Federal Register

6–28–05 Tuesday

Vol. 70 No. 123 June 28, 2005

Pages 37009–37248

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# Rules and Regulations

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

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

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 5 CFR Part 5502

**RIN 3209–AA15**

### Supplemental Financial Disclosure Requirements for Employees of the Department of Health and Human Services

**AGENCY:** Department of Health and Human Services (HHS).

**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule extends the due date for NIH employees to file a report of prohibited financial interests held on or acquired after February 3, 2005. The reports are now due no earlier than October 3, 2005.

**DATES:** This interim final rule is effective June 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Edgar M. Swindell, Associate General Counsel, Office of the General Counsel, Ethics Division, Department of Health and Human Services, telephone (202) 690–7258, fax (202) 205–9752.

**SUPPLEMENTARY INFORMATION:** The Executive Branch Financial Disclosure Regulation, 5 CFR part 2634, prescribes rules governing the public and confidential financial disclosure systems established under the Ethics in Government Act. With the approval of the Office of Government Ethics, an agency may supplement those regulations pursuant to 5 CFR 2634.103. In an interim final rule published at 70 FR 5543 on February 3, 2005, HHS added a new part 5502 to title 5. Among other provisions, NIH employees on duty as of the effective date of the interim final rule were required by § 5502.106(c)(3) to report in writing within 60 days after the effective date any financial interest prohibited by 5 CFR 5501.110 that was held on the effective date.

The specified report was due initially on April 4, 2005. The Designated Agency Ethics Official extended the deadline to July 5, 2005, the maximum 90 day period provided under § 5502.105. In response to comments submitted following the publication of the interim final rule, the Department is considering issuing revisions to the HHS supplemental ethics regulations, including part 5502. To allow time for any revisions to be fairly considered, the current reporting date must be deferred. Accordingly, § 5502.106(c)(3) is amended to specify a new due date, October 3, 2005.

For those new entrant or reassigned employees who enter on duty at the NIH after February 3, 2005, and before September 4, 2005, or for incumbent employees who acquire a prohibited financial interest during this period, the due date for the report is also changed to October 3, 2005.

Pursuant to 5 CFR 5501.110(g), the due date for the report determines the divestiture period specified in 5 CFR 2635.403(d), as applied to financial interests prohibited under 5 CFR 5501.110(c) and (d). As a consequence, the new deadline for any required divestitures will be January 2, 2006.

Section 5502.105 is amended to allow the Designated Agency Ethics Official, for good cause, to extend reporting deadlines for reports required under part 5502 during the initial implementation phase for any reporting requirement, without regard to the 90 day maximum specified in the interim final rule.

### Administrative Procedure Act

Because this interim final rule involves only a procedural matter and extends a financial disclosure reporting deadline applicable to agency personnel, it is exempt under 5 U.S.C. 553(a)(2) and 553(b) from the requirement for notice and comment rulemaking. The deferral of the reporting requirement relieves restrictions under current law and thus is effective upon publication pursuant to 5 U.S.C. 553(d)(1).

### Regulatory Flexibility Act

This interim final rule will not have a significant economic impact on a substantial number of small entities because the rule amends a personnel provision affecting only HHS employees.

### Paperwork Reduction Act

This interim final rule does not prescribe information collection requirements that are subject to approval by the Office of Management and Budget.

### Congressional Review Act

As a provision related to agency personnel, this rulemaking is not a rule as defined in 5 U.S.C. 804, and does not require review by Congress.

### Executive Orders 12866 and 12988

Because this rule relates to HHS personnel, it is exempt from the provisions of Executive Orders 12866 and 12988.

### List of Subjects 5 CFR Part 5502

Conflict of interests, Ethics, Government employees, Reporting and recordkeeping requirements.

Dated: June 10, 2005.

**Edgar M. Swindell,**

*Designated Agency Ethics Official, Department of Health and Human Services.*

Dated: June 22, 2005.

**Michael O. Leavitt,**

*Secretary, Department of Health and Human Services.*

Approved: June 22, 2005.

**Marilyn L. Glynn,**

*Acting Director, Office of Government Ethics.*

■ For the reasons discussed in the preamble, the Department of Health and Human Services, with the concurrence of the Office of Government Ethics, amends 5 CFR part 5502 as follows:

### Title 5—[Amended]

**Chapter XLV–Department of Health and Human Services**

## PART 5502—SUPPLEMENTAL FINANCIAL DISCLOSURE REQUIREMENTS FOR EMPLOYEES OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

■ 1. The authority citation for part 5502 continues to read as follows:

**Authority:** 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2634.103.

■ 2. Revise § 5502.105 to read as follows:

**§ 5502.105 Agency procedures.**

(a) The designated agency ethics official or, with the concurrence of the designated agency ethics official, each of the separate agency components of HHS listed in § 5501.102(a) of this chapter may prescribe procedures for the submission and review of each report filed under this part. These procedures may provide for filing extensions, for good cause shown, totaling not more than 90 days.

(b) For good cause, the designated agency ethics official may extend the reporting deadlines for reports required under this part during the initial implementation phase for any reporting requirement, without regard to the 90 day maximum specified in paragraph (a) of this section.

■ 3. Amend § 5502.106 by revising paragraph (c) to read as follows:

**§ 5502.106 Supplemental disclosure of prohibited financial interests applicable to employees of the Food and Drug Administration and the National Institutes of Health.**

* * * * *

(c) *Report of prohibited financial interests.*—(1) *New entrant employees.* A new FDA employee, other than a public filer or a confidential filer, shall report in writing within 30 days after entering on duty with the FDA any prohibited financial interest held upon commencement of employment with the agency. A new NIH employee, other than a public filer or a confidential filer, who enters on duty at the NIH after February 3, 2005, and before September 4, 2005, shall report in writing on or before October 3, 2005, any prohibited financial interest held upon commencement of employment with the agency. A new NIH employee, other than a public filer or a confidential filer, who enters on duty at the NIH on or after September 4, 2005, shall report in writing within 30 days after entering on duty with the NIH any prohibited financial interest held upon commencement of employment with the agency.

(2) *Reassigned employees.* An employee of a separate agency component other than the FDA or of the remainder of HHS who is reassigned to a position at the FDA shall report in writing within 30 days of entering on duty with the FDA any prohibited financial interest held on the effective date of the reassignment to the agency. An employee of a separate agency component other than the NIH or of the remainder of HHS who is reassigned to a position at the NIH after February 3, 2005, and before September 4, 2005, shall report in writing on or before October 3, 2005, any prohibited financial interest held on the effective date of the reassignment to the agency. An employee of a separate agency component other than the NIH or of the remainder of HHS who is reassigned to a position at the NIH on or after September 4, 2005, shall report in writing within 30 days of entering on duty with the NIH any prohibited financial interest held on the effective date of the reassignment to the agency.

(3) *Incumbent employees.* An incumbent employee of the FDA who acquires any prohibited financial interest shall report such interest in writing within 30 days after acquiring the financial interest. An incumbent employee of the NIH who acquires any prohibited financial interest after February 3, 2005, and before September 4, 2005, shall report such interest in writing on or before October 3, 2005. An incumbent employee of the NIH who acquires any prohibited financial interest on or after September 4, 2005, shall report such interest in writing within 30 days after acquiring the financial interest. An incumbent employee on duty at the NIH on February 3, 2005, shall report in writing on or before October 3, 2005, any prohibited financial interest held on February 3, 2005.

[FR Doc. 05–12733 Filed 6–23–05; 5 pm]

BILLING CODE 4150–03–P

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## DEPARTMENT OF ENERGY

## 10 CFR Parts 600 and 733

## 48 CFR Parts 935, 952 and 970

**RIN 1901–AA89**

## Policy on Research Misconduct

**AGENCY:** Department of Energy.

**ACTION:** Notice of interim final rulemaking and opportunity for comment.

**SUMMARY:** The Department of Energy (DOE) is publishing an interim final general statement of policy and interim final financial assistance and procurement requirements to implement the government-wide Federal Policy on Research Misconduct. These interim final rules are designed to protect the integrity of research and development funded by DOE.

**DATES:** The effective date is July 28, 2005. Written comments must be received on or before the close of business August 29, 2005.

**ADDRESSES:** Comments (5 copies) should be addressed to: Christine Chalk, SC–5, U.S. Department of Energy, Office of Science, Room 3H–051, 1000 Independence Avenue, SW., Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Christine Chalk at 202–586–7203 *(Christine.Chalk@science.doe.gov).*

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### I. Background

In 1996, the White House Office of Science and Technology Policy (OSTP) began the process of formulating a uniform government-wide Federal policy on research misconduct. OSTP published a proposed policy on research misconduct in the **Federal Register** at 64 FR 55722, October 14, 1999, and published the final policy at 65 FR 76260, December 6, 2000 (Federal Policy). The Federal Policy is available on the Office of Science Web site at *http://www.sc.doe.gov/misconduct/finalpolicy.pdf.*

The objective of the Federal Policy is to create a uniform policy framework for Federal agencies for the handling of allegations of misconduct in federally funded or supported research. Within this framework, each Federal agency funding or supporting research is expected to fashion its own regulations to accommodate the various types of research transactions in which it is engaged. This rule implements the Federal Policy for DOE including the National Nuclear Security Administration. In keeping with these objectives, these DOE regulations incorporate key aspects of the Federal Policy. In particular, research misconduct is being defined as including fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but not as including honest error or differences of opinion. In addition, a finding of research

misconduct requires a determination, based on a preponderance of the evidence, that research misconduct has occurred, including a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

The core principle of the Federal Policy is that, while research organizations have the primary responsibility for the inquiry, investigation, and adjudication of allegations of research misconduct, Federal agencies have ultimate oversight authority for the research they fund or support. While there may be some overlap in the actions that may be pursued by Federal agencies and research organizations, DOE has designed this rule to assure that if an allegation of research misconduct is made against a contractor or recipient of financial assistance, either the contractor or recipient or, if appropriate, DOE, investigates that allegation. Federal law prescribes procedural frameworks for adverse contract actions, adverse assistance actions, suspensions, or debarments that are different from procedural frameworks for competing for Federal procurement or assistance awards, and for adverse personnel actions against Federal civil service employees. Further, the DOE Office of the Inspector General (OIG) may proceed under its previously existing administrative investigation process when misconduct is alleged against Federal civil service employees, contractors or recipients of financial assistance. In addition, if a contractor or financial assistance recipient cannot conduct its own research misconduct investigation the rule provides that DOE will be responsible for conducting the investigation.

In order to best implement the Federal Policy, DOE promulgates a new 10 CFR part 733 (Allegations of Research Misconduct), which sets forth a general statement of policy applicable to research conducted under a DOE contract or financial assistance agreement. Consistent with the general statement of policy, DOE today amends 10 CFR part 600 (Financial Assistance Rules), 48 CFR part 935 (Research and Development Contracting), 48 CFR part 952 (Solicitation Provisions and Contract Clauses), and 48 CFR part 970 (DOE Management and Operating Contracts). The Secretary of Energy has approved this notice for publication in the **Federal Register**. For all contracts, contracting officers must apply the DOE Acquisition Regulations (DEAR) changes (codified at 48 CFR) to solicitations issued on or after the effective date of this rule and may, at their discretion, include these DEAR changes in solicitations issued before the effective date of this rule, provided award of the resulting contract(s) occurs on or after the effective date.

For management and operating contracts, contracting officers must apply these DEAR changes: to contracts extended in accordance with the Department's extend/compete policies and procedures (48 CFR 917.6, 48 CFR 970.1706, and internal guidance); and to options exercised under competitively awarded management and operating contracts (48 CFR 970.1706).

For management and operating contracts, contracting officers should modify existing contracts at the next fee negotiation/annual renewal after the effective date of this rule.

## II. Discussion of the General Statement of Policy and Standard Requirements

Since research for DOE occurs pursuant to financial assistance agreements or contracts, the general statement of policy provides that DOE will implement the Federal Policy through the insertion in financial assistance agreements and contracts of standard requirements based on the Federal Policy. DOE expects that these standard requirements will result in most allegations of research misconduct being handled in accordance with the Federal Policy by the research institution where the research misconduct is alleged to have taken place.

The general statement of policy also sets forth guidance to DOE offices with regard to the processing of allegations of research misconduct made directly to DOE. The guidance provides for initial handling of such allegations by the DOE office programmatically responsible for an assistance agreement or contract. That office in turn will consult with the DOE Office of the Inspector General (IG) to determine whether that office will choose to investigate the allegation. If the IG declines to investigate, the DOE program office will refer the allegation to the appropriate contracting officer responsible for the administration of the assistance agreement or contract for processing by the assistance recipient or contractor consistent with requirements of the applicable research misconduct requirements. If the Department elects to act in lieu of the contractor or financial assistance recipient, the research misconduct investigation shall be conducted by the DOE office programmatically responsible for the assistance agreement or contract with support from other departmental elements, as appropriate.

DOE is amending the DEAR at 48 CFR part 935 to prescribe the inclusion of requirements on research misconduct in all DOE contracts that involve research. DOE also is amending part 952 of the DEAR and 10 CFR part 600, respectively, to add requirements that by accepting the funds under a contract, including a management and operating contractor a financial assistance award, the recipient of DOE funds is making assurances that it has established an administrative process for reviewing, investigating, and reporting allegations of research misconduct and that it will comply with its own administrative process and the requirements of 10 CFR part 733 for review, investigation, and reporting of research misconduct. DOE also is amending part 970 of the DEAR to provide that records generated by a management and operating contractor during the course of responding to allegations of research misconduct will be considered owned by the contractor.

As suggested in the Federal Policy, DOE expects debarment and suspension would be available as possible recommended remedies for a finding of research misconduct. These remedies would exclude a person or organization from participating in research activities funded by the Federal Government. DOE's non-procurement suspension and debarment rule is promulgated at 10 CFR part 606, while the Federal procurement suspension and debarment rule is promulgated at 48 CFR part 909. Both regulations require a fact-finding process if there are any facts in dispute prior to a suspension or debarment determination. The fact-finding process used to make a determination of research misconduct under this rule would satisfy the requirements for a fact-finding hearing as adopted in the DOE's non-procurement debarment and suspension regulations, as well as the requirements for a fact-finding hearing as described in the FAR.

## III. Public Comment Procedures

Interested persons are invited to participate by submitting data, views or arguments with respect to the new regulation in this rulemaking. Five copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice of rulemaking. All comments received will be available for public inspection as part of the administrative record on file for this rulemaking in the Department of Energy Freedom of Information Reading Room, Room 1E–090, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–

3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the **DATES** section of this notice of rulemaking and all other relevant information in the record will be carefully assessed and fully considered prior to the publication of the final rule. Any information or data considered to be exempt from public disclosure by law must be so identified and submitted in writing, one copy, as well as one complete copy from which the information believed to be exempt from disclosure is deleted. DOE will determine if the information or data is exempt from disclosure.

## IV. Procedural Review Requirements

### *A. Review Under Executive Order 12866*

This regulatory action has been determined to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB). OMB has completed its review.

### *B. Review Under Executive Order 12988*

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. The review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

### *C. Review Under the Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that a Federal agency prepare a regulatory flexibility analysis for any rule for which the agency is required to publish a general notice of rulemaking. Today's rule consists of a general statement of policy, amendments to financial assistance regulations, and amendments to procurement regulations. Each part of today's rule is exempt from the requirement to publish a general notice of proposed rulemaking under the Administrative Procedure Act (5 U.S.C. 553) or any other law. Therefore, the Regulatory Flexibility Act does not apply to this rulemaking.

### *D. Review Under the Paperwork Reduction Act*

No new information collection requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, are imposed by today's regulatory action.

### *E. Review Under the National Environmental Policy Act*

The Department has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by Department of Energy regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the rule and amendments to the Department of Energy Acquisition Regulation (DEAR) would be strictly procedural (categorical exclusion A6). Therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

### *F. Review Under Executive Order 13132*

Executive Order 13132 (64 FR 43255, August 10, 1999) requires agencies 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.'' As defined in the Executive Order, policies that have Federalism implications 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. The Department has examined this rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

### *G. Review Under the Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking affects private sector entities, and the impact is less than $100 million.

### *H. Review Under the Treasury and General Government Appropriations Act, 1999*

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's rule does not impact on the autonomy or integrity of the family institution. Accordingly, the Department has concluded that it is not necessary to prepare a Family Policymaking Statement.

### *I. Review Under the Treasury and General Government Appropriations Act, 2001*

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to the general guideline issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002) and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's rulemaking under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

*J. Review Under the Small Business Regulatory Enforcement Fairness Act*

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's interim final rule prior to its effective date. The report will state that the rule is not a major rule under 5 U.S.C. 804(2).

**List of Subjects**

*10 CFR Part 600*

Administrative practice and procedure.

*10 CFR Part 733*

Investigations, Reporting and recordkeeping requirements, Research, Science and technology, Scientists.

*48 CFR Parts 935, 952, and 970*

Government procurement.

Issued in Washington, DC on June 20, 2005.

**Raymond L. Orbach,**

*Director of Science.*

■ For the reasons set out in the preamble, Chapters II and III of title 10 and Chapter 9 of title 48 of the Code of Federal Regulations respectively, are to be amended as set forth below:

## PART 600—FINANCIAL ASSISTANCE RULES

■ 1. The authority citation for 10 CFR part 600 continues to read as follows:

**Authority:** 42 U.S.C. 7101 *et seq.*; 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.*, unless otherwise noted.

■ 2. Add § 600.31 to subpart A to read as follows:

### § 600.31 Research misconduct.

(a) A recipient is responsible for maintaining the integrity of research of any kind under an award from DOE including the prevention, detection, and remediation of research misconduct, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this section.

(b) For purposes of this section, the following definitions are applicable:

*Adjudication* means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.

*Fabrication* means making up data or results and recording or reporting them.

*Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

*Finding of Research Misconduct* means a determination, based on a preponderance of the evidence, that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

*Inquiry* means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

*Investigation* means the formal examination and evaluation of the relevant facts.

*Plagiarism* means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

*Research* means all basic, applied, and demonstration research in all fields of science, medicine, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences statistics, and research involving human subjects or animals.

*Research misconduct* means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.

*Research record* means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

(c) Unless otherwise instructed by the contracting officer, the recipient must conduct an initial inquiry into any allegation of research misconduct. If the recipient determines that there is sufficient evidence to proceed to an investigation, it must notify the contracting officer and, unless otherwise instructed, the recipient must:

(1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted;

(2) Inform the contracting officer if an initial inquiry supports an investigation and, if requested by the contracting officer thereafter, keep the contracting officer informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the recipient will forward to the contracting officer a copy of the evidentiary record, the investigative report, any recommendations made to the recipient's adjudicating official, and the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response to the recommendations (if any).

(3) If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

(d) The Department may elect to act in lieu of the recipient in conducting an inquiry or investigation into an allegation of research misconduct if the contracting officer finds that:

(1) The research organization is not prepared to handle the allegation in a manner consistent with this section;

(2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(3) DOE involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or,

(4) The allegation involves possible criminal misconduct.

(e) DOE reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the recipient's good faith administration of this section and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If DOE pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

(f) In conducting the activities in paragraph (c) of this section, the recipient and the Department, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:

(1) *Safeguards for information and subjects of allegations.* The recipient shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the recipient without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations;

and diligence in protecting positions and reputations. The recipient shall also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.

(2) *Objectivity and expertise.* The recipient shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.

(3) *Timeliness.* The recipient shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.

(4) *Confidentiality.* To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.

(5) *Remediation and sanction.* If the recipient finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The recipient must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The recipient must coordinate remedial actions with the contracting officer. The recipient must also consider whether personnel sanctions are appropriate. Any such sanction must be consistent with any applicable personnel laws, policies, and procedures, and must take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

(g) By executing this agreement, the recipient provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements and definitions of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of allegations of research misconduct.

(h) The recipient must insert or have inserted the substance of this section, including paragraph (g), in subawards at all tiers that involve research.

## PART 733—ALLEGATIONS OF RESEARCH MISCONDUCT

■ 3. Part 733 is added to Chapter III of title 10 of the Code of Federal Regulations to read as follows:

## PART 733—[ADDED]

Sec.
733.1 Purpose.
733.2 Scope.
733.3 Definitions.
733.4 Research misconduct requirements.
733.5 Allegations received by DOE.
733.6 Consultation with the DOE Office of the Inspector General.
733.7 Referral to the contracting officer.
733.8 Contracting officer procedures.

**Authority:** 42 U.S.C. 2201; 7254; 7256; 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

### § 733.1 Purpose.

The purpose of this part is to set forth a general statement of policy on the treatment of allegations of research misconduct consistent with Federal Policy on Research Misconduct established by the White House Office of Science and Technology Policy on December 6, 2000 (65 FR 76260–76264).

### § 733.2 Scope.

This part applies to allegations of research misconduct with regard to scientific research conducted under a Department of Energy contract or an agreement.

### § 733.3 Definitions.

The following terms used in this part are defined as follows:

*Contract* means an agreement primarily for the acquisition of goods or services that is subject to the Federal Acquisition Regulations (48 CFR Chapter 1) and the DOE Acquisition Regulations (48 CFR Chapter 9).

*DOE* means the U.S. Department of Energy (including the National Nuclear Security Administration).

*DOE Element* means a major division of DOE, usually headed by a Presidential appointee, which has a delegation of authority to carry out activities by entering into contracts or financial assistance agreements.

*Fabrication* means making up data or results and recording or reporting them.

*Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

*Financial assistance agreement* means an agreement the primary purpose of which is to provide appropriated funds to stimulate an activity, including but not limited to, grants and cooperative agreements pursuant to 10 CFR Part 600.

*Finding of research misconduct* means a determination, based on a preponderance of the evidence, that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

*Plagiarism* means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

*Research* means all basic, applied, and demonstration research in all fields of science, engineering, and mathematics, such as research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals.

*Research misconduct* means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.

*Research record* means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles

### § 733.4 Research misconduct requirements.

DOE intends to apply the research misconduct policy set forth in 65 FR 76260–76264 by including appropriate research misconduct requirements in contracts and financial assistance awards that make contractors and financial recipients primarily responsible for implementing the policy in dealing with allegations of research

misconduct in connection with the proposal, performance or review of research for DOE .

**§ 733.5 Allegations received by DOE.**

If DOE receives directly a written allegation of research misconduct with regard to research under a DOE contract or financial assistance agreement, DOE will refer the allegation for processing to the DOE Element responsible for the contract or financial assistance agreement.

**§ 733.6 Consultation with the DOE Office of the Inspector General.**

Upon receipt of an allegation of research misconduct, the DOE Element shall consult with the DOE Office of the Inspector General which will determine whether that office will elect to investigate the allegation.

**§ 733.7 Referral to the contracting officer.**

If the DOE Office of the Inspector General declines to investigate an allegation of research misconduct, the DOE Element should forward the allegation to the contracting officer responsible for administration of the contract or financial assistance agreement to which the allegation pertains.

**§ 733.8 Contracting officer procedures.**

Upon receipt of an allegation of research misconduct by referral under § 733.7, the contracting officer should, by notification of the contractor or financial assistance recipient:

(a) Require the contractor or the financial assistance recipient to act on the allegation consistent with the Research Misconduct requirements in the contract or financial assistance award to which the allegation pertains; or

(b) In the event the contractor or the financial assistance recipient is unable to act:

(1) Designate an appropriate DOE program to conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted; and

(2) Make the appropriate findings consistent with the Research Misconduct requirements contained in the contract or financial assistance award, in order to act in lieu of the contractor or financial assistance recipient.

**Title 48**

## PART 935—RESEARCH AND DEVELOPMENT CONTRACTING

■ 4. The authority citation for 48 CFR part 935 continues to read as follows:

**Authority:** 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

■ 5. Sections 935.070 and 935.071 are added to read as follows:

**935.070 Research misconduct.**

(a) *Applicability.* The DOE research misconduct policy set forth at 10 CFR part 733 addresses research misconduct by individuals who propose, perform or review research of any kind for the Department of Energy pursuant to a contract. The regulation applies regardless of where the research or other activity is conducted or by whom.

(b) *Definition.* Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion. A finding of research misconduct means a determination, based on a preponderance of the evidence, that research misconduct has occurred, including a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

**935.071 Contract clause.**

The contracting officer must insert the clause at 952.235–71, Research Misconduct, in contracts, including management and operating contracts, that involve research.

## PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. The authority citation for part 952 continues to read as follows:

**Authority:** 42 U.S.C. 2201, 2282a, 2282b, 2282c, 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

■ 7. Section 952.235–71 is added to read as follows:

**952.235–71 Research Misconduct.**

As prescribed in 48 CFR Part 935.071, insert the following clause:

Research Misconduct (JUL 2005)

(a) The contractor is responsible for maintaining the integrity of research performed pursuant to this contract award including the prevention, detection, and remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this clause.

(b) Unless otherwise instructed by the contracting officer, the contractor must conduct an initial inquiry into any allegation of research misconduct. If the contractor determines that there is sufficient evidence to proceed to an investigation, it must notify the contracting officer and, unless otherwise instructed, the contractor must:

(1) Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted;

(2) If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

(3) Inform the contracting officer if an initial inquiry supports a formal investigation and, if requested by the contracting officer thereafter, keep the contracting officer informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the contractor will forward to the contracting officer a copy of the evidentiary record, the investigative report, any recommendations made to the contractor's adjudicating official, the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

(c) The Department may elect to act in lieu of the contractor in conducting an inquiry or investigation into an allegation of research misconduct if the contracting officer finds that:

(1) The research organization is not prepared to handle the allegation in a manner consistent with this clause;

(2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(3) DOE involvement is necessary to ensure the public heath, safety, and security, or to prevent harm to the public interest; or,

(4) The allegation involves possible criminal misconduct.

(d) In conducting the activities under paragraphs (b) and (c) of this clause, the contractor and the Department, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:

(1) *Safeguards for information and subjects of allegations.* The contractor shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the contractor without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The contractor shall also provide

the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.

(2) *Objectivity and Expertise.* The contractor shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.

(3) *Timeliness.* The contractor shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.

(4) *Confidentiality.* To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.

(5) *Remediation and Sanction.* If the contractor finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The contractor must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The contractor must coordinate remedial actions with the contracting officer. The contractor must also consider whether personnel sanctions are appropriate. Any such sanction must be considered and effected consistent with any applicable personnel laws, policies, and procedures, and shall take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

(e) DOE reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the contractor's good faith administration of this clause and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If DOE pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

(f) *Definitions.*

*Adjudication* means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.

*Fabrication* means making up data or results and recording or reporting them.

*Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

*Finding of Research Misconduct* means a determination, based on a preponderance of the evidence, that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

*Inquiry* means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

*Investigation* means the formal examination and evaluation of the relevant facts.

*Plagiarism* means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

*Research* means all basic, applied, and demonstration research in all fields of science, medicine, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences statistics, and research involving human subjects or animals.

*Research Misconduct* means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.

*Research record* means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

(g) By executing this contract, the contractor provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, or investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of research misconduct.

(h) The contractor must insert or have inserted the substance of this clause, including paragraph (g), in subcontracts at all tiers that involve research.

(End of Clause)

## PART 970—MANAGEMENT AND OPERATING CONTRACTS

■ 7. The authority citation for part 970 continues to read as follows:

**Authority:** 42 U.S.C. 2201, 2282a, 2282b, 2282c; 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

■ 8. Section 970.5204–3 is amended by revising paragraph (b)(1) to read as follows:

**970.5204–3 Access to and ownership of records.**

* * * * *

(b) * * *

(1) Employment-related records (such as worker's compensation files; employee relations records, records on salary and employee benefits; drug testing records, labor negotiation records; records on ethics, employee concerns; records generated during the course of responding to allegations of research misconduct; records generated during other employee related investigations conducted under an expectation of confidentiality; employee assistance program records; and personnel and medical/health-related records and similar files), and non-employee patient medical/health-related records, except for those records described by the contract as being maintained in Privacy Act systems of records.

* * * * *

[FR Doc. 05–12645 Filed 6–27–05; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 23

**[Docket No. CE227; Special Condition No. 23–169–SC]**

## Special Conditions: Diamond Aircraft Industries, DA–42; Diesel Cycle Engine Using Turbine (Jet) Fuel

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Diamond Aircraft Industries (DAI) DA–42 airplane. This airplane will have a novel or unusual design feature(s) associated with the installation of a diesel cycle engine utilizing turbine (jet) fuel. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for installation of this new technology engine. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is June 22, 2005.

Comments must be received on or before July 28, 2005.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE227, 901 Locust, Room 506, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE227. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Peter L. Rouse, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Kansas City, Missouri, 816–329–4135, fax 816–329–4090.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

## Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE227.'' The postcard will be date stamped and returned to the commenter.

## Background

Under the Bilateral Airworthiness Agreement (BAA) between the USA and the Austrian Exporting Civil Aviation Authority (ECAA), the Austro Control GmbH (ACG), the DAI applied for U.S. Type Certification of Diamond Aircraft Industries (DAI) Model DA–42 on August 2, 2004, through the European Aviation Safety Agency (EASA). The DAI DA–42 aircraft is a new fully composite, four place, twin-engine airplane with retractable gear, cantilever low wing and T-tail. EASA certified the airplane on type certificate number A005, dated May 13, 2004. The airplane is powered by two Thielert Aircraft Engines GmbH (Thielert) TAE 125–01 aircraft diesel engines (ADE), type certificated in the United States, type certificate number E00069EN.

Expecting the reintroduction of diesel engine technology into the small airplane fleet, the FAA issued Policy Statement PS-ACE100–2002–004 on May 15, 2004, which identified areas of technological concern involving introduction of new technology diesel engines into small airplanes. For a more detailed summary of the FAA's development of diesel engine requirements, refer to this policy.

The general areas of concern involved the power characteristics of the diesel engines, the use of turbine fuel in an airplane class that has typically been powered by gasoline fueled engines, the vibration characteristics and failure modes of diesel engines. These concerns were identified after a review of the record of diesel engine use in aircraft and a review of the 14 CFR part 23 regulations, which identified specific regulatory areas that needed to be evaluated for applicability to diesel engine installations. These concerns are not considered universally applicable to all types of possible diesel engines and diesel engine installations. However, after review of the DAI installation, the Thielert engine type, and the requirements applied by the ACG, and after applying the provisions of the diesel policy, the FAA proposes these fuel system and engine related special conditions. Other special conditions issued in a separate notice include special conditions for HIRF and application of § 23.1309 provisions to the Full Authority Digital Engine Control (FADEC).

## Discussion

Several major concerns were identified in developing FAA policy. These include installing the diesel engine and noting its vibration levels under both normal operating conditions and when one cylinder is inoperative. The concerns also include accommodating turbine fuels in airplane systems that have generally evolved based on gasoline requirements, anticipated use of a FADEC to control the engine, and appropriate limitations and indications for a diesel engine powered airplane. The general concerns associated with the aircraft diesel engine installation are as follows: Installation and Vibration Requirements, Fuel and Fuel System Related Requirements, FADEC and Electrical System Requirements, Limitations and Indications.

*Installation and Vibration Requirements:* These special conditions include requirements similar to the requirements of § 23.901(d)(1) for turbine engines. In addition to the requirements of § 23.901 applied to reciprocating engines, the applicant will be required to construct and arrange each diesel engine installation to result in vibration characteristics that do not exceed those established during the type certification of the engine. These vibration levels must not exceed vibration characteristics that a previously certificated airframe structure has been approved for, unless such vibration characteristics are shown to have no effect on safety or continued airworthiness. The engine limit torque design requirements as specified in § 23.361 are also modified.

An additional requirement to consider vibration levels and/or effects of an inoperative cylinder was imposed. Also, a requirement to evaluate the engine design for the possibility of, or effect of, liberating high-energy engine fragments, in the event of a catastrophic engine failure, requirements was added.

*Fuel and Fuel System Related Requirements:* Due to the use of turbine fuel, this airplane must comply with the requirements in § 23.951(c).

Section 23.961 will be complied with using the turbine fuel requirements. These requirements will substantiated by flight-testing as described in Advisory Circular AC 23–8B, Flight Test Guide for Certification of Part 23 Airplanes.

This special condition specifically requires testing to show compliance to § 23.961 and adds the possibility of testing non-aviation diesel fuels.

To ensure fuel system compatibility and reduce the possibility of misfueling, and discounting the first clause of § 23.973(f) referring to turbine engines, the applicant will comply with § 23.973(f).

Due to the use of turbine fuel, the applicant will comply with § 23.977(a)(2), and § 23.977(a)(1) will not apply. ''Turbine engines'' will be interpreted to mean ''aircraft diesel engine'' for this requirement. An additional requirement to consider the possibility of fuel freezing was imposed.

Due to the use of turbine fuel, the applicant will comply with § 23.1305(c)(8).

Due to the use of turbine fuel, the applicant must comply with § 23.1557(c)(1)(ii). Section 23.1557(c)(1)(ii) will not apply. ''Turbine engine'' is interpreted to mean ''aircraft diesel engine'' for this requirement.

*FADEC and Electrical System Requirements:* The electrical system must comply with the following:

- In case of failure of one power supply of the electrical system, there will be no significant engine power change. The electrical power supply to the FADEC must remain stable in such a failure.
- The transition from the actual engine electrical network (FADEC) to the remaining electrical system with the consumer's, avionics, communication, etc., should be made by a single point only. If several transitions (*e.g.*, for redundancy reasons) are needed, then the number of the transitions must be kept as small as possible.
- There must be the ability to separate the FADEC power supply (alternator) from the battery and from the remaining electrical system.
- In case of loss of alternator power, the installation must guarantee that the battery will provide the power for an appropriate time after appropriate warning to the pilot.
- FADEC, alternator, and battery must be interconnected in an appropriate way so, in case of loss of battery power, the supply of the FADEC is guaranteed by the alternator.

*Limitations and Indications*

Section 23.1305(a) and § 23.1305(b)(2) will apply, except that propeller revolutions per minute (RPM) will be displayed. Sections 23.1305(b)(4), 23.1305(b)(5), and 23.1305(b)(7) are deleted.

Additional critical engine parameters for this installation that will be displayed include:

(1) Power setting, in percentage, and

(2) Fuel temperature.

Due to the use of turbine fuel, the requirements for § 23.1521(d), as applicable to fuel designation for turbine engines, will apply.

## Type Certification Basis

Under the provisions of 14 CFR 21.17, Diamond Aircraft Industries must show that the DA–42 meets the applicable provisions of part 23, as amended by Amendments 23–1 through 23–51 thereto. In addition, the certification basis includes special conditions and equivalent levels of safety for the following:

Special Conditions:

- Engine torque (Provisions similar to § 23.361, paragraphs (b)(1) and (c)(3))
- Powerplant—Installation (Provisions similar to § 23.901(d)(1) for turbine engines)
- Powerplant—Fuel System—Fuel system with water saturated fuel (Compliance with § 23.951 requirements)
- Powerplant—Fuel System—Fuel system hot weather operation (Compliance with § 23.961 requirements)
- Powerplant—Fuel system—Fuel tank filler connection (Compliance with § 23.973(f) requirements)
- Powerplant—Fuel system—Fuel tank outlet (Compliance with § 23.977 requirements)
- Powerplant—Powerplant Controls and Accessories—Engine ignition systems (Compliance with § 23.1165 requirements)
- Equipment—General—Powerplant Instruments (Compliance with § 23.1305 requirements)
- Operating Limitations and Information—Powerplant limitations—Fuel grade or designation (Compliance with § 23.1521(d) requirements)
- Markings And Placards—Miscellaneous markings and placards—Fuel, oil, and coolant filler openings (Compliance with § 23.1557(c)(1) requirements)
- Powerplant—Fuel system—Fuel-Freezing
- Powerplant Installation—Vibration levels
- Powerplant Installation—One cylinder inoperative
- Powerplant Installation—High Energy Engine Fragments

Equivalent levels of safety for:

- Cockpit controls—23.777(d)
- Motion and effect of cockpit controls—23.779(b)
- Liquid Cooling—Installation—23.1061
- Ignition switches—23.1145

The type certification basis includes exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 23) do not contain adequate or appropriate safety standards for the Diamond Aircraft Industries DA–42 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 Diamond Aircraft Industries DA–42 must comply with the part 23 noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.17.

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

## Novel or Unusual Design Features

The Diamond Aircraft Industries DA–42 will incorporate the following novel or unusual design feature:

The Diamond Aircraft Industries DA–42 will incorporate an aircraft diesel engine using turbine (jet) fuel.

## Applicability

As discussed above, these special conditions are applicable to the Diamond Aircraft Industries DA–42. Should Diamond Aircraft Industries apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special condition 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 one model series of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in a prior instance and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and 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 opportunity for comment described above.

**List of Subjects in 14 CFR Part 23**

Aircraft, Aviation safety, Signs and symbols.

**Citation**

The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.38 and 11.19.

**The Special Conditions**

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Diamond Aircraft Industries DA–42 airplane.

1. Engine torque (Provisions similar to § 23.361, paragraphs (b)(1) and (c)(3)):

a. For diesel engine installations, the engine mounts and supporting structure must be designed to withstand the following:

(1) A limit engine torque load imposed by sudden engine stoppage due to malfunction or structural failure.

(a) The effects of sudden engine stoppage may alternatively be mitigated to an acceptable level by utilization of isolators, dampers clutches, and similar provisions, so unacceptable load levels are not imposed on the previously certificated structure.

b. The limit engine torque to be considered under § 23.361(a) must be obtained by multiplying the mean torque by a factor of four for diesel cycle engines.

(1) If a factor of less than four is used, it must be shown that the limit torque imposed on the engine mount is consistent with the provisions of § 23.361(c). In other words, it must be shown that the use of the factors listed in § 23.361(c)(3) will result in limit torques on the mount that are equivalent to or less than those imposed by a conventional gasoline reciprocating engine.

2. Powerplant—Installation (Provisions similar to § 23.901(d)(1) for turbine engines):

Considering the vibration characteristics of diesel engines, the applicant must comply with the following:

a. Each diesel engine installation must be constructed and arranged to result in vibration characteristics that—

(1) Do not exceed those established during the type certification of the engine; and

(2) Do not exceed vibration characteristics that a previously certificated airframe structure has been approved for —

(i) Unless such vibration characteristics are shown to have no effect on safety or continued airworthiness, or

(ii) Unless mitigated to an acceptable level by utilization of isolators, dampers clutches, and similar provisions, so that unacceptable vibration levels are not imposed on the previously certificated structure.

3. Powerplant—Fuel System—Fuel system with water saturated fuel (Compliance with § 23.951 requirements):

Considering the fuel types used by diesel engines, the applicant must comply with the following:

a. Each fuel system for a diesel engine must be capable of sustained operation throughout its flow and pressure range with fuel initially saturated with water at 80° F and having 0.75cc of free water per gallon added and cooled to the most critical condition for icing likely to be encountered in operation.

b. Methods of compliance that are acceptable for turbine engine fuel systems requirements of § 23.951(c) are also considered acceptable for this requirement.

4. Powerplant—Fuel System—Fuel system hot weather operation (Compliance with § 23.961 requirements):

In place of compliance with § 23.961, the applicant must comply with the following:

a. Each fuel system must be free from vapor lock when using fuel at its critical temperature, with respect to vapor formation, when operating the airplane in all critical operating and environmental conditions for which approval is requested. For turbine fuel, or for aircraft equipped with diesel cycle engines that use turbine or diesel type fuels, the initial temperature must be 110 °F, −0°, +5° or the maximum outside air temperature for which approval is requested, whichever is more critical.

b. The fuel system must be in an operational configuration that will yield the most adverse, that is, conservative results.

c. To comply with this requirement, the applicant must use the turbine fuel requirements and must substantiate these by flight-testing, as described in Advisory Circular AC 23–8B, Flight Test Guide for Certification of Part 23 Airplanes.

5. Powerplant—Fuel system—Fuel tank filler connection (Compliance with § 23.973(f) requirements):

In place of compliance with § 23.973(e) and (f), the applicant must comply with the following:

For airplanes that operate on turbine or diesel type fuels, the inside diameter of the fuel filler opening must be no smaller than 2.95 inches.

6. Powerplant—Fuel system—Fuel tank outlet (Compliance with § 23.977 requirements):

In place of compliance with § 23.977(a)(1) and (a)(2), the applicant will comply with the following:

There must be a fuel strainer for the fuel tank outlet or for the booster pump. This strainer must, for diesel engine powered airplanes, prevent the passage of any object that could restrict fuel flow or damage any fuel system component.

7. Powerplant—Powerplant Controls and Accessories—Engine ignition systems (Compliance with § 23.1165 requirements):

Considering that the FADEC provides the same function as an ignition system for this diesel engine, in place of compliance to § 23.1165, the applicant will comply with the following:

a. The electrical system must comply with the following requirements:

(1) In case of failure of one power supply of the electrical system, there will be no significant engine power change. The electrical power supply to the FADEC must remain stable in such a failure.

(2) The transition from the actual engine electrical network (FADEC network) to the remaining electrical system should be made at a single point only. If several transitions (for example, redundancy reasons) are needed, then the number of the transitions must be kept as small as possible.

(3) There must be the ability to separate the FADEC power supply (alternator) from the battery and from the remaining electrical system.

(4) In case of loss of alternator power, the installation must guarantee the battery will provide the power for an appropriate time after appropriate warning to the pilot. This period must be at least 30 minutes required, 60 minutes desired.

(5) FADEC, alternator, and battery must be interconnected in an appropriate way so, in case of loss of battery power, the supply of the FADEC is guaranteed by the alternator.

8. Equipment—General—Powerplant Instruments (Compliance with § 23.1305 and 91.205 requirements):

a. In place of compliance with § 23.1305, the applicant will comply with the following:

(1) The following are required powerplant instruments:

(a) A fuel quantity indicator for each fuel tank, installed in accordance with § 23.1337(b).

(b) An oil pressure indicator.

(c) An oil temperature indicator.

(d) A tachometer indicating propeller speed.

(e) A coolant temperature indicator.

(f) An indicating means for the fuel strainer or filter required by § 23.997 to indicate the occurrence of contamination of the strainer or filter before it reaches the capacity established in accordance with § 23.997(d).

*1.* No indicator is required if the engine can operate normally for a specified period with the fuel strainer exposed to the maximum fuel contamination as specified in MIL–5007D and provisions for replacing the fuel filter at this specified period (or a shorter period) are included in the maintenance schedule for the engine installation.

(g) Power setting, in percentage.

(h) Fuel temperature.

(i) Fuel flow (engine fuel consumption).

b. In place of compliance with § 91.205, the following will be complied with: The diesel engine has no manifold pressure gauge as required by § 91.205, in its place, the engine instrumentation as installed is to be approved as equivalent. TCDS is to be modified to show power indication will be accepted to be equivalent to the manifold pressure indication.

9. Operating Limitations and Information—Powerplant limitations—Fuel grade or designation (Compliance with § 23.1521(d) requirements):

Instead of compliance with § 23.1521(d), the applicant must comply with the following:

The minimum fuel designation (for diesel engines) must be established so it is not less than that required for the operation of the engines within the limitations in paragraphs (b) and (c) of § 23.1521.

10. Markings And Placards—Miscellaneous markings and placards—Fuel, oil, and coolant filler openings (Compliance with § 23.1557(c)(1) requirements):

Instead of compliance with § 23.1557(c)(1), the applicant must comply with the following:

a. Fuel filler openings must be marked at or near the filler cover with—

(1) For diesel engine-powered airplanes—

(a) The words ''Jet Fuel''; and

(b) The permissible fuel designations, or references to the Airplane Flight Manual (AFM) for permissible fuel designations.

(c) A warning placard or note that states the following or similar:

''Warning—this airplane equipped with an aircraft diesel engine, service with approved fuels only.''

The colors of this warning placard should be black and white.

11. Powerplant—Fuel system—Fuel-Freezing:

If the fuel in the tanks cannot be shown to flow suitably under all possible temperature conditions, then fuel temperature limitations are required. These will be considered as part of the essential operating parameters for the aircraft and must be limitations.

a. The takeoff temperature limitation must be determined by testing or analysis to define the minimum cold-soaked temperature of the fuel that the airplane can operate on.

b. The minimum operating temperature limitation must be determined by testing to define the minimum operating temperature acceptable after takeoff (with minimum takeoff temperature established in (1) above).

12. Powerplant Installation—Vibration levels:

a. Vibration levels throughout the engine operating range must be evaluated and:

(1) Vibration levels imposed on the airframe must be less than or equivalent to those of the gasoline engine; or

(2) Any vibration level that is higher than that imposed on the airframe by the replaced gasoline engine must be considered in the modification and the effects on the technical areas covered by the following paragraphs must be investigated: 14 CFR part 23, 23.251; 23.613; 23.627; 23.629 (or CAR 3.159, as applicable to various models); 23.572; 23.573; 23.574 and 23.901.

b. Vibration levels imposed on the airframe can be mitigated to an acceptable level by use of isolators, dampers clutches, and similar provisions, so unacceptable vibration levels are not imposed on the previously certificated structure.

13. Powerplant Installation—One cylinder inoperative:

It must be shown by test or analysis, or by a combination of methods, that the airframe can withstand the shaking or vibratory forces imposed by the engine if a cylinder becomes inoperative. Diesel engines of conventional design typically have extremely high levels of vibration when a cylinder becomes inoperative. Data must be provided to the airframe installer/modifier so either appropriate design considerations or operating procedures, or both, can be developed to prevent airframe and propeller damage.

14. Powerplant Installation—High Energy Engine Fragments:

It may be possible for diesel engine cylinders (or portions thereof) to fail and physically separate from the engine at high velocity (due to the high internal pressures). This failure mode will be considered possible in engine designs with removable cylinders or other non-integral block designs. The following is required:

a. It must be shown that the engine construction type (massive or integral block with non-removable cylinders) is inherently resistant to liberating high energy fragments in the event of a catastrophic engine failure; or,

b. It must be shown by the design of the engine, that engine cylinders, other engine components or portions thereof (fragments) cannot be shed or blown off the engine in the event of a catastrophic engine failure; or

c. It must be shown that all possible liberated engine parts or components do not have adequate energy to penetrate engine cowlings; or

d. Assuming infinite fragment energy, and analyzing the trajectory of the probable fragments and components, any hazard due to liberated engine parts or components will be minimized and the possibility of crew injury is eliminated. Minimization must be considered during initial design and not presented as an analysis after design completion.

Issued in Kansas City, Missouri on June 22, 2005.

**John Colomy,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–12720 Filed 6–27–05; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–127–AD; Amendment 39–14168; AD 2005–13–31]**

**RIN 2120–AA64**

## Airworthiness Directives; Short Brothers Model SD3–60 Airplanes

**AGENCY:** Federal Aviation Administration, Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3–60 airplanes, that requires performing repetitive inspections of the shear attachment fittings of the vertical stabilizer for corrosion, and performing corrective actions if necessary. The actions specified by this AD are intended to detect and correct corrosion in the area of the main spar web fittings of the vertical stabilizer, which could

result in reduced structural integrity of the vertical stabilizer. This action is intended to address the identified unsafe condition.

**DATES:** Effective August 2, 2005.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of August 2, 2005.

**ADDRESSES:** The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

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

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–60 airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on April 1, 2005 (70 FR 16764). That action proposed to require performing repetitive inspections of the shear attachment fittings of the vertical stabilizer for corrosion, and performing corrective actions if necessary. The actions specified by this AD are intended to detect and correct corrosion in the area of the main spar web fittings of the vertical stabilizer, which could result in reduced structural integrity of the vertical stabilizer.

## Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

## Explanation of Change to Applicability

We have revised the applicability of the proposed AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

## Explanation of Change to Final Rule

The proposed AD had an incorrectly numbered ''Note'' paragraph. We have corrected the number of that Note in the final rule.

## Conclusion

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

## Cost Impact

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

ESTIMATED COSTS

| Action | Work hours | Average labor rate per hour | Parts | Cost per airplane | Number of U.S.-registered airplanes | Fleet cost |
|---|---|---|---|---|---|---|
| Inspection, per inspection cycle. | 4 | $65 | None ..... | $260 | 46 | $11,960, per inspection cycle. |

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

## Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

## Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2005–13–31 Short Brothers PLC:** Amendment 39–14168. Docket 2003–NM–127–AD.

*Applicability:* All Model SD3–60 airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct corrosion in the area of the main spar web fittings of the vertical stabilizer, which could result in reduced structural integrity of the vertical stabilizer, accomplish the following:

**Inspection and Previous Actions**

(a) Except as provided by paragraphs (a)(1) and (a)(2) of this AD, within 4,800 flight hours or 90 days after the effective date of this AD, whichever occurs first, do a borescope inspection to detect corrosion of the shear attachment fittings of the vertical stabilizer, in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–45, dated December 2003.

(1) If an airplane (the shear attachment fitting) has been inspected in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–44, Revision 1, dated January 24, 2003, before the effective date of this AD, and was found to have no corrosion on the fittings, then the initial inspection specified in paragraph (a) of this AD is not required.

(2) If the shear attachment fitting has been inspected in accordance with the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–44, Revision 1, dated January 24, 2003, and was found to have corrosion, but the corroded fitting is not yet replaced, then a review of the inspection results is required to determine if the corrosion was within the acceptable limits specified in Short Brothers Service Bulletin SD360–53–45, dated December 2003.

**Corrective Actions and Repetitive Inspections**

(b) If any corrosion is found during the inspection required by paragraph (a) of this AD, do the applicable actions required by paragraph (b)(1) or (b)(2) of this AD.

(1) If any corrosion is within the limits specified in the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–45, dated December 2003, do the actions required by paragraphs (b)(1)(i) and (b)(1)(ii) of this AD.

(i) Repeat the inspection required by the service bulletin at intervals not to exceed 6 months.

(ii) Within 18 months after the initial inspection required by paragraph (a) of this AD, replace all corroded shear attachment fittings in accordance with the Accomplishment Instructions of the service bulletin. Accomplishing the replacement ends the repetitive inspections required by paragraph (b)(1)(i) of this AD.

(2) If any corrosion is outside the limits specified in the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–45, dated December 2003, before further flight, replace the corroded fitting with a new fitting, in accordance with the Accomplishment Instructions of the service bulletin.

(c) If no corrosion is found during the inspection required by paragraph (a) or if the fitting was replaced with a new fitting in accordance with Short Brothers Service Bulletin SD360–53–45, dated December 2003, do the actions in paragraphs (c)(1) and (c)(2) of this AD.

(1) Within 24 months after the initial inspection required by paragraph (a) of this AD or within 24 months after replacement of the fitting with a new one, whichever occurs later, do a borescope (intrascope) detailed inspection for corrosion, in accordance with Part A of the Accomplishment Instructions of Short Brothers Service Bulletin SD360–53–45, dated December 2003. Repeat this inspection thereafter at intervals not to exceed 24 months. Do corrective actions in accordance with paragraph (b) of this AD.

(2) Thereafter, except as provided in paragraph (f) of this AD, no alternative borescope inspections may be approved.

**Previous Repetitive Inspections**

(d) Borescope (intrascope) detailed inspections done before the effective date of this AD in accordance with Bombardier Temporary Revisions (TR) TR360–MPSUPP–04 and TR360–MPSUPP–03, both dated August 20, 2003, are acceptable for compliance with the requirements of paragraph (c)(1) of this AD.

**Disposition of Repairs for Corroded/Oversized Holes**

(e) Where Short Brothers Service Bulletin SD360–53–45, dated December 2003, says to contact the manufacturer for action on any corroded or oversized hole found during the inspection required by paragraph (a) or (c) of this AD, before further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent).

**Alternative Methods of Compliance**

(f) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, is authorized to approve alternative methods of compliance for this AD.

**Note 1:** The subject of this AD is addressed in British airworthiness directive G–2004–0005, effective March 16, 2004.

**Incorporation by Reference**

(g) You must use Short Brothers Service Bulletin SD360–53–45, dated December 2003, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

**Effective Date**

(h) This amendment becomes effective on August 2, 2005.

Issued in Renton, Washington, on June 14, 2005.

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–12508 Filed 6–27–05; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2004–18716; Directorate Identifier 2003–NM–240–AD; Amendment 39–14156; AD 2005–13–19]**

**RIN 2120–AA64**

## Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. This AD requires repetitive external eddy current inspections of the forward fuselage skin to detect cracking due to fatigue, and repair if necessary. This AD is prompted by evidence of cracking due to fatigue along the edges of the chemi-etched pockets in certain front fuselage canopy skin panels. We are issuing this AD to detect and correct this cracking, which could result in reduced structural integrity of the airplane fuselage.

**DATES:** This AD becomes effective August 2, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of August 2, 2005.

**ADDRESSES:** For service information identified in this AD, contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171.

*Docket:* The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Washington, DC. This docket number is FAA–2004–18716; the directorate identifier for this docket is 2003–NM–240–AD.

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

## Examining the Docket

The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR Part 39 with an AD for all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. That action, published in the **Federal Register** on July 30, 2004 (69 FR 45614), proposed to require repetitive external eddy current inspections of the forward fuselage skin to detect cracking due to fatigue, and repair if necessary.

## Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been submitted on the proposed AD.

## Request To Refer to Revised Service Information

One commenter requests that we revise the proposed AD to refer to BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 1, dated May 18, 2004, as the acceptable source of service information for the actions required by paragraph (f) of the proposed AD. Paragraph (f) of the proposed AD refers to BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendices 2 and 3, all dated June 27, 2003, as the applicable source of service information for the actions specified in that paragraph.

We concur. We have reviewed BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 1. The instructions in Revision 1 are essentially the same as those in the original issue of the service bulletin, including Appendices 2 and 3. Accordingly, we have revised this AD to refer to BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendix 2, Revision 1, as the applicable source of service information for the actions required by paragraph (f) of this AD. We have also added a new paragraph (g) (and reidentified subsequent paragraphs accordingly) to give credit for inspections accomplished before the effective date of this AD in accordance with the original issue of the service bulletin, including Appendices 2 and 3.

In the proposed AD, we explained two differences between the proposed AD and the original issue of the service bulletin. These differences continue to apply between this AD and Revision 1 of the service bulletin. For the convenience of operators, these differences are repeated as follows:

- Although the referenced service bulletin describes procedures for submitting Appendix 1 of the service bulletin with inspection results to the manufacturer, this AD does not require that action. We do not need this information from operators.
- The service bulletin specifies that you may perform repairs in accordance with the structural repair manual (SRM), or that you may contact the manufacturer for instructions on how to repair conditions outside the limits defined in the SRM, but this AD requires you to repair those conditions using a method that we or the CAA (or its delegated agent) approve. In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this AD, a repair we or the CAA approve would be acceptable for compliance with this AD.

## Request To Extend Compliance Time

One commenter requests that we extend the repetitive interval for Model Avro 146-RJ series airplanes from 4,000 to 6,000 flight cycles. The commenter notes that a 6,000-flight-cycle repetitive interval would be more compatible with normal maintenance schedules. The commenter provides no justification for the requested change other than for the convenience of its maintenance program.

We do not concur. In developing a repetitive interval for this AD, we considered the manufacturer's recommendation and the action taken by the CAA, as well as the degree of urgency associated with the subject unsafe condition. In light of these factors, we find that a 4,000-flight-cycle repetitive interval represents an appropriate interval of time for Model Avro 146-RJ series airplanes to operate between inspections without compromising safety. We note that this is consistent with the repetitive interval specified in the referenced service bulletin. However, under the provisions of paragraph (i) of this AD, we may approve a request to adjust the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety. We have not changed the AD in this regard.

## Explanation of Editorial Changes

We have revised the statement of unsafe condition in the Summary and paragraph (d) of this AD to better clarify that this AD is intended to detect and correct fatigue cracking along the edges of the chemi-etched pockets in certain front fuselage canopy skin panels, which could result in reduced structural integrity of the airplane fuselage.

We have also revised paragraphs (f)(1)(ii) and (f)(2)(ii) of this AD to clarify that repair must be accomplished before further flight on any area where a crack is found. The proposed AD implied but did not explicitly state that a repair must be accomplished before further flight.

## Conclusion

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

## Costs of Compliance

This AD affects about 54 airplanes of U.S. registry. The required actions will take about 40 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is $140,400, or $2,600 per airplane, per inspection cycle.

## Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

## Regulatory Findings

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

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

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

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

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2005–13–19 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft):** Amendment 39–14156. Docket No. FAA–2004–18716; Directorate Identifier 2003–NM–240–AD.

**Effective Date**

(a) This AD becomes effective August 2, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ series airplanes, certificated in any category.

**Unsafe Condition**

(d) This AD was prompted by evidence of cracking due to fatigue along the edges of the chemi-etched pockets in certain front fuselage canopy skin panels. We are issuing this AD to detect and correct this cracking, which could result in reduced structural integrity of the airplane fuselage.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

**Inspections and Repair**

(f) Within the applicable compliance time specified in paragraph (f)(1) or (f)(2) of this AD, perform an external eddy current inspection of the forward fuselage skin to detect cracking, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin ISB.53–167, including Appendix 2, Revision 1, dated May 18, 2004.

(1) For Model BAe 146 series airplanes: Inspect before the accumulation of 16,000 total landings, or within 4,000 landings after the effective date of this AD, whichever is later.

(i) For areas where no crack is found, repeat the inspection at intervals not to exceed 8,000 landings.

(ii) For areas where any crack is found, before further flight, perform repairs in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the Civil Aviation Authority (CAA) (or its delegated agent). No further inspection of any repaired area is required by this AD.

(2) For Model Avro 146-RJ series airplanes: Inspect before the accumulation of 10,000 total landings, or within 2,000 landings after the effective date of this AD, whichever is later.

(i) For areas where no crack is found, repeat the inspection at intervals not to exceed 4,000 landings.

(ii) For areas where any crack is found, before further flight, perform repairs in accordance with a method approved by the Manager, International Branch, ANM–116, or the CAA (or its delegated agent). No further inspection of any repaired area is required by this AD.

**Inspections Accomplished According to Previous Issue of Service Bulletin**

(g) Inspections accomplished before the effective date of this AD in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–167, including Appendices 2 and 3, all dated June 27, 2003, are considered acceptable for compliance with the corresponding action specified in paragraph (f) of this AD.

**No Reporting Requirement**

(h) Although the service bulletin referenced in this AD specifies to submit Appendix 1 of the service bulletin with certain information to the manufacturer, this AD does not include that requirement.

**Alternative Methods of Compliance (AMOCs)**

(i) The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

**Related Information**

(j) British airworthiness directive 007–06–2003 also addresses the subject of this AD.

**Material Incorporated by Reference**

(k) You must use BAE Systems (Operations) Limited Modification Service Bulletin ISB.53–167, including Appendix 2, Revision 1, dated May 18, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, go to British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 14, 2005.

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–12511 Filed 6–27–05; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2001–NM–296–AD; Amendment 39–14171; AD 2005–13–34]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777–200 and –300 series airplanes, that requires replacing existing ceiling and sidewall light connectors in the passenger cabin with new connectors, and follow-on actions. This action is necessary to prevent overheating of the light connectors, which could result in smoke and a possible fire in the passenger cabin. This action is intended to address the identified unsafe condition.

**DATES:** Effective August 2, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 2, 2005.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Binh V. Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 and –300 series airplanes was published in the **Federal Register** on August 15, 2003 (68 FR 48833). That action proposed to require replacing existing ceiling and sidewall light connectors in the passenger cabin with new connectors, and follow-on actions.

### Explanation of New Relevant Service Information

Since the issuance of the proposed AD, the FAA has reviewed and approved Boeing Special Attention Service Bulletin 777–33–0019, Revision 1, dated March 11, 2004. (The proposed AD refers to Boeing Special Attention Service Bulletin 777–33–0019, dated July 19, 2001, as the appropriate source of service information for the proposed actions.) Revision 1 limits the effectivity listing to airplanes having line numbers 1 through 264 inclusive. (Connectors on airplanes with line numbers 265 and subsequent were modified and screened prior to delivery of those airplanes to ensure the connectors' resistance to moisture contamination.) We have revised the applicability statement of this AD accordingly.

The work instructions in Revision 1 of the service bulletin are essentially the same as those in the original issue. Accordingly, we have revised paragraph (a) of this AD to refer to Revision 1 of the service bulletin and to give credit for actions accomplished previously per the original issue of the service bulletin. We have also revised paragraph (b) of this AD to remove the reference to the applicable steps in Work Packages 1, 2, and 3 of the service bulletin. Since all steps in Work Packages 1, 2, and 3 of Boeing Special Attention Service Bulletin 777–33–0019, Revision 1, must be done, there is no need to include this information in the AD.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. We have duly considered the comments received.

### Support for the Proposed AD

One commenter supports the proposed AD.

### Request To Withdraw the Proposed AD

One commenter, the airplane manufacturer, requests that we withdraw the proposed AD. The commenter notes that it has performed a comprehensive hazard assessment of the subject connectors and has concluded that a connector failure would not adversely affect the airplane's capacity for continued safe flight and landing. The commenter states that the hazard assessment included a review of the materials adjacent to the subject connectors. This review shows that these materials do not propagate a flame and would not significantly affect the magnitude or duration of a potential connector failure. The commenter notes that the type of material adjacent to the connectors was also changed to an improved material at a certain line number during production. The commenter further explains that the reported connector failures were detected during troubleshooting of inoperative lighting or during airplane maintenance and, in all cases, short circuiting was limited by circuit breaker protection. Based on this information, the commenter concludes that the proposed AD is not justified. The commenter also expresses concern that the extensive rework associated with the proposed AD could be detrimental because the rework would increase the probability of latent system failures due to the large number of connectors in the airplane that must be reworked in an environment not conducive to such rework.

After the comment period closed, we coordinated with the commenter on this issue. The commenter agrees that an unsafe condition exists, and that the proposed AD is an appropriate means of addressing it. Thus, we find that no change to the AD is necessary in this regard.

### Requests To Extend Compliance Time

Several commenters request that we extend the proposed compliance time beyond the proposed 18 months. The commenters' proposals for the extended compliance time range from 24 months to 6 years. The commenters justify their requests based on the scope of the necessary work, especially related to the amount of work associated with gaining access to the connectors (*e.g.*, removing stowage bins and ceiling panels, which are not normally removed during minor maintenance visits). The commenters state that extending the compliance time would allow them to accomplish the proposed requirements during a scheduled heavy maintenance visit. Two commenters question the urgency of the unsafe condition (a factor that we considered in determining the compliance time, as explained in the proposed AD). These commenters have not experienced any connector failures in their fleets and thus conclude that an extension of the compliance time would not adversely affect safety. Another commenter suggests that we require the replacement of Priority ''A+'' and ''A'' connectors (as defined in Revision 01 of the referenced service bulletin) within 18 months, and the replacement of Priority ''B'' and ''C'' connectors within 6 years. One commenter also expresses concern about parts availability, in that the number of airplanes affected by the proposed AD and the relatively short compliance time could overburden the ceiling light supplier with a large

number of lights sent to them for modification.

We agree that the compliance time for the requirements of this AD may be extended somewhat. We have reconsidered the urgency of the unsafe condition and the amount of work related to the required actions. We find that extending the compliance time from 18 months to 60 months will not adversely affect safety, and, for the majority of affected operators, will allow the required actions to be performed during regularly scheduled maintenance at a base where special equipment and trained maintenance personnel will be available if necessary. A 60-month compliance time will reduce the burden on affected operators, while at the same time addressing one of the manufacturer's concerns, stated previously, that the rework associated with the connector replacement could increase the probability of latent system failures. We have revised paragraph (b) of this AD accordingly.

**Request To Limit Required Replacement of Connectors**

One commenter, the airplane manufacturer, requests that we limit the requirement to replace connectors to connectors that are prioritized ''A+'' and ''A'' (as defined in Revision 1 of the referenced service bulletin). The commenter notes that Revision 1 of the referenced service bulletin designates connectors with ''A+'' priority as those that have failed in service, and connectors with ''A'' priority as those that are in the same physical area and exposed to the same conditions as the failed connectors. (Connectors with ''B'' priority are those that are in the same physical areas as connectors with ''A'' priority, but that are not expected to be subject to the same environmental conditions (*e.g.*, possible exposure to moisture) as connectors with ''A'' priority. Connectors with priority ''C'' are all other connectors in which 115-volt power is present.)

We acknowledge the manufacturer's position with regard to known service problems. We also acknowledge our common interest in replacing all of the connectors. We have determined that all connectors, regardless of their location, have the potential to fail if they are contaminated by moisture. Also, these connectors are interchangeable, so it is possible that connectors with priority ''C'' could be removed and reinstalled in a location where they would merit priority ''A+'' or ''A'' replacement. For these reasons, we find that all connectors are subject to the same unsafe condition that is addressed by this AD. We find that requiring replacement of all connectors with improved connectors that are more resistant to moisture contamination will eliminate the unsafe condition and ensure the continued operating safety of the affected airplane fleet. As stated previously, we have agreed to extend the compliance time for the replacement of all connectors to 60 months, which the manufacturer has agreed will not impose an unnecessary burden on operators. No further change is necessary in this regard.

**Requests To Increase Estimate of Cost Impact**

Several commenters request that we revise the Cost Impact section of the proposed AD to increase the estimated number of work hours, as well as the estimated number of affected Model 777–200 series airplanes.

Several commenters note that the referenced service bulletin estimates that 242 work hours per airplane will be needed to modify each Model 777–200 series airplane. One of these commenters explains that the time required for gaining access and closing up should be included as a specific cost of the proposed AD because the overhead bins and ceiling panels would not normally be removed at a maintenance visit corresponding to the proposed compliance time of 18 months. Another commenter notes that the estimate in the service bulletin of 242 work hours is low. Based on its past experience, the commenter estimates that 300 work hours per airplane will be necessary.

We do not concur with the request to increase the estimated number of work hours. Section 1. G., ''Manpower,'' of the service bulletin states that 242 work hours per airplane will be needed to accomplish the actions that apply to Model 777–200 series airplanes. This total figure of 242 work hours includes 79 work hours for opening access and 91 work hours for closing access. We do not typically include the time for gaining access and closing up in the Cost Impact estimates in ADs. Thus, in this AD we estimate that 72 work hours will be needed to accomplish the required actions on each Model 777–200 series airplane.

Regarding the commenter's statement that the time for gaining access and closing up should be included because the overhead bins and ceiling panels would not normally be removed at a maintenance visit corresponding to the originally proposed compliance time of 18 months: As explained previously, we have revised the compliance time for this AD from 18 months to 60 months. This extension should allow the majority of affected operators to accomplish the required actions at a scheduled heavy maintenance visit (when stowage bins and ceiling panels are removed). No additional change is necessary in this regard.

Several commenters also note that the estimate that the proposed AD would affect 22 Model 777–200 series airplanes of U.S. registry is incorrect, and that there are actually 107 of these airplanes that would be affected by the proposed AD. We partially concur. We find that 74 Model 777–200 series airplanes will be affected by this AD. We also find that there are no affected Model 777–300 series airplanes currently on the U.S. Register. (The proposed AD identifies 86 affected Model 777–300 series airplanes.) We have revised the Cost Impact section of this AD accordingly.

Other commenters request that we add cost estimates for additional actions. One commenter requests that we revise the cost estimate to include the work hours for modifying each light connector. We do not concur. We find that the light connectors may be modified by the operator or by a vendor. Thus, the time for modifying the light connectors may not be borne by the operator. No change is necessary in this regard.

One commenter states that, to support the modification program, it will need to purchase an entire ship's set of lights to create a rotating pool of light assemblies. This commenter requests that we increase the cost estimate to reflect this cost of $63,200. We do not concur. The need to create a rotating pool of light assemblies is a planning decision made by the individual operator. Not all operators will choose such a course of action; thus, the cost of additional light assemblies should not be attributable to this AD. No change is necessary in this regard.

Another commenter requests that we revise the Cost Impact section of the proposed AD to include the cost of an oxygen leak detection test that it must accomplish following removal/installation of stowage bins on airplanes equipped with gaseous oxygen systems. We do not concur. Not all airplanes subject to this AD are equipped with a gaseous oxygen system in the passenger cabin. Thus, not all airplanes will be subject to the cost of a test of such a system. Further, the estimated work hours needed for testing, as specified in Section 1.G., Manpower, of the service bulletin, are already included in the Cost Impact estimate specified in this AD. No change is necessary in this regard.

**Explanation of Additional Change to This AD**

We have revised the Note included in the proposed AD to correct the reference to Diehl Service Information Letter 3352–33–01/01, dated June 20, 2001, and to designate the note as ''Note 1.''

**Conclusion**

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

There are approximately 264 airplanes of the affected design in the worldwide fleet. We estimate that 74 Model 777–200 series airplanes of U.S. registry will be affected by this AD.

For Model 777–200 series airplanes, it will take approximately 72 work hours per airplane to accomplish the required actions, at an average labor rate of $65 per work hour. Required parts will cost approximately $4,631 per airplane. Based on these figures, we estimate the cost impact of this AD on U.S. operators of Model 777–200 series airplanes to be $689,014, or $9,311 per airplane.

There are currently no affected Model 777–300 series airplanes on the U.S. Register. However, if an affected Model 777–300 series airplane is placed on the U.S. Register in the future, it will take approximately 82 work hours per airplane to accomplish the required actions, at an average labor rate of $65 per work hour. Required parts will cost approximately $5,488 per airplane. Based on these figures, we estimate the cost impact of this AD to be $10,818 per affected Model 777–300 series airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

**Regulatory Impact**

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

**2005–13–34 Boeing:** Amendment 39–14171. Docket 2001–NM–296–AD.

*Applicability:* Model 777–200 and –300 series airplanes, certificated in any category, line numbers 001 through 264 inclusive.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent overheating of ceiling and sidewall light connectors, which could result in smoke and a possible fire in the passenger cabin, accomplish the following:

**Service Bulletin References**

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–33–0019, Revision 1, dated March 11, 2004.

(2) Although the service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include such a requirement.

(3) Actions accomplished before the effective date of this AD per Boeing Special Attention Service Bulletin 777–33–0019, dated July 19, 2001, are acceptable for compliance with the corresponding actions required by this AD.

**Replacement of Light Connectors**

(b) Within 60 months after the effective date of this AD: Replace, with improved parts, the existing ceiling and sidewall light connectors and wire bundle connectors in the areas specified in the service bulletin; by accomplishing all actions in Work Packages 1, 2, and 3, of the Accomplishment Instructions of the service bulletin.

**Note 1:** Boeing Special Attention Service Bulletin 777–33–0019 refers to Diehl Service Information Letter 3352–33–01/01, dated June 20, 2001, as an additional source of service information for accomplishment of the connector replacements.

**Alternative Methods of Compliance**

(c) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

**Incorporation by Reference**

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Special Attention Service Bulletin 777–33–0019, Revision 1, dated March 11, 2004. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of this service information, go to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To inspect copies of this service information, go to the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA,

call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Effective Date**

(e) This amendment becomes effective on August 2, 2005.

Issued in Renton, Washington, on June 21, 2005.

**Ali Bahrami,**

*Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–12635 Filed 6–27–05; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–21357; Directorate Identifier 2005–CE–29–AD; Amendment 39–14136; AD 2005–12–20]**

**RIN 2120–AA64**

## Airworthiness Directives; The Lancair Company Model LC41–550FG Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction

**SUMMARY:** This document makes a correction to Airworthiness Directive (AD) 2005–12–20, which was published in the **Federal Register** on June 20, 2005 (70 FR 35370), and applies to certain The Lancair Company (Lancair) Model LC41–550FG airplanes. We incorrectly referenced the affected airplane model as LC41–550F in the applicability section. The correct airplane model is LC41–550FG. This action corrects the regulatory text.

**DATES:** The effective date of this AD remains June 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeffrey Morfitt, Program Manager, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98055–4065; telephone: (425) 917–6405; facsimile: (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Discussion

On June 10, 2005, FAA issued AD 2005–12–20, Amendment 39–14136 (70 FR 35370, June 20, 2005), which applies to certain The Lancair Company (Lancair) Model LC41–550FG airplanes.

We incorrectly referenced the affected airplane model as LC41–550F. The correct airplane model is LC41–550FG. This action corrects the regulatory text.

This AD requires both visual and dye penetrant inspections of the elevator torque tube assembly for cracks. If a crack is found, this AD requires replacement with a modified assembly that incorporates a steel doubler. This AD also requires replacement of the modified elevator torque tube assembly every 300 hours time-in-service or 18 months (whichever occurs first).

### Need for the Correction

This correction is needed to ensure that the affected airplane model is correct and to eliminate misunderstanding in the field.

### Correction of Publication

■ Accordingly, the publication of June 20, 2005 (70 FR 35370), of Amendment 39–14136; AD 2005–12–20, which was the subject of FR Doc. 05–11880, is corrected as follows:

**§ 39.13 [Corrected]**

On page 35371, in section 39.13 [Amended], in paragraph (c), replace Model LC41–550F with Model LC41–550FG.

Action is taken herein to correct this reference in AD 2005–12–20 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains June 21, 2005.

Issued in Kansas City, Missouri, on June 20, 2005.

**Kim Smith,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 05–12676 Filed 6–27–05; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket FAA 2005–20248; Airspace Docket 05–AWP–1]**

## Establish Class D Airspace; Front Range Airport, Denver, CO

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule will establish Class D airspace at Front Range Airport, Denver, CO. An Airport Traffic Control Tower (ATCT) is being constructed at Front Range Airport, Denver, CO, which will meet criteria for Class D airspace. Class D airspace is required when the ATCT is open, and to contain and protect Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to 8,000 feet Mean Sea Level (MSL) within a 5.1 nautical mile radius of the airport.

**DATES:** *Effective Date:* 0901 UTC, August 4, 2005.

**FOR FURTHER INFORMATION CONTACT:** Larry Tonish, Federal Aviation Administration, Western Terminal Operations, 15000 Aviation Boulevard, Lawndale, CA 90261; telephone (310) 725–6539.

**SUPPLEMENTARY INFORMATION:**

### History

On March 11, 2005, the FAA proposed to amend Title 14 Code of Federal Regulations part 71 (CFR part 71) to establish Class D airspace at Front Range Airport, Denver, CO, (70 FR 12161). An Airport Traffic Control Tower (ATCT) is under construction at Front Range Airport, Denver CO, which will meet criteria for Class D airspace. The Class D airspace area will be effective during periods that the ATCT is open.

Interested parties were invited to participate in this rule making proceeding by submitting written comments on the proposal to the FAA. No comments were received. Class D airspace designations are published in paragraph 5000 of FAA Order 7400.9M dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class D airspace designation listed in this document will be published subsequently in that Order.

### The Rule

This amendment to 14 CFR part 71 establishes Class D airspace at Front Range Airport, Denver CO. An Airport Traffic Control Tower (ATCT) is under construction at Front Range Airport, Denver, CO, which will meet criteria for Class D airspace.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air

traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air)

**Adoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR part 71.1 of the 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 5000 Class D Airspace area extending upward from the surface of the earth.*

* * * * *

**ANM CO D Front Range Airport, Denver, CO [NEW]**

Front Range Airport, Denver, CO
(Lat 39°47′07″ N., long. 104°32′35″ W.)

That airspace extending upward from the surface of 8,000 feet MSL within a 5.1 nautical mile radius of the Front Range Airport, Denver, CO, excluding the Denver International Airport Class B. This Class D airspace area is effective during the specific days and times established in advance by the Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California on June 15, 2005.

**Leonard A. Mobley,**

*Acting Area Director, Terminal Operations, Western Service Area.*

[FR Doc. 05–12725 Filed 6–27–05; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2005–20752; Airspace Docket No. 05–ACE–15]**

## Modification of Class E Airspace; Columbus, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of effective date.

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

**DATES:** *Effective Date:* 0901 UTC, September 1, 2005.

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

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on April 25, 2005 (70 FR 21144). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 1, 2005. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on July 10, 2005.

**Elizabeth S. Wallis,**

*Acting Area Director, Western Flight Services Operations.*

[FR Doc. 05–12722 Filed 6–27–05; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2005–21608; Airspace Docket No. 05–ACE–18]**

## Modification of Class E Airspace; Mc Cook, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace areas at Mc Cook, NE. A review of the Class E airspace surface area and the Class E airspace area extending upward from 700 feet above ground level (AGL) at Mc Cook, NE reveals neither area complies with criteria in FAA Orders nor reflects the current airport name. These airspace areas and their legal descriptions are modified to conform to the criteria in FAA Orders.

**DATES:** This direct final rule is effective 0901 UTC, October 27, 2005. Comments for inclusion on the Rules Docket must be received on or before July 30, 2005.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21608/ Airspace Docket No. 05–ACE–18, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR 71 modifies the Class E surface area and the Class E airspace area extending upward from 700 feet AGL at Mc Cook, NE. An examination of controlled airspace for Mc Cook, NE revealed that neither airspace area is in compliance with FAA

Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. The radius of the Class E surface area is expanded from within a 4.6-mile radius to within a 5.0-mile radius of the Mc Cook Regional Airport and the existing extensions remain the same. The Class E airspace area extending upward from 700 feet AGL is reduced from within a 7.6-mile radius to within a 7.5-mile radius of the Mc Cook Regional Airport. The Mc Cook Regional Airport name is corrected in both legal descriptions. These modifications bring the legal descriptions of the Mc Cook, NE Class E airspace areas into compliance with FAA Orders 7400.2E and 8260.19C. 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. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

**The Direct Final Rule Procedure**

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

**Comments Invited**

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21608/Airspace Docket No. 05–ACE–18.'' The postcard will be date/time stamped and returned to the commenter.

**Agency Findings**

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

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

The rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it contains aircraft executing instrument approach procedures to Mc Cook Regional Airport.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

* * * * *

**ACE NE E2 McCook, NE**

Mc Cook Regional Airport, NE
(Lat. 40°12′23″ N., long. 100°35′32″ W.)
Mc Cook VOR/DME
(Lat. 40°12′14″ N., long. 100°35′39″ W.)

Within a 5.0-mile radius of Mc Cook Regional Airport and within 1.8 miles each side of the Mc Cook VOR/DME 122° radial extending from the 5.0-mile radius of the airport to 7 miles southeast of the VOR/DME and within 1.8 miles each side of the Mc Cook VOR/DME 326° radial extending from the 5.0-mile radius of the airport to 7 miles northwest of the VOR/DME.

* * * * *

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

* * * * *

**ACE NE E5 McCook, NE**

Mc Cook Regional Airport, NE
(Lat. 40°12′23″ N., long. 100°35′32″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Mc Cook Regional Airport.

* * * * *

Issued in Kansas City, MO, on June 20, 2005.

**Elizabeth S. Wallis,**

*Acting Area Director, Western Flight Services Operations.*

[FR Doc. 05–12721 Filed 6–27–05; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 284

**[RM96–1–026]**

### Standards for Business Practices of Interstate Natural Gas Pipelines

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Federal Energy Regulatory Commission published in the **Federal Register** of May 17, 2005, a document concerning regulations governing standards for conducting business practices with interstate natural gas pipelines. This final rule was incorrectly designated ''Order No. 654''. This correction document changes that to read ''Order No. 587–S''.

**DATES:** Effective on June 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Jamie Chabinsky, 202–502–6040.

**SUPPLEMENTARY INFORMATION:** The Federal Energy Regulatory Commission published a document in the **Federal Register** of May 17, 2005 (70 FR 28204). This correction changes the order number of the final rule.

In rule FR Doc. 05–9803 published on May 17, 2005 (70 FR 28204), make the following correction. On page 28205, in the first column, change ''Order No. 654'' to ''Order No. 587–S''.

Dated: June 22, 2005.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. 05–12715 Filed 6–27–05; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### 18 CFR Part 388

**[Docket Nos. RM02–4–003, PL02–1–003; Order No. 662]**

### Critical Energy Infrastructure Information

Issued June 21, 2005.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is issuing this final rule amending its regulations for gaining access to critical energy infrastructure information (CEII). These changes are being made based on comments filed in response to the March 3, 2005, notice seeking public comment on the effectiveness of the Commission's CEII rules. The final rule removes federal agency requesters from the scope of the rule, modifies the application of non-Internet public (NIP) treatment, and clarifies obligations of requesters. It also discusses changes that will be made to non-disclosure agreements.

**DATES:** *Effective Date:* The rule will become effective June 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Carol C. Johnson, Office of the General Counsel, GC–13, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 202–502–8521.

**SUPPLEMENTARY INFORMATION:**

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

### Final Rule

1. On March 3, 2005, the Commission issued a ''Notice Soliciting Public Comment'' (the notice) on its procedures for dealing with critical energy infrastructure information (CEII). 70 FR 12867 (Mar. 16, 2005). The Commission's CEII procedures were established by Order Nos. 630 and 630–A. *See* Critical Energy Infrastructure Information, Order No. 630, 68 FR 9857 (Mar. 3, 2003), FERC Stats. & Regs. ¶ 31,140 (2003); *order on reh'g*, Order No. 630–A, 68 FR 46456 (Aug. 6, 2003), FERC Stats. & Regs. ¶ 31,147 (2003). After soliciting public comment on the effectiveness of the rules in February 2004, the Commission amended 18 CFR 388.113 and clarified some other issues regarding CEII in Order No. 649.[1] After receiving comments in response to its most recent notice, the Commission further amends and clarifies 18 CFR 388.113 and its CEII process.

### Background

2. Shortly after the attacks on September 11, 2001, the Commission began its efforts with respect to CEII. *See* Statement of Policy on Treatment of Previously Public Documents, 66 FR 52917 (Oct. 18, 2001), 97 FERC ¶ 61,130 (2001). As a preliminary step, the Commission removed documents such as oversized maps that were likely to contain detailed specifications of facilities from its public files and Internet page, and directed the public to use the Freedom of Information Act (FOIA) request process in order to request such information.[2] After receiving responses to a notice of inquiry (NOI) it issued on January 16, 2002, 67 FR 3129 (Jan. 23, 2002), FERC Stats. & Regs. ¶ 35,542 (2002), the Commission issued a notice of proposed rulemaking (NOPR) regarding CEII, which proposed expanding the definition of CEII to include detailed information about proposed facilities as well as those already licensed or certificated by the Commission. Notice of Rulemaking and Revised Statement of Policy, 67 FR 57994 (Sept. 13, 2002); FERC Stats. & Regs. ¶ 32,564 (2002). The Commission issued Order No. 630 on February 21, 2003, defining CEII to include information about proposed facilities, and to exclude information that simply identified the location of the infrastructure. Order No. 630, 68 FR 9857, FERC Stats. & Regs. ¶ 31,140. After receiving a request for rehearing on Order No. 630, the Commission issued Order No. 630–A on July 23, 2003, denying the request for rehearing, but amending the rule in several respects. Order No. 630–A, 68 FR 46456, FERC Stats. & Regs. ¶ 31,147. Specifically, the order on rehearing made several minor procedural changes and clarifications, added a reference in the regulation regarding the filing of non-Internet public (NIP) information, a term first described in Order No. 630, and added the aforementioned commitment to review the effectiveness of the new process after six months. The February 13, 2004, notice facilitated the review contemplated in Order No. 630–A. This order continues the Commission's ongoing commitment to evaluate the effectiveness of the CEII regulations by addressing the comments received in response to its March 3, 2005, notice.

### Summary and Discussion of Comments Received

*A. Introduction*

3. In its March 3, 2005, notice, the Commission specifically invited comments on the following issues: (i) Is the CEII designation being misused or claimed for information that does not meet the definition? (ii) Is there a need for the non-Internet public designation? Is it currently too broad? Are there location maps that should be available on the Internet? (iii) Does it make sense for the Commission to protect (either as CEII or NIP) information that is readily publicly available, for instance in the USGS maps? (iv) Are there classes of information that are not appropriate for

[1] Critical Energy Infrastructure Information, Order No. 649, 69 FR 48386 (Aug. 10, 2004).

[2] The FOIA process is specified in 5 U.S.C. 552 and the Commission's regulations at 18 CFR 388.108.

release even when a legitimate requester agrees to the terms of an appropriate non-disclosure agreement? The Commission received seventeen responses to its notice.[3] While some of the comments address the specific questions raised by the Commission, the majority of the comments relate more to the Commission's processing of requests for CEII. Commenters raise issues regarding verification of requesters, use of non-disclosure agreements and how to ensure compliance with such agreements. In addition, several commenters raise concerns about CEII claims in the context of market-based rate (MBR) filings, and how the typical CEII response times makes it difficult to participate in such proceedings. At least one commenter raises issues regarding owner operator requests for information about their own facilities. Finally, as part of its review of the CEII process, the Commission is revisiting its rules as regards to federal agency requests. These issues are discussed below.

*B. Misuse of CEII Designation*

4. The March 3, 2005, notice specifically asked whether the CEII designation was being misused by filers to claim protection for information that does not meet the definition of CEII. The majority of commenters addressing this issue say they are not aware of a problem with misuse of the CEII designation.[4] With one exception discussed below, over-designation does not appear to be an issue.

5. The one area the commenters identify as a potential problem is MBR filings. Both the Transmission Access Policy Study Group (TAPS) and the American Public Power Administration (APPA) raise the issue of whether CEII protection is warranted for these filings. APPA claims that there is ''widespread designation of simultaneous import capability studies as CEII, with such designations appearing to apply to data and information that does not appear to be CEII.'' [5] Similarly, TAPS evidences concern that ''CEII claims are overbroad, especially in the MBR context where entire simultaneous transmission studies and underlying workpapers are designated as CEII.'' [6] TAPS questions whether all such information qualifies as CEII. Both APPA and TAPS suggest that the Commission commit to perform random audits of CEII filings.[7] TAPS also encourages the Commission to stress that requesters must make every effort to segregate public information from CEII, and only withhold the CEII from ready public access. TAPS further states that submitters should provide thorough descriptions of the material designated as CEII, and the justification for such label.[8]

6. We appreciate commenters' concerns that CEII claims in the MBR context may be overbroad, particularly where entire simultaneous transmission studies and underlying work papers are designated as CEII. In an effort to achieve proper designation of material as CEII while avoiding misuse of the CEII designation, we encourage requesters to make every effort to segregate public information from CEII and to only withhold the CEII from ready public access. To this end, we emphasize that 18 CFR 388.112(b)(1) requires submitters to provide a justification for CEII treatment. The way to properly justify CEII treatment is by describing the information for which CEII treatment is requested and explaining the legal justification for such treatment. The Commission may audit random CEII MBR filings in the future to verify that the CEII label is not being misused.

*C. Re-Evaluation of the Non-Internet Public Designation*

7. The Commission's most recent Notice requested comment regarding the need for the non-Internet public (NIP) designation, whether the current NIP definition is too broad and should exclude certain location maps. Only about half of the commenters specifically address the NIP issue. Duke claims that the NIP designation is not necessary given that much of the NIP information is already accessible to the public through other means, and information that contains sufficient detail could be treated as CEII. Similarly, Edison Electric Institute (EEI) and ITC state that information that raises security concerns should be treated as CEII, not NIP; however, EEI is in favor of use of the NIP category as a fallback.[9] Williston Basin favors keeping the NIP category, stating ''[a]bsent a reversal of the Commission's determination that location information does not qualify as CEII, [it] believes the need for the [NIP] designation is unequivocal.'' Williston Basin at p. 3. INGAA, NHA, and PG&E also appear to favor retaining the NIP category.[10]

8. After analyzing the advantages and disadvantages of the NIP category, we have decided to retain a NIP category, modified to exclude certain general information. To date, the NIP label has been applied to ''location maps and diagrams that do not rise to the level of CEII.'' The following documents previously have been identified as NIP: ''(1) USGS 7.5 minute topographic maps showing the location of pipelines, dams, or other aboveground facilities, (2) alignment sheets showing the location of pipeline and aboveground facilities, right of way dimensions, and extra work areas; (3) drawings showing site or project boundaries, footprints, building locations and reservoir extent; and (4) general location maps.'' [11] Anyone wishing to obtain NIP may get it upon request from the Public Reference Room or from Commission staff; however it is not made available to the public through the Commission's Internet site.

9. The Commission has decided to modify the definition of NIP to exclude general, stylized non-system location maps, and to henceforth, make such maps available through the Commission's Internet site. ''Stylized non-system location maps'' are those showing generalized project facility locations and little more information than the state in which the facilities are located. Topographic maps, alignment sheets, and drawings with project specifics will continue to be treated as NIP, as will maps that show the location of the national, regional, or specific pipeline systems.

*D. Protection of Information That Is Publicly Available Elsewhere*

10. Eight entities responded to the question of whether it made sense for the Commission to protect (either by NIP or CEII designation) information that is publicly available elsewhere. Duke and El Paso say there is no need for the Commission to attempt to protect information that was available to the public from another source.[12] However, most of the others support some sort of protection for sensitive information regardless of whether it may be available elsewhere. For instance, INGAA advocates the Commission make its own determination of whether information should be protected, ''so as not to exacerbate a security problem that

[3] *See* Appendix A.

[4] *See e.g.*, Duke Energy Corporation (Duke) at p. 3, El Paso Corporation's Pipeline Group (El Paso) at p. 3, International Transmission Company (ITC) at p. 2, Interstate Natural Gas Association of America (INGAA) at p. 1, MidAmerican Energy Company (Mid American) at p. 2, National Hydropower Association (NHA) at p. 1, Pacific Gas & Electric Company (PG&E) at p. 1, and Williston Basin Interstate Pipeline Company (Williston Basin) at p. 3.

[5] APPA at p. 2.

[6] TAPS at p. 4.

[7] APPA at p. 3, TAPS at p. 4.

[8] TAPS at pp. 4–5.

[9] *EEI* at p. 4, ITC at p. 2.

[10] *See e.g.*, INGAA at pp. 1–2, NHA at p. 2, and PG&E at p. 1.

[11] Critical Energy Infrastructure Information, Order No. 630–A, 68 FR 46456, n.9 (Aug. 6, 2003), FERC Stats. & Regs. ¶ 31,147 (2003).

[12] *See e.g.*, Duke at p. 6; and El Paso at p. 3.

might already exist,'' explicitly referencing the Commission's NIP treatment for USGS maps depicting pipeline facilities as appropriate although the maps may be available through other sources.[13] ITC, MidAmerican, NHA, PG&E, and Williston Basin likewise support some level of protection for such information, with NHA stating that ''[r]ather than lowering its standards, NHA would urge other agencies that handle CEII and NIP documents to raise the bar and come up to the level of protection rightly provided by FERC.'' [14]

11. In light of the comments received, the Commission will continue to protect information that it believes poses a risk to the security of the infrastructure, even where the information may be publicly available elsewhere, as long as the information fits within the definition of NIP (as revised) or CEII.

*E. Special Protection for Especially Sensitive Information*

12. The final issue posed in the Notice was whether there is information that may not be appropriate for release even where a CEII requester agrees to abide by the terms of an NDA. Nine commenters responded to that question, with the majority stating that especially sensitive information is not always appropriate for release.[15] The types of information companies cite as examples include commercially sensitive (or trade secret type) information,[16] privileged information (attorney-client, attorney work product, or deliberative process),[17] cultural resources information,[18] LNG and pipeline project details,[19] and security information.[20]

13. ITC and MidAmerican are the exceptions, with ITC indicating that as long as the requester follows the CEII request process, evidences a legitimate need for the information, and agrees to abide by the NDA, that he or she should be given the information requested. MidAmerican says it ''is not aware of a class of information that in all cases should not be considered for public release upon execution of [an NDA] to a properly screened requestor with a legitimate need for the information.'' [21]

14. The Commission's existing rule specifies that the decision whether to release CEII involves a balancing of the potential harm from release against the requester's need for the information. This balancing implicitly recognizes that information may not be suitable for release where the extreme sensitivity of the information outweighs a requester's legitimate need for that information. The Commission already made such a determination in the case of some particularly sensitive information related to LNG tanker attacks.[22] In addition, in several instances the Commission has withheld information because it fell within the Commission's deliberative process privilege or contained cultural resources information that the Commission did not release prior to its creation of CEII. In light of the comments received, the Commission intends to continue to withhold CEII in the instances where the potential harm from disclosure outweighs the requester's need for the information

*F. Requester Verification Issues*

15. Many of the commenters encourage the Commission to adopt stricter standards when it comes to verifying the legitimacy and need of requesters. Commenters ask that the Commission follow a standard, articulated process of verifying requesters' legitimacy and need, and require requesters to provide sufficiently detailed statements of need and intended use of the information for the record.[23]

16. Form No. 715 data is of particular concern to several requesters, including BPA, FirstEnergy, and PG&E. Bonneville Power Administration (BPA) encourages the Commission to ''require a clear and detailed explanation of why the data from each utility or interconnection is needed, how the data will be used by the requester, and how the requester will prevent its release to any other person.'' [24] FirstEnergy argues that ''the rationale that consultants provide a valuable service to the public has nothing to do with the Commission's responsibility to determine what specifically a particular purported consultant is going to do with the CEII or to prevent the unauthorized disclosure of CEII to third parties.'' [25]

17. Form No. 715 presents unique issues because that information is not typically requested in order to participate in a particular Commission proceeding, rather, it is often requested by consultants and academics using the data to create models in order to advise clients and potential clients. The Commission continues to recognize the valuable service provided by these consultants and researchers, and believes that the benefits derived from legitimate consultants and researchers performing such work are substantial. The Commission also realizes that much of their work may be done prior to being engaged by a particular client. Where the work is being done on behalf of a particular client, the regulation requires that the requester identify the client on whose behalf the CEII is being requested. Where the research or product is being developed generally, and there is not yet a client, the requester should provide information by which the Commission can verify his or her legitimacy, such as identifying a past client for whom the consultant has provided similar services or their university affiliation. Such information will help the Commission verify that the requester is providing legitimate services or conducting valuable research. It would be counterproductive to deny requests simply because the consultant or researcher could not identify a particular client on whose behalf the work is being performed.

18. Another issue regarding Form No. 715 request arises when a consultant or other requester doesn't clearly articulate why he or she needs data for all regions. Requesters are reminded to justify in their requests why they need the information they have requested. Requesters are warned that failure to do so may result in denial of their requests. This is not a change from the current regulation, which requires requests provide ''a detailed statement explaining the particular need for and intended use of the information.'' 18 CFR 388.113(d)(3)(i). The Commission intends to be more rigorous in analyzing whether a request complies with the regulatory requirement, and will expect to see detailed descriptions regarding

[13] INGAA at p. 2.

[14] ITC at pp. 2–3, MidAmerican at pp. 3–4, NHA at p. 2, PG&E at p. 1, and Williston Basin at p. 5.

[15] *See* Chandeleur Pipe Line Company and Sabine Pipe Line LLC (Chandeleur & Sabine) at p. 4, Duke at pp. 6–7, El Paso at p. 4, INGAA at p. 2, PG&E at p. 1, Weaver's Cove Energy LLC and Mill River Pipeline LLC (Weaver's Cove) at p. 7, and Williston Basin at pp. 5–6.

[16] Duke at pp. 6–7,

[17] Duke at p. 7.

[18] *Id.*

[19] El Paso at pp. 3–4.

[20] INGAA at p. 2, PG&E at p. 1, and Weaver's Cove at p. 7.

[21] MidAmerican at p. 4.

[22] *See, e.g.*, Alfred Lima, 110 FERC ¶ 61,002 (Jan. 5, 2005).

[23] FirstEnergy Corporation on behalf of its operating companies Ohio Edison, The Cleveland Electric Illumination Company, Toledo Edison, Pennsylvania Electric Company, Pennsylvania Power Company, Metropolitan Edison Company, Jersey Central Power & Light Company, and American Transmission Systems, Inc. (FirstEnergy) at pp. 3–4.

[24] BPA at p. 2.

[25] FirstEnergy at p. 7. FirstEnergy also claims the Form No. 715 data is confidential commercial information that is provided with the expectation of confidential treatment. The Commission notes that prior to the creation of CEII, Form No. 715 data was publicly available, undercutting FirstEnergy's argument that it is confidential commercial information.

the need for the information and the intended use of the information. It will not be sufficient, for instance, to simply say the information is needed to analyze the transmission system. The Commission will look for details such as what type of analysis is being performed, what portions of the system are being analyzed, and who are the potential clients or customers who may benefit from the analysis.

19. PJM Interconnection, L.L.C. (PJM) encourages the Commission to seek assistance from the Department of Homeland Security, the Federal Bureau of Investigation, and other law enforcement agencies regarding ''requester identification and verification procedures as well as making case-by-case decisions about whether to disclose information.'' [26] The Commission is exploring options available through other federal agencies, in particular the possible use of existing databases maintained by other agencies in order to screen CEII requesters.

20. Commenters also raise issues regarding the Commission's notice and comment process. More than one commenter notes difficulties in getting notice and comments letters on a timely basis.[27] Chandeleur & Sabine requests that the Commission provide notice to the corporate official designated to receive service.[28] Duke encourages the Commission to provide notice using electronic means.[29] Several commenters are requesting longer notice and comment periods.[30]

21. The Commission currently is providing submitters with either five business days or seven calendar days in which to comment on requests. Where the Commission has the submitter's e-mail address or facsimile number, it will use one of those methods to convey the notice and comment letter to the submitter. We believe in most instances this will provide sufficient time to enable submitters to comment on the request. One problem with routinely giving ten days or more for responses to notice and comment letters is that it extends the time for response, which can be critical where the information is requested in order to participate in a Commission proceeding.[31] If a submitter requires additional time, it should request more time from the contact person identified in the Commission's notice and comment letter.

22. For now, the Commission is not planning to change the notice and comment process to notify the person designated to receive service on behalf of a company. There has not been a broad call from submitters to change the person notified; the current method of notifying the person submitting the information at issue generally seems to be working for most companies. Adding additional contacts to the notice and comment mailing lists complicates the notice and comment process, especially with regard to requests (for CEII such as Form Nos. 715 and 567) that involve large numbers of submitters.

*G. Non-Disclosure Agreement Issues*

23. Several companies offer suggestions regarding NDAs, voicing a common concern with respect to compliance with NDAs.[32] EEI and PG&E both raise questions regarding how consultants and advisors use CEII to advise clients without revealing the CEII to the clients themselves.[33] FirstEnergy states that it is impossible ''to meaningfully assess the risk that the CEII may be improperly disclosed to others (regardless of the execution of an NDA).'' [34] Several of the commenters suggest that the Commission undertake to audit compliance with the NDAs.[35] The Commission agrees that random audits may be useful in the future to ensure compliance with NDAs. Given that to date the NDAs have not included any clause whereby the requester agrees to such audit, the Commission believes that the NDAs should be revised accordingly, and audits should be restricted to those requesters who receive information pursuant to the revised NDAs. In addition, the Commission will add language to NDAs notifying requesters that a violation of the NDA could result in civil or criminal sanctions. This will provide requesters with an additional incentive to comply with the terms of the NDA.

*H. Market-Based Rate Filings Issues*

24. APPA and TAPS evidence particular concern with market based rate [MBR] filings where the filer claims CEII treatment for portions of its filing. As discussed above, one concern is whether filers are over-designating portions of such filings as CEII, particularly where simultaneous transmission studies and underlying work papers are designated as CEII. Another concern is whether interveners have sufficient time to respond to market based rate filings for which CEII is claimed. TAPS urges the Commission to ''synchronize the time available to respond to MBR filings with the need to obtain CEII,'' citing the difficulty in responding within 21 days when it can take 30 days or more to obtain access to CEII.[36] TAPS recommends that the Commission adopt a policy ''to respond favorably to intervenor motions for additional time to prepare interventions and protests where it is necessary to obtain and analyze CEII.'' [37]

25. In response to commenters' concerns that intervenors should have sufficient time to respond to MBR filings for which CEII is claimed, the Commission is willing to consider on a case-by-case basis requests for extensions of time to prepare protests to MBR filings where an intervenor demonstrates that it needs additional time to obtain and analyze CEII. Intervenors should file a request for an extension of time before the deadline for comments runs, explicitly stating that they have filed a CEII request and are waiting for a response. If a CEII request is filed in a case involving a new application for MBR authority, however, the Commission's ability to grant a request for an extension of time would necessarily be limited by the statutory action date in such a case. In all MBR cases in which CEII is filed, the Commission strongly encourages the parties to either promptly negotiate a protective order in the proceeding governing access to the CEII, or privately negotiate for the submitter to provide the data to interested parties pursuant to an appropriate non-disclosure agreement. Either one of these alternative approaches is more likely to expedite the requester's receipt of the information.

*I. Miscellaneous Issues*

26. The Commission received several miscellaneous comments regarding its CEII processing. Weaver's Cove notes an apparent inconsistency in requiring a company like Weaver's Cove to submit a CEII request in order to obtain a response prepared by someone who made a responsive filing (marked as CEII) after gaining access to the Weaver's Cove original CEII pleading.[38] Weaver's Cove urges staff to automatically release such information to the original submitter. The problem with this approach is that it is not

[26] PJM at pp. 5–6.

[27] *See* BPA at p. 3, Chandeleur & Sabine at p. 2, INGAA at p. 3.

[28] Chandeleur & Sabine at p. 3.

[29] Duke at p. 8.

[30] *See e.g.*, Duke at p. 7, and INGAA at p. 3.

[31] *See* Weaver's Cove at p. 2, discussing how lengthy CEII processing times can delay a substantive proceeding. *See also* discussion below regarding market based rate filings.

[32] *See* EEI at pp. 3–4, FirstEnergy at pp. 1–5, and 9–10, PG&E at pp. 1–2, and PJM at p. 7.

[33] EEI at p. 3, and PG&E at p. 2.

[34] FirstEnergy at p. 5.

[35] *See* EEI at pp. 3–4, FirstEnergy at pp. 9–10, and PG&E at p. 2.

[36] TAPS at pp. 2–3.

[37] TAPS at p. 4.

[38] Weaver's Cove at p. 5.

guaranteed that the responsive pleading does not contain additional CEII that was not already contained in the original CEII filing. It could be that the responsive pleading is marked as CEII because it contains CEII about a similar project. In that case, it would not be fair to automatically release the CEII. Instead, the Commission encourages entities to negotiate to get the information directly from the submitters. In fact, the Commission prefers that requesters negotiate directly with submitters whenever practical.

27. PJM encourages the Commission to clarify that CEII released to an RTO, NERC or reliability coordinator does not invalidate the information's protection as CEII.[39] As far as the Commission is concerned, such limited releases to entities with a clear need to know such information would not result in loss of CEII protection.

*J. Federal Agency Requests*

28. In the course of reviewing its CEII regulations and processing, the Commission has revisited processing of federal agency requests. As the Commission gets more involved in reliability issues, its need to share information, particularly CEII, with fellow federal agencies increases. In light of this increased need to share CEII, the current system of requiring federal agencies to file formal CEII requests is impractical and unwieldy. For this reason, the Commission has decided to permit federal agencies to request CEII outside of the normal CEII process. As previously noted in Order No. 630–A, federal employees pose less of a security risk because most are screened as part of their federal employment.[40] Henceforth, federal agency requesters can request CEII directly from the Commission without filing formal CEII requests under 18 CFR 388.113. Submitters of CEII will not be given notice and an opportunity to comment on federal agency requests. In order to control release of CEII, authority to approve federal agency requests is restricted to Commission officials at or above the level of division director.[41] The regulation at 18 CFR 388.113(d) is amended to reflect this change.

**Information Collection Statement**

29. The Office of Management and Budget's (OMB's) regulations require that OMB approve certain information collection requirements imposed by agency rule. 5 CFR 1320.12 (2004). This final rule does not impose any additional information collection requirements. Therefore, the information collection regulations do not apply to this final rule.

**Environmental Analysis**

30. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[42] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusions are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended. 18 CFR 380.4(a)(2)(ii). This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

**Regulatory Flexibility Act Certification**

31. The Regulatory Flexibility Act of 1980 (RFA)[43] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission certifies that this proposed rule, if finalized, would not have such an impact on small entities.

**Document Availability**

32. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

33. From FERC's home page on the Internet, this information is available in the Commission's document management system, eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

34. User assistance is available for eLibrary and the FERC's Web site during normal business hours. For assistance, please contact FERC Online Support at 1–866–208–3676 (toll free) or 202–502–6652 (e-mail at *FERCOnlineSupport@FERC.gov*), or the Public Reference Room at 202–502–8371, TTY 202–502–8659 (e-mail at *public.referenceroom@ferc.gov*).

**Effective Date**

35. These regulations are effective immediately upon publication in the **Federal Register**. In accordance with 5 U.S.C. 553(d)(3), the Commission finds that good cause exists to make this final rule effective immediately. The regulatory changes in the rule concern matters of internal operations and will not affect the rights of person appearing before the Commission. There is, therefore, no reason to make it effective at a later time.

36. The provisions of 5 U.S.C. 801 regarding Congressional review of final rules do not apply to this final rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

37. The Commission is issuing this as a final rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure and practice, or where the agency finds that notice and comment is unnecessary. The regulatory changes concern only matters of agency procedure and will not significantly affect regulated entities or the general public.

**List of Subjects in 18 CFR Part 388**

Confidential business information, Freedom of information.

By the Commission.

**Linda Mitry,**

*Deputy Secretary.*

■ In consideration of the foregoing, the Commission amends part 388, Chapter I, Title 18, Code of Federal Regulations, as follows:

[39] PJM at p. 6.

[40] Order No. 630–A, 68 FR 46456 at P 15, FERC Stats. & Regs. ¶ 31,147. The Commission further reduced burdens on federal agency requesters in the CEII final rule it issued on August 3, 2004, which found that once an agency was granted to CEII in a particular docket, it no longer needed to file a formal CEII request to obtain additional CEII in that same docket. Critical Energy Infrastructure Information, Order No. 649, 69 FR 48386 at P 16 (Aug. 10, 2004), 108 FERC ¶ 61,121 (2004).

[41] A representative of the requesting agency will, however, still be required to sign an acknowledgment and agreement recognizing the legal protections afforded to CEII, and agreeing that requests from the public for the information (including requests filed under the Freedom of Information Act, 5 U.S.C. 552) will be referred to the Commission for processing.

[42] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[43] 5 U.S.C. 601–612.

## PART 388—INFORMATION AND REQUESTS

■ 1. The authority citation for part 388 continues to read as follows:

**Authority:** 5 U.S.C. 301–305, 551, 552 (as amended), 553–557; 42 U.S.C. 7101–7352.

■ 2. Amend § 388.113 by revising the heading of paragraph (d), revising paragraph (d)(1), redesignating paragraph (d)(2) as paragraph (d)(3) and revising newly designated paragraph (d)(3)(i), and adding a new paragraph (d)(2) to read as follows:

**§ 388.113 Accessing critical energy infrastructure information.**

* * * * *

(d) *Accessing critical energy infrastructure information.*

(1) An Owner/operator of a facility, including employees and officers of the owner/operator, may obtain CEII relating to its own facility directly from Commission staff without going through the procedures outlined in paragraph (d)(3) of this section. Non-employee agents of an owner/operator of such facility may obtain CEII relating to the owner/operator's facility in the same manner as owner/operators as long as they present written authorization from the owner/operator to obtain such information.

(2) An employee of a federal agency acting within the scope of his or her federal employment may obtain CEII directly from Commission staff without following the procedures outlined in paragraph (d)(3) of this section. Any Commission employee at or above the level of division director or its equivalent may rule on federal agency representatives' requests for access to CEII.

(3) * * *

(i) File a signed, written request with the Commission's CEII Coordinator. The request must contain the following: Requester's name (including any other name(s) which the requested has used and the dates the requester used such names(s)), date and place of birth, title, address, and telephone number; the name, address, and telephone number of the person or entity on whose behalf the information is requested; a detailed statement explaining the particular need for and intended use of the information; and a statement as to the requester's willingness to adhere to limitations on the use and disclosure of the information requested. Requesters are also requested to include their social security number for identification purposes.

* * * * *

## Appendix A

**List of Commenters**

[This appendix will not appear in the Code of Federal Regulations.]

| Abbreviation | Name |
|---|---|
| APPA | American Public Power Association. |
| BPA | Bonneville Power Administration. |
| Chandeleur and Sabine | Chandeleur Pipe Line Company and Sabine Pipe Line LLC. |
| Duke | Duke Energy Corporation. |
| EEI | Edison Electric Institute. |
| El Paso | El Paso Corporation's Pipeline Group. |
| FirstEnergy | FirstEnergy Corporation on behalf of its operating companies Ohio Edison, The Cleveland Electric Illuminating Company, Toledo Edison, Pennsylvania Electric Company, Pennsylvania Power Company, Metropolitan Edison Company, Jersey Central Power & Light Company, and American Transmission Systems, Inc. |
| ITC | International Transmission Company. |
| INGAA | Interstate Natural Gas Association of America. |
| MidAmerican | MidAmerican Energy Company. |
| NHA | National Hydropower Association. |
| PG&E | Pacific Gas & Electric Company. |
| PJM | PJM Interconnection, L.L.C. |
| SCE | Southern California Edison Company. |
| TAPS | Transmission Access Policy Study Group. |
| Weaver's Cove | Weaver's Cove Energy LLC & Mill River Pipeline LLC. |
| Williston Basin | Williston Basin Interstate Pipeline Company. |

[FR Doc. 05–12627 Filed 6–27–05; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[CGD05–05–067]**

**RIN 1625–AA08**

## Special Local Regulation for Marine Events; Atlantic Ocean, Atlantic City, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary special local regulations for the OPA Atlantic City Grand Prix, a marine event to be held on the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in portions of the Atlantic Ocean adjacent to Atlantic City, New Jersey during the event.

**DATES:** This rule is effective from 9:30 a.m. to 3:30 p.m. on July 17, 2005.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–05–067 and are available for inspection or copying at Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Dennis Sens, Project Manager, Auxiliary and Recreational Boating Safety Branch, at (757) 398–6204.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be impracticable. The event will take place on July 17, 2005. Because of the danger posed by high-speed powerboats racing in a closed circuit, special local regulations are necessary to provide for the safety of event participants, spectator craft and

other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

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**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, spectator craft and other vessels transiting the event area. However advance notifications will be made to affected waterway users via marine information broadcasts and area newspapers.

**Background and Purpose**

On July 17, 2005, the Offshore Performance Association will sponsor the OPA Atlantic City Grand Prix. The event will consist of approximately 40 offshore powerboats conducting high-speed competitive races on the waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. A fleet of approximately 200 spectator vessels is expected to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

**Discussion of Rule**

The Coast Guard is establishing temporary special local regulations on specified waters of the Atlantic Ocean adjacent to Atlantic City, New Jersey. The regulated area includes a 3-mile long seciton of the Atlantic Ocean south of Absecon Inlet, extending approximately 300 yards out from the shoreline. The temporary special local regulations will be enforced from 9:30 a.m. to 3:30 p.m. on July 17, 2005, and will restrict general navigation in the regulated area during the races. Except for participants in the OPA Atlantic City Grand Prix and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

**Regulatory Evaluation**

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

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

Although this regulation will prevent traffic from transiting a portion of the atlantic Ocean adjacent to Atlantic City, New Jersey during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, some of which might be small entities: the owners or operators of vessels intending to transit this section of the Atlantic Ocean during the event.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Affected waterway users can pass safely around the regulated area. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

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

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small businesses, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

This rule will not 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 an economically significant rule and does not create 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 does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

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

**Technical Standards**

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

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

**Environment**

We have analyzed this rule under Commandant Instruction M16475.1D, 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)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

**List of Subjects in 33 CFR Part 100**

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 100.35–T05–067 to read as follows:

**§ 100.35–T05–067 Atlantic Ocean, Atlantic City, NJ.**

(a) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participating Vessels* Include all vessels participating in the OPA Atlantic City Grand Prix under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Delaware Bay.

(b) *Regulated area.* The regulated area is established for the waters of the Atlantic Ocean, adjacent to Atlantic City, New Jersey, bounded by a line drawn between the following points: southeasterly from a point along the shoreline at latitude 39°21′50″ N., longitude 074°24′37″ W., to latitude 39°20′40″ N., longitude 074°23′50″ W., thence southwesterly to latitude 39°19′33″ N., longitude 074°26′52″ W., thence northwesterly to a point along the shoreline at latitude 39°20′43″ N., longitude 074°27′40″ W., thence northeasterly along the shoreline to latitude 39°21′50″ N., longitude 074°24′37″ W. All coordinates reference Datum NAD 1983.

(c) *Special local regulations.* (1) Except for participating vessels and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by an Official Patrol.

(d) *Enforcement period.* This section will be enforced from 9:30 a.m. to 3:30 p.m. on July 17, 2005.

Dated: June 20, 2005.

**Sally Brice-O'Hara,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 05–12728 Filed 6–27–05; 8:45 am]

BILLING CODE 4190–15–M

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD09–05–026]**

**RIN 1625–AA00**

## Safety Zone; Mentor Harbor Offshore Powerboat Race, Mentor, OH

**AGENCY:** Coast Guard, DHS

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the 2005 Mentor Harbor Offshore Powerboat Race. The safety zone is necessary to ensure the safety of the people participating in this event on July 10, 2005. The safety zone will restrict vessels from portions of the southern shore of Lake Erie.

**DATES:** This rule is effective from 12 p.m. (local) through 4 p.m. (local) on Sunday July 10, 2005.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket (CGD09–05–026) and are available for inspection or

copying at the U.S. Coast Guard Marine Safety Office Cleveland, 1055 East Ninth Street, Cleveland, Ohio 44114, between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Allen Turner, U.S. Coast Guard Marine Safety Office Cleveland, at (216) 937–0128.

**SUPPLEMENTARY INFORMATION:**

## Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The exact date of the event was not known with sufficient time to allow for the publication of an NPRM followed by an effective date before the event.

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**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event, and immediate action is necessary to prevent possible loss of life or property.

## Background and Purpose

The following area is a safety zone: All waters located within 400 yards of the triangular race course as drawn by a line from position 41°43′49″ N, 081°21′18″ W to position 41°46′02″ N, 081°20′51″ W and to 41°45′34″ N, 081°18′04″ W. Entry into, transit through, or anchoring within this safety zone is not allowed unless authorized by the Captain of the Port Cleveland or his designated on-scene representative. The designated on-scene representative will be the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may be contacted via VHF Channel 16.

## Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

This determination is based on limited time that the safety zone will be in effect, and the extensive advance notice will be made to the maritime community via Local Notice to Mariners, facsimile, and marine safety information broadcasts. This regulation is tailored to impose a minimal impact on maritime interests without compromising safety.

## Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of the activated safety zone.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect for a few hours on the day of the event. Before the activation of the safety zone, the Coast Guard will issue maritime advisories available to users who may be impacted through notification in the Local Notice to Mariners, facsimile, and marine safety information broadcasts. Additionally, the Coast Guard has not received any reports from small entities that will be negatively affected.

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

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Cleveland (*see* **ADDRESSES**).

## Collection of Information

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

## Federalism

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

## Unfunded Mandates Reform Act

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

## Taking of Private Property

This rule would 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

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

## Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that 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 procedure; and related management system 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 made a preliminary determination that there are no factors in this case that would limit the use of categorical exclusion under Section 2.B.2 of the Instruction. Therefore, we believe this rule should be categorically excluded under figure 2–1, paragraph 34(g) of the Instruction, from further environmental documentation.

A preliminary ''Environmental Analysis Check List'' is available in the docket where indicated under **ADDRESSES.** Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

**List of Subjects in 33 CFR Part 165**

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

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

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–026 to read as follows:

**§ 165.T09–026 Safety Zone; 2005 Mentor Harbor Offshore Classic, Mentor, OH.**

(a) *Location.* The following area is a safety zone: All waters located within 400 yards of the triangular race course as drawn by a line from position 41°43′49″ N, 081°21′18″ W to position 41°46′02″ N, 081°20′51″ W and to 41°45′34″ N, 081°18′04″ W.

(b) *Effective Period.* This section is effective from noon (local) until 4 p.m. (local) on Sunday July 10, 2005.

(c) *Regulations.* Entry into, transit through, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Cleveland or his designated on-scene representative. The designated on-scene representative will be the Coast Guard Patrol Commander. The Coast Guard Patrol Commander may be contacted via VHF Channel 16.

Dated: June 21, 2005.

**Lorne W. Thomas,**

*Commander, U.S. Coast Guard, Captain of the Port Cleveland.*

[FR Doc. 05–12726 Filed 6–27–05; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 1 and 3

**RIN 2900–AM09**

### Presumptions of Service Connection for Diseases Associated With Service Involving Detention or Internment as a Prisoner of War

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Affirmation of interim final rule as final rule.

**SUMMARY:** This document affirms as final, without change, an interim final rule that established presumptions of service connection for atherosclerotic heart disease, hypertensive vascular disease, and stroke in former prisoners of war; set forth guidelines to govern future actions by the Department of Veterans Affairs (VA) to establish presumptions of service connection for other diseases associated with service involving detention or internment as a prisoner of war; and revised VA's regulations to conform to statutory changes made by the Veterans Benefits Act of 2003.

**DATES:** The interim final rule became effective on October 7, 2004.

**FOR FURTHER INFORMATION CONTACT:** Maya Ferrandino, Consultant, Compensation and Pension Service, Policy and Regulations Staff, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7232.

**SUPPLEMENTARY INFORMATION:**

**Background**

In a document published in the **Federal Register** on October 7, 2004 (69 FR 60083), VA issued an interim final rule that set forth guidelines to govern VA's determinations as to whether presumptions of service connection are warranted for any disease based on a finding that the disease may be associated with service involving detention or internment as a prisoner of war (POW). The interim final rule also established presumptions of service connection, pursuant to those guidelines, for atherosclerotic heart disease, hypertensive vascular disease, stroke, and their complications in former POWs. Finally, the interim final rule revised VA's regulations to reflect statutory changes made by section 201 of the Veterans Benefits Act of 2003, Public Law No. 108–183, which revised 38 U.S.C. 1112(b) to remove, for certain POW presumptive diseases, the previous requirement that the former POW must have been detained or interned for at least 30 days in order to qualify for the presumption. We solicited public comments on the interim final rule and we received comments from one individual.

In the October 7, 2004, **Federal Register** notice, we explained that VA generally employs evidentiary presumptions of service connection to assist claimants who face unusually difficult evidentiary burdens in demonstrating entitlement to VA

disability and death benefits, due to circumstances such as the complexity of the medical issues involved in the claim or the lack of contemporaneous medical records during periods of service. We explained that Congress had previously established guidelines for determining whether new presumptions of service connection are warranted for disabilities associated with certain hazards of service, but had not established any guidelines for determining whether presumptions were warranted for diseases associated with service involving detention or internment as a prisoner of war. Accordingly, the interim final rule established such guidelines in 38 CFR 1.18, which, among other things, states that the Secretary of Veterans Affairs may establish a presumption of service connection for a disease when the Secretary finds that there is ''limited/suggestive'' evidence that an increased risk of such disease is associated with service involving detention or internment as a POW and the association is biologically plausible.

Applying the new guidelines in § 1.18, the Secretary determined that presumptions of service connection were warranted for atherosclerotic heart disease, hypertensive vascular disease, stroke, and their complications based on medical evidence indicating that those diseases are associated with service involving detention or internment as a POW. Accordingly, the interim final rule revised 38 CFR 3.309(c) to add those diseases to the list of diseases presumed to be associated with such service.

**Analysis of Public Comment**

We received comments from an epidemiologist with experience in veterans' health studies. Based on several medical studies, the commenter states that veterans who have a long-term history of post-traumatic stress disorder (PTSD) have a high risk of developing cardiovascular disease and myocardial infarction, particularly if such veterans suffer from other major psychiatric disorders or inflammatory diseases in addition to PTSD. The commenter states that, because former POWs have a relatively high rate of PTSD incurrence, they would presumably have an increased risk of cardiovascular disease. As noted above, the interim final rule established presumptions of service connection for atherosclerotic heart disease, hypertensive vascular disease, and their complications, including myocardial infarction, in former POWs. This action was based on the Secretary's determination that there was at least limited/suggestive evidence of an association between cardiovascular disease and POW experience and that such an association is biologically plausible. We noted that medical studies had detected an increased risk of cardiovascular disease among former POWs. We further noted that the evidence of an association between PTSD and cardiovascular disease lends support to our conclusion that cardiovascular disease is associated with POW experience. Accordingly, we believe the commenter's statement that former POWs have a higher risk of cardiovascular disease is consistent with our interim final rule.

To the extent the comment might be viewed as suggesting that we should use the term ''cardiovascular disease'' rather than the terms ''atherosclerotic heart disease'' and ''hypertensive vascular disease'' to describe the presumptive diseases, we make no change based on that comment. As explained in our October 7, 2004, **Federal Register** notice, the terms ''atherosclerotic heart disease'' and ''hypertensive vascular disease'' are broad terms encompassing a wide variety of cardiovascular diseases that may be described by more specific diagnoses in individual cases. We have concluded that those terms are sufficiently broad to cover the cardiovascular diseases for which there is evidence suggestive of an association with POW experience and, moreover, for which there is a biologically plausible relationship to circumstances of POW experience such as malnutrition and stress. We do not have sufficient evidence at this time to conclude that there is a sufficiently demonstrated and biologically plausible association between POW experience and certain other types of cardiovascular disease such as those of viral or bacterial origin. Accordingly, we believe that the term ''atherosclerotic heart disease'' most aptly describes the range of heart diseases for which current medical evidence supports a presumption of service connection, and that the term ''hypertensive vascular disease'' most aptly describes the range of peripheral vascular diseases for which current medical evidence supports a presumption of service connection.

The commenter also states that veterans with chronic PTSD have been found to have a significant risk of developing autoimmune diseases, such as rheumatoid arthritis, psoriasis, insulin-dependent diabetes, and hypothyroidism, and asserts that former POWs are therefore likely to have a higher risk of autoimmune diseases. We make no change based on this comment because it involves matters beyond the scope of the interim final rule. Although the interim final rule established presumptions of service connection for certain diseases, it should not be construed to reflect a determination by VA concerning the strength of any evidence that may exist for a possible association between other diseases, such as autoimmune diseases, and POW experience. In order to ensure the prompt delivery of benefits to the aging POW population, VA necessarily focused on certain diseases for which it was aware of the compelling evidence of an association with POW service. The issue of whether presumptions may be established for other specific diseases is beyond the scope of this final rule. However, the purpose of establishing guidelines in new § 1.18 was to provide a framework for VA, on an ongoing basis, to evaluate scientific and medical evidence pertaining to diseases possibly associated with POW experience as well as policy issues pertaining to the need for particular presumptions. Accordingly, evidence such as that cited by the commenter with respect to autoimmune diseases may be the subject of subsequent review and deliberation under the newly established guidelines.

We note further that existing VA regulations may provide a basis for granting service connection to former POWs who incur autoimmune diseases as a result of PTSD. Currently, 38 CFR 3.309(c) establishes a presumption of service connection for anxiety disorders, including PTSD, in former POWs. A separate regulation at 38 CFR 3.310 provides that service connection may be granted for any disability arising as a proximate result of a service-connected condition. Pursuant to those regulations, a former POW who has PTSD may be able to establish service connection for an autoimmune disease if medical evidence shows that the veteran's disease proximately resulted from the veteran's PTSD.

**Administrative Procedure Act**

In the October 7, 2004, **Federal Register** notice, we determined that there was a basis under the Administrative Procedure Act for issuing the interim final rule with immediate effect. We invited and received public comment on the interim final rule. This document merely affirms the interim final rule as a final rule without change.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in

an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This rule will have no such effect on State, local, or tribal governments, or the private sector.

**Paperwork Reduction Act**

This document contains no new collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The Office of Management and Budget (OMB) previously has approved the VA application forms governing claims for benefits based on service-connected disability or death. Those forms specify the requirements for submitting information and evidence in support of such claims and would govern any claims for benefits based on the presumptions established by this rule. By establishing presumptions of service connection, this rule will relieve some claimants of the need to submit evidence directly establishing that a cardiovascular disease was incurred in or aggravated by service. The OMB approval numbers for the relevant information collections are 2900–0001 (VA Form 21–526, Veterans' Application for Compensation and/or Pension); 2900–0004 (VA Form 21–534, Application for DIC, Death Compensation, and Accrued Benefits by a Surviving Spouse or Child); and 2900–0005 (VA Form 21–535, Application for DIC by Parent(s)).

**Regulatory Flexibility Act**

The Secretary hereby certifies that this regulatory action will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments will not directly affect any small entities. Only VA beneficiaries and their survivors will be directly affected.

**Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance program numbers are 64.109, Veterans Compensation for Services-Connected Disability; and 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death.

**List of Subjects**

*38 CFR Part 1*

Administrative practice and procedure, Claims.

*38 CFR Part 3*

Administrative practice and procedure, Claims, Disability benefits, Health care, Veterans, Vietnam.

Approved: May 10, 2005.

**R. James Nicholson,**

*Secretary of Veterans Affairs.*

■ Accordingly, the interim final rule amending 38 CFR parts 1 and 3 which was published at 69 FR 60083 is adopted as a final rule without change.

[FR Doc. 05–12760 Filed 6–27–05; 8:45 am]

BILLING CODE 8320–01–P

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## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 64

**[Docket No. FEMA–7778]**

## List of Communities Eligible for the Sale of Flood Insurance

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

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities participating in the National Flood Insurance Program (NFIP) and suspended from the NFIP. These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

**DATES:** *Effective Dates:* The dates listed under the column headed Effective Date of Eligibility.

**ADDRESSES:** Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community or from the NFIP at: (800) 638–6620.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Grimm, Mitigation Division, 500 C Street, SW.; Room 412, Washington, DC 20472, (202) 646–2878.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 202 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4016(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Administrator finds that delayed effective dates would be contrary to the public interest and that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

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

*Regulatory Flexibility Act.* The Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U. S. C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

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

*Paperwork Reduction Act.* This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*Executive Order 12612, Federalism.* This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

*Executive Order 12778, Civil Justice Reform.* This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

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

**§ 64.6 [Amended]**

■ 2. The tables published under the authority of § 64.6 are amended as follows:

| State and location | Community No. | Effective date of eligibility | Current effective map date |
|---|---|---|---|
| **New Eligibles—Emergency Program** | | | |
| Nebraska: | | | |
| Maywood, Village of, Frontier County | 310085 | January 4, 2005 | December 20, 1974. |
| Florida: | | | |
| Otter Creek, Town of, Levy County | 120592 | February 8, 2005 | August 17, 1979. |
| North Carolina: | | | |
| Yanceyville, Town of, Caswell County | 370641 | .....do | Use Caswell County FHBM dated February 3, 1978. |
| Kansas: | | | |
| Osage County, Unincorporated Areas | 200601 | February 11, 2005 | FHBM dated August 9, 1977. |
| New Mexico: | | | |
| Curry County, Unincorporated Areas | 350127 | .....do | FHBM dated February 7, 1978. |
| Arkansas: | | | |
| Rosston, City of, Nevada County | 050475 | March 2, 2005 | February 18, 1977. |
| Texas: | | | |
| Devers, City of, Liberty County | 481514 | March 14, 2005 | April 24, 1979. |
| **New Eligibles—Regular Program** | | | |
| Texas: | | | |
| **Fannin County, Unincorporated Areas | 480807 | January 4, 2005 | FHBM dated November 8, 1977, converted to FIRM by letter January 4, 2005. |
| Nebraska: | | | |
| St. Paul, City of, Howard County | 310119 | January 21, 2005 | October 19, 2004. |
| Kansas: | | | |
| **Protection, City of, Comanche County | 200550 | February 1, 2005 | FHBM dated July 2, 1976, converted to FIRM by letter February 1, 2005. |
| **Neosho County, Unincorporated Areas | 200598 | .....do | FHBM dated November 1, 1977, converted to FIRM by letter February 1, 2005. |
| Alaska: | | | |
| Haines Borough, Unincorporated Areas | 020007 | February 2, 2005 | August 22, 1975. |
| Kentucky: | | | |
| Laurel County, Unincorporated Areas | 210134 | February 8, 2005 | November 2, 1990. |
| Ohio: | | | |
| Forest Park, City of, Hamilton County | 390216 | February 9, 2005 | Use Hamilton County (CID 390204) FIRM panels 0065D, 0070D, 0086D, and 0088D dated May 14, 2004. |
| Frazeysburg, Village of, Muskingum County | 390426 | .....do | NSFHA. |
| Wisconsin: | | | |
| Bellevue, Village of, Brown County | 550627 | .....do | Use Brown County (CID 550020) panels 0125B and 0150B dated February 19, 1982. |
| Missouri: | | | |
| Seymour, City of, Webster County | 290933 | February 11, 2005 | July 17, 2002. |
| Rhode Island: | | | |
| Narragansett Indian Tribe, Washington County | 445414 | February 14, 2005 | Use Charlestown, Town of (CID 445395) FIRM panels 0005E and 0010E dated September 30, 1995, and panels 0015C and 0020C dated July 16, 1986. |
| Georgia: | | | |
| Jeff Davis County, Unincorporated Areas | 130113 | .....do | September 6, 1996. |
| Maine: | | | |
| **Alna, Town of, Lincoln County | 230083 | March 1, 2005 | FHBM dated January 3, 1975, converted to FIRM by letter March 1, 2005. |
| Alabama: | | | |
| Good Hope, Town of, Cullman County | 010437 | .....do | December 2, 2004. |
| Kansas: | | | |
| **Burdett, City of, Pawnee County | 200396 | .....do | FHBM dated March 26, 1976, converted to FIRM by letter March 1, 2005. |
| **Marion County, Unincorporated Areas | 200593 | .....do | FHBM dated August 22, 1978, converted to FIRM by letter March 1, 2005. |
| Ohio: | | | |
| Berkey, Village of, Lucas County | 390901 | March 8, 2005 | Use Lucas County (CID 390359) FIRM panels 0035D and 0050D dated October 6, 2000. |
| Missouri: | | | |
| **Edmundson, City of, St. Louis County. | 290729 | March 10, 2005 | Use St. Louis County (CID 290327) FIRM panel 0176H dated August 2, 1995. |
| Arkansas: | | | |
| Gentry, City of, Benton County | 050324 | March 11, 2005 | Use Benton County (CID 050419) FIRM panel 0125E dated September 18, 1991. |

| State and location | Community No. | Effective date of eligibility | Current effective map date |
|---|---|---|---|
| New Mexico: | | | |
| Elephant Butte, City of, Sierra County | 350136 | March 17, 2005 | Use Sierra County (CID 350071) FIRM panel 0485C dated July 16, 1996. |
| Indiana: | | | |
| McCordsville, Town of, Hancock County | 180468 | March 18, 2005 | Use Hancock County (CID 180419) FIRM panel 0025B dated October 15, 1982. |
| Florida: | | | |
| Polk City, Town of, Polk County | 120665 | March 22, 2005 | November 19, 2003. |
| **Reinstatements** | | | |
| Minnesota: | | | |
| Greenwood, City of, Hennepin County | 270164 | January 31, 2005 | September 2, 2004. |
| Shorewood, City of, Hennepin County | 270185 | .....do | Do. |
| St. Anthony, City of, Hennepin County and Ramsey County. | 270716 | March 4, 2004 | Do. |
| Alabama: | | | |
| Alexander City, City of, Tallapoosa County | 010210 | March 15, 2005 | September 27, 1985. |
| **Withdrawals** | | | |
| **Suspensions** | | | |
| North Carolina: | | | |
| Orrum, Town of, Robeson County | 370349 | March 11, 1997, Emerg.<br>March 11, 1997, Reg<br>February 22, 2005, Susp. | January 19, 2005. |
| Arkansas: | | | |
| Caldwell, Town of, St. Francis County | 050185 | May 28, 1975, Emerg<br>October 19, 1982, Reg<br>February 23, 2005, Susp. | February 18, 2005. |
| St. Francis County, Unincorporated Areas | 050184 | September 4, 1979, Emerg.<br>November 1, 1985, Reg.<br>February 23, 2005, Susp. | Do. |
| **Suspension Rescissions** | | | |
| **Region III** | | | |
| Delaware: | | | |
| Bethany Beach, Town of, Sussex County | 105083 | January 18, 2005<br>Suspension Notice Rescinded. | January 6, 2005. |
| Dewey Beach, Town of, Sussex County | 100056 | .....do | Do. |
| South Bethany, Town of, Sussex County | 100051 | .....do | Do. |
| **Region V** | | | |
| Ohio: | | | |
| Brookville, City of, Montgomery County | 390407 | .....do | Do. |
| Dayton, City of, Montgomery County | 390409 | .....do | Do. |
| Miamisburg, City of, Montgomery County | 390413 | .....do | Do. |
| Trotwood, City of, Montgomery County | 390417 | .....do | Do. |
| **Region VII** | | | |
| Kansas: | | | |
| Manhattan, City of, Riley County and Pottawatomie County. | 200300 | February 4, 2005<br>Suspension Notice Rescinded. | February 4, 2005. |
| Ogden, City of, Riley County | 200301 | .....do | Do. |
| Riley County, Unincorporated Areas | 200298 | .....do | Do. |
| Nebraska: | | | |
| Battle Creek, City of, Madison County | 310145 | .....do | Do. |
| Madison County, Unincorporated Areas | 310455 | .....do | Do. |
| **Region IV** | | | |
| Florida: | | | |
| Islamorada, Village of, Monroe County | 120424 | February 18, 2005<br>Suspension Notice Rescinded. | February 18, 2005. |
| Marathon, City of, Monroe County | 120681 | .....do | Do. |
| North Carolina: | | | |
| Lumberton, City of, Robeson County | 370203 | .....do | January 19, 2005. |
| **Region VI** | | | |
| Arkansas: | | | |
| Forrest City, City of, St. Francis County | 050187 | .....do | February 18, 2005. |
| Hughes, City of, St. Francis County | 050188 | .....do | Do. |

| State and location | Community No. | Effective date of eligibility | Current effective map date |
|---|---|---|---|
| Palestine, City of, St. Francis County | 050359 | .....do | Do. |
| Wheatley, City of, St. Francis County | 050374 | .....do | Do. |
| **Region VII** | | | |
| Missouri: | | | |
| Callaway County, Unincorporated Areas | 290049 | .....do | Do. |
| Fulton, City of, Callaway County | 290051 | .....do | Do. |
| Jefferson, City of, Callaway County and Cole County. | 290108 | .....do | Do. |
| **Region IV** | | | |
| Kentucky: | | | |
| Magoffin County, Unincorporated Areas | 210158 | March 16, 2005 Suspension Notice Rescinded. | March 16, 2005. |
| Salyersville, City of, Magoffin County | 210159 | .....do | Do. |

*-do- and Do. = ditto
**Designates communities converted from Emergency Phase of participation to the Regular Phase of participation.
Code for reading fourth and fifth columns: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

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

Dated: June 21, 2005.

**David I. Maurstad,**

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

[FR Doc. 05–12679 Filed 6–27–05; 8:45 am]

BILLING CODE 9110–12–P

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 65

**[Docket No. FEMA–P–7644]**

## Changes in Flood Elevation Determinations

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

**ACTION:** Interim rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and record keeping requirements.

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

## PART 65—[AMENDED]

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

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

### § 65.4 [Amended]

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

| State and county | Location | Dates and name of newspaper where notice was published | Chief Executive Officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Arkansas: Sebastian. (Case No. 04–06–667P) | City of Fort Smith. | March 22, 2005, March 29, 2005, *Southwest Times Record*. | The Honorable C. Ray Baker, Jr., Mayor, City of Fort Smith, 4420 Victoria Drive, Fort Smith, AR 72904. | June 28, 2005 ..... | 055013 |
| Illinois: Cook ..... (Case No. 03–05–3983P) | Village of Orland Park. | March 17, 2005, March 24, 2005, *Orland Park Star*. | The Honorable Daniel McLaughlin, Mayor, Village of Orland Park, 14700 South Ravinia Avenue, Orland Park, IL 60462. | February 28, 2005 ..... | 170140 |
| Illinois: Will ..... (Case No. 04–05–3555P) | Village of Rockdale. | February 21, 2005, February 28, 2005, *The Herald News*. | The Honorable Henry Berry, President, Village of Rockdale, 603 Otis Avenue, Rockdale, IL 60436. | May 30, 2005 ..... | 170710 |
| Minnesota: Anoka (Case No. 04–05–3553P) | City of Andover | May 13, 2005, May 20, 2005, *Anoka County Union*. | The Honorable Mike Gamache, Mayor, City of Andover, 1685 Crosstown Boulevard, NW, Andover, MN 55304. | August 19, 2005 ..... | 270689 |
| Minnesota: Dakota. (Case No. 04–05–2890P) | Unincorporated Areas. | March 3, 2005, March 10, 2005, *Dakota County Tribune*. | Mr. Brandt Richardson, Administrator, Dakota County, Dakota County Administration Bldg., 1590 Highway 55, Hastings, MN 55033–2372. | June 9, 2005 ..... | 270101 |
| Minnesota: Washington and Dakota. (Case No. 04–05–2890P) | City of Hastings | March 3, 2005, March 10, 2005, *Dakota County Tribune*. | The Honorable Michael Werner, Mayor, City of Hastings, 100 East 4th Street, Hastings, MN 55033. | June 9, 2005 ..... | 270105 |
| Minnesota: Washington. (Case No. 04–05–4071P) | City of Hugo ..... | April 13, 2005, April 20, 2005, *The White Bear Press*. | The Honorable Fran Miron, Mayor, City of Hugo, 15250 Homestead Avenue N, Hugo, MN 55038. | March 29, 2005 ..... | 270504 |
| Minnesota: Anoka (Case No. 04–05–3553P) | City of Oak Grove. | May 13, 2005, May 20, 2005, *Anoka County Union*. | The Honorable Oscar Olson, Mayor, City of Oak Grove, 22200 Poppy Street, NW, Anoka, MN 55303. | August 19, 2005 ..... | 270031 |
| Minnesota: Scott (Case No. 04–05–0763P) | City of Savage ... | May 14, 2005, May 21, 2005, *The Savage Pacer*. | The Hon. Thomas M. Brennan, Mayor, City of Savage, 6000 McColl Drive, Savage, MN 55378–2464. | August 20, 2005 ..... | 270433 |
| Missouri: Cape Girardeau. (Case No. 04–07–533P) | City of Cape Girardeau. | March 22, 2005, March 29, 2005, *Southeast Missourian*. | The Honorable Jay Knudtson, Mayor, City of Cape Girardeau, City Hall, 401 Independence Street, Cape Girardeau, MO 63705. | March 3, 2005 ..... | 290458 |
| Missouri: Cape Girardeau. (Case No. 04–07–533P) | Unincorporated Areas. | March 22, 2005, March 29, 2005, *Southeast Missourian*. | Mr. Gerald Jones, Presiding Commissioner, Cape Girardeau County Commission, 1 Barton Square, Jackson, MO 63755. | April 4, 2005 ..... | 290790 |
| Missouri: St. Louis. (Case No. 04–07–050P) | City of Ferguson | March 23, 2005, March 30, 2005, *St. Louis Post Dispatch*. | The Honorable Steven Wegert, Mayor, City of Ferguson, 110 Church Street, Ferguson, MO 63135. | June 29, 2005 ..... | 290351 |
| Missouri: St. Louis. (Case No. 04–07–050P) | Unincorporated Areas. | March 23, 2005, March 30, 2005, *St. Louis Post-Dispatch*. | Mr. Charlie A. Dooley, St. Louis County Executive, 41 South Central Avenue, Clayton, MO 63105. | June 29, 2005 ..... | 290327 |
| New Mexico: Bernalillo. (Case No. 04–06–2142P) | Unincorporated Areas. | April 20, 2005, April 27, 2005, *The Albuquerque Journal*. | The Honorable Tom Rutherford, Commissioner, Bernalillo County, One Civic Plaza, N.W., Albuquerque, NM 87102. | July 27, 2005 ..... | 350001 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief Executive Officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| New Mexico: Dona Ana. (Case No. 04–06–857P) | City of Las Cruces. | May 4, 2005, May 11, 2005, *Las Cruces Sun News*. | The Honorable William Mattiace, Mayor, City of Las Cruces, P.O. Box 20000, Las Cruces, NM 88004. | April 21, 2005 ..... | 355332 |
| Ohio: Lorain ..... (Case No. 04–05–4063P) | Unincorporated Areas. | April 6, 2005, April 13, 2005, *The Morning Journal*. | The Honorable James R. Cordes, Lorain County Administrator, 226 Middle Avenue, Elyria, OH 44035. | July 13, 2005 ..... | 390346 |
| Oklahoma: Oklahoma. (Case No. 04–06–1925P) | City of Oklahoma City. | February 16, 2005, February 23, 2005, *The Daily Oklahoman*. | The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker, 3rd Floor, Oklahoma City, OK 73102. | February 2, 2005 ..... | 405378 |
| Texas: Taylor and Jones. (Case No 04–06–1912P) | City of Abilene ... | March 2, 2005, March 9, 2005, *The Abilene Reporter-News*. | The Honorable Grady Barr, Mayor, City of Abilene, P.O. Box 60, Abilene, TX 79604. | February 8, 2005 ..... | 485450 |
| Texas: Collin ..... (Case No. 04–06–573P) | City of Allen ..... | March 3, 2005, March 10, 2005, *The Allen American*. | The Honorable Steve Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013. | February 9, 2005 ..... | 480131 |
| Texas: Denton .... (Case No. 04–06–1465P) | Town of Bartonville. | May 9, 2005, May 16, 2005, *Denton Record Chronicle*. | The Honorable Ron Robertson, Mayor, Town of Bartonville, 1941 East Jeter Road, Bartonville, TX 76226. | April 22, 2005 ..... | 481501 |
| Texas: Dallas ..... (Case No. 04–06–673P) | City of Dallas ..... | May 5, 2005, May 12, 2005, *Dallas Morning News*. | The Honorable Laura Miller, Mayor, City of Dallas, Dallas City Hall, 1500 Marilla Street, Room 5EN, Dallas, TX 75201–6390. | August 11, 2005 ..... | 480171 |
| Texas: Denton .... (Case No. 04–06–1465P) | Unincorporated Areas. | May 9, 2005, May 16, 2005, *Denton Record Chronicle*. | The Honorable Mary Horn, Judge, Denton County, 110 West Hickory Street, 2nd Floor, Denton, TX 76201. | April 22, 2005 ..... | 480774 |
| Texas: Fort Bend (Case No. 04–06–380P) | Unincorporated Areas. | May 4, 2005, May 11, 2005, *Fort Bend Star*. | The Honorable Robert E. Hebert, Judge, Fort Bend County, 301 Jackson Street, Richmond, TX 77469. | August 10, 2005 ..... | 480228 |
| Texas: Tarrant .... (Case No. 04–06–1206P) | City of Fort Worth. | February 18, 2005, February 25, 2005, *The Star Telegram*. | The Honorable Michael Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311. | May 27, 2005 ..... | 480596 |
| Texas: Collin ..... (Case No. 04–06–868P) . | City of Frisco ..... | February 25, 2005, March 4, 2005, *The Frisco Enterprise*. | The Honorable Mike Simpson, Mayor, City of Frisco, 6891 Main Street, Frisco, TX 75034. | June 3, 2005 ..... | 480134 |
| Texas: Hays ..... (Case No. 04–06–1456P) | Unincorporated Areas. | April 14, 2005, April 21, 2005, *San Marcos Daily Record*. | The Honorable Jim Powers, Judge, Hays County, 111 E. San Antonio Street, Suite 300, San Marcos, TX 78666. | March 31, 2005 ..... | 480321 |
| Texas: Ellis ..... (Case No. 04–06–1901P) | City of Midlothian | March 30, 2005, April 6, 2005, *The Midlothian Mirror*. | The Honorable David Setzer, Mayor, City of Midlothian, 104 West Avenue East, Midlothian, TX 76065. | March 15, 2005 ..... | 480801 |
| Texas: Comal and Guadalupe. (Case No 04–06–1906P) | City of New Braunfels. | February 23, 2005, March 2, 2005, *New Braunfels Herald-Zeitung*. | The Honorable Adam Cork, Mayor, City of New Braunfels, P.O. Box 311747, New Braunfels, TX 78131–1747. | June 1, 2005 ..... | 485493 |
| Texas: Parker ..... (Case No. 04–06–1004P) | Unincorporated Areas. | February 16, 2005, February 23, 2005, *The Weatherford Democrat*. | The Honorable Mark Riley, Parker County Judge, One Courthouse Square, Weatherford, TX 76086. | May 25, 2005 ..... | 480520 |
| Texas: Collin ..... (Case No. 05–06–0150P) | City of Plano ..... | March 23, 2005, March 30, 2005 *The Plano Star Courier*. | The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, TX 75086–0358. | June 29, 2005 ..... | 480140 |
| Texas: Collin ..... (Case No. 04–06–673P) | City of Plano ..... | May 5, 2005, May 12, 2005, *Plano Star Courier*. | The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, TX 75086. | August 11, 2005 ..... | 480140 |
| Texas: Bexar ..... (Case No. 04–06–1738P) | City of San Antonio. | May 24, 2005, May 31, 2005, *San Antonio Express News*. | The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966. | August 30, 2005 ..... | 480045 |

| State and county | Location | Dates and name of newspaper where notice was published | Chief Executive Officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Texas: Parker ..... (Case No. 04–06–1004P) | City of Weatherford. | February 16, 2005, February 23, 2005, *The Weatherford Democrat*. | The Honorable Joe M. Tison, Mayor, City of Weatherford, One Courthouse Square, Weatherford, TX 76086. | May 25, 2005 ..... | 480522 |
| Texas: Tarrant .... (Case No. 04–06–1206P) | Village of Westworth. | February 18, 2005, February 25, 2005, *The Star Telegram*. | The Honorable Andy Fontenot, Mayor, Village of Westworth Village, 311 Burton Hill Road, Fort Worth, TX 76114. | May 27, 2005 ..... | 480616 |
| Texas: Williamson (Case No. 04–06–1455P) | Unincorporated Areas. | March 2, 2005, March 9, 2005, *Williamson County Sun*. | The Honorable John C. Doerfler, Judge, Williamson County, 710 Main Street, Suite 201, Georgetown, TX 78626. | February 8, 2005 ..... | 481079 |
| Texas: Fort Bend (Case No. 04–06–380P) | Willow Fork Drainage District. | May 4, 2005, May 11, 2005, *The Katy Times*. | The Honorable Larry J. Mueller, Willow Fork Drainage District, c/o Allen, Boone & Humphries, LLP, 3200 Southwest Freeway, 26th Floor, Houston, TX 77027. | August 10, 2005 ..... | 481603 |
| Texas: Parker ..... (Case No. 04–06–1004P) | City of Willow Park. | February 16, 2005, February 23, 2005, *The Weatherford Democrat*. | The Honorable James H. Poythress, Mayor, City of Willow Park, 101 Stagecoach Trail, Willow Park, TX 76087. | May 25, 2005 ..... | 481164 |
| Wisconsin: Fond du Lac. (Case No. 04–05–4086P) | City of Fond du Lac. | March 2, 2005, March 9, 2005, *The Reporter*. | Mr. Tom W. Ahrens, City Manager, City of Fond du Lac, 160 South Macy Street, Fond du Lac, WI 54935. | June 8, 2005 ..... | 550136 |
| Wisconsin: Fond du Lac. (Case No. 04–05–4086P) | Unincorporated Areas. | March 2, 2005, March 9, 2005, *The Reporter*. | Mr. Allen J. Buechel, Fond du Lac County Executive, 160 South Macy Street, Fond du Lac, WI 54935. | June 8, 2005 ..... | 550131 |
| Wisconsin: Manitowoc. (Case No. 04–05–4084P) | Unincorporated Areas. | March 2, 2005, March 9, 2005, *Herald Times Reporter*. | The Honorable Dan Sicher, Manitowoc County Executive, Administrative Office Building, 1110 South 9th Street, Manitowoc, WI 54220. | June 8, 2005 ..... | 550236 |

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

Dated: June 22, 2005.

**David I. Maurstad,**

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

[FR Doc. 05–12680 Filed 6–27–05; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 65

**[Docket No. FEMA –B–7452]**

## Changes in Flood Elevation Determinations

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

**ACTION:** Interim rule.

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

**DATES:** These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for the listed communities.

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

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

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

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

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

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

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

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in

the National Flood Insurance Program (NFIP).

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

The changes BFEs are in accordance with 44 CFR 65.4.

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

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

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

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

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

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

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

## PART 65—[AMENDED]

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

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

### § 65.4 [Amended]

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

| State and county | Location and case no. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Alaska: Anchorage Borough. | Municipality of Anchorage (04–10–0831P). | April 27, 2005; May 4, 2005; *Anchorage Daily News*. | The Honorable Mark Begich, Mayor, Municipality of Anchorage, P.O. Box 196650, Anchorage, Alaska 99519–6650. | August 3, 2005 ..... | 020005 |
| Alabama: Coffee | Unincorporated Areas (04–04–A853P). | February 23, 2005; March 3, 2005; *The Enterprise Ledger*. | The Honorable Doug Dalrymple, Chairman, Coffee County Commission, County Courthouse, Two County Complex, New Brockton, Alabama 36351. | February 10, 2005 ..... | 010239 |
| Arizona: | | | | | |
| Maricopa ..... | City of Phoenix (03–09–0661P). | April 21, 2005; April 28, 2005; *Arizona Business Gazette*. | The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003. | July 28, 2005 ..... | 040051 |
| Maricopa ..... | City of Scottsdale (05–09–0403X). | February 24, 2005; March 3, 2005; *Arizona Business Gazette*. | The Honorable Mary Manross, Mayor, City of Scottsdale, 3939 North Drinkwater Boulevard, Scottsdale, Arizona 85251. | February 4, 2005 ..... | 045012 |
| Pima ..... | Town of Marana (03–09–1149P). | April 28, 2005; May 5, 2005; *The Daily Territorial*. | The Honorable Bobby Sutton, Mayor, Town of Marana, 13251 North Lon Adams Road, Marana, Arizona 85653. | August 4, 2005 ..... | 040118 |
| Pima ..... | City of Tucson (04–09–0547P). | April 21, 2005; April 28, 2005; *The Daily Territorial*. | The Honorable Bob Walkup, Mayor, City of Tucson, City Hall, 255 West Alameda Street, Tucson, Arizona 85701. | July 28, 2005 ..... | 040076 |
| Pima ..... | Unincorporated Areas (03–09–1149P). | April 28, 2005; May 5, 2005; *The Daily Territorial*. | The Honorable Sharon Bronson, Chair, Pima County Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, Arizona 85701. | August 4, 2005 ..... | 040073 |
| California: | | | | | |
| Alameda ..... | City of Hayward (04–09–0592P). | April 23, 2005; April 30, 2005; *Daily Review*. | The Honorable Roberta Cooper, Mayor, City of Hayward, 777 B Street, Hayward, California 94541–5007. | April 11, 2005 ..... | 065033 |
| Alameda ..... | City of Pleasanton (04–09–0039P). | May 10, 2005; May 17, 2005; *Alameda Journal*. | The Honorable Jennifer Hosterman, Mayor, City of Pleasanton, P.O. Box 520, Pleasanton, California 94566–0802. | August 16, 2005 ..... | 060012 |

| State and county | Location and case no. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Alameda ..... | Unincorporated Areas (04–09–0039P). | May 10, 2005; May 17, 2005; *Alameda Journal*. | The Honorable Keith Carson, President, Alameda County Board of Supervisors, 1221 Oak Street, Suite 536, Oakland, California 94612. | August 16, 2005 ..... | 060001 |
| Contra Costa | City of Hercules (05–09–0327P). | April 14, 2005; April 21, 2005; *West County Times*. | The Honorable Frank Batara, Mayor, City of Hercules, 111 Civic Drive, Hercules, California 94547. | July 21, 2005 ..... | 060434 |
| Los Angeles | City of Agoura Hills (04–09–1686P). | March 24, 2005; March 31, 2005; *The Acorn*. | The Honorable Denis Weber, Mayor, City of Agoura Hills, 30001 Ladyface Court, Agoura Hills, California 91301. | June 30, 2005 ..... | 065072 |
| San Bernardino. | City of Colton (03–09–0798P). | March 23, 2005; March 30, 2005; *San Bernardino County Sun*. | The Honorable Deirdre Bennett, Mayor, City of Colton, City Hall, 650 North La Cadena Drive, Colton, California 92324. | March 17, 2005 ..... | 060273 |
| San Bernardino. | City of Grande Terrace (03–09–0798P). | March 23, 2005; March 30, 2005; *San Bernardino County Sun*. | The Honorable Maryetta Ferre, Mayor, City of Grand Terrace, City Hall, 22795 Barton Road, Grand Terrace, California 92313. | March 17, 2005 ..... | 060737 |
| San Bernardino. | City of Highland (03–09–0798P). | March 23, 2005; March 30, 2005; *San Bernardino County Sun*. | The Honorable Ross Jones, Mayor, City of Highland, City Hall, 27215 Baseline Drive, Highland, California 92346. | March 17, 2005 ..... | 060732 |
| San Bernardino. | City of Redlands (03–09–0798P). | March 23, 2005; March 30, 2005; *San Bernardino County Sun*. | The Honorable Susan Peppler, Mayor, City of Redlands, P.O. Box 3005, Redlands, California 92373–1505. | March 17, 2005 ..... | 060279 |
| San Bernardino. | City of Rialto (03–09–0798P). | March 23, 2005; March 30, 2005; *San Bernardino County Sun*. | The Honorable Grace Vargas, Mayor, City of Rialto, 150 South Palm Avenue, Rialto, California 92376. | March 17, 2005 ..... | 060280 |
| San Bernardino. | City of San Bernardino (03–09–0798P). | March 23, 2005; March 30, 2005; *San Bernardino County Sun*. | The Honorable Judith Valles, Mayor, City of San Bernardino, 300 North D Street, Sixth Floor, San Bernardino, California 92418. | March 17, 2005 ..... | 060281 |
| San Bernardino. | Unincorporated Areas (03–09–0798P). | March 23, 2005; March 30, 2005; *San Bernardino County Sun*. | The Honorable Bill Postmus, Chairman, San Bernardino County Board of Supervisors, 385 North Arrowhead Avenue, San Bernardino, California 92415–0110. | March 17, 2005 ..... | 060270 |
| San Diego ... | City of Chula Vista (04–09–1682P). | March 22, 2005; March 29, 2005; *San Diego Union-Tribune*. | The Honorable Stephen C. Padilla, Mayor, City of Chula Vista, 276 Fourth Avenue, Chula Vista, California 91910. | June 28, 2005 ..... | 065021 |
| San Diego ... | City of San Diego (04–09–1682P). | March 22, 2005; March 29, 2005; *San Diego Union-Tribune*. | The Honorable Dick Murphy, Mayor, City of San Diego, 202 "C" Street, Eleventh Floor, San Diego, California 92101. | June 28, 2005 ..... | 065295 |
| San Diego ... | Unincorporated Areas (04–09–1360P). | March 24, 2005; March 31, 2005; *San Diego Union-Tribune*. | The Honorable Dianne Jacob, Chairperson, San Diego County Board of Supervisors, County Administration Center, 1600 Pacific Highway, San Diego, California 92101. | March 10, 2005 ..... | 060284 |
| Colorado: | | | | | |
| Adams ..... | City of Commerce City (04–08–0577P). | February 2, 2005; February 9, 2005; *Brighton Standard-Blade*. | The Honorable Sean Ford, Mayor, City of Commerce City, 5291 East 60th Avenue, Commerce City, Colorado 80022. | May 11, 2005 ..... | 080006 |
| Adams ..... | City of Thornton (04–08–0577P). | February 2, 2005; February 9, 2005; *Brighton Standard-Blade*. | The Honorable Noel Busck, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, Colorado 80229. | May 11, 2005 ..... | 080007 |
| Adams ..... | Unincorporated Areas (04–08–0577P). | February 2, 2005; February 9, 2005; *Brighton Standard-Blade*. | The Honorable Elaine T. Valente, Chairman, Adams County Board of Commissioners, 450 South Fourth Avenue, Brighton, Colorado 80601. | May 11, 2005 ..... | 080001 |

| State and county | Location and case no. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Arapahoe | City of Centennial (05–08–0060P). | March 17, 2005; March 24, 2005; *The Littleton Independent*. | The Honorable Randy Pye, Mayor, City of Centennial, City of Centennial Office, 12503 East Euclid Drive, Suite 200, Centennial, Colorado 80111. | March 3, 2005 | 080315 |
| Denver | City & County of Denver (04–08–0657P). | March 23, 2005; March 30, 2005; *Rocky Mountain News*. | The Honorable John W. Hickenlooper, Mayor, City and County of Denver, 1437 Bannock Street, Suite 350, Denver, Colorado 80202. | February 23, 2005 | 080046 |
| Douglas | Unincorporated Areas (04–08–0696P). | March 3, 2005; March 10, 2005; *Douglas County News-Press*. | The Honorable Walter M. Maxwell, Chairman, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104. | February 17, 2005 | 080049 |
| Douglas | Unincorporated Areas (05–08–0022P). | March 31, 2005; April 7, 2005; *Douglas County News-Press*. | The Honorable Walter M. Maxwell, Chairman, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104. | March 21, 2005 | 080049 |
| El Paso | Unincorporated Areas (04–08–0519P). | February 2, 2005; February 9, 2005; *El Paso County News*. | The Honorable Chuck Brown, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903–2208. | May 11, 2005 | 080059 |
| El Paso | Unincorporated Areas (04–08–0709P). | February 9, 2005; February 16, 2005; *El Paso County News*. | The Honorable Chuck Brown, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903–2208. | May 18, 2005 | 080059 |
| Gilpin | City of Black Hawk (04–08–0333P). | March 18, 2005; March 25, 2005; *Weekly Register Call*. | The Honorable Kathryn Eccker, Mayor, City of Black Hawk, P.O. Box 17, Black Hawk, Colorado 80422. | June 24, 2005 | 080076 |
| Jefferson | City of Lakewood (05–08–0126P). | March 24, 2005; March 31, 2005 *The Lakewood Sentinel*. | The Honorable Steve Burkholder, Mayor, City of Lakewood, Lakewood Civic Center South, 480 South Allison Parkway, Lakewood, Colorado 80226. | February 22, 2005 | 085075 |
| Connecticut: | | | | | |
| Fairfield | Town of Greenwich (05–01–0130P). | March 3, 2005; March 10, 2005; *Greenwich Times*. | The Honorable Jim Lash, First Selectman, Town of Greenwich, Town Hall 101 Field Point Road, Greenwich, Connecticut 06830. | February 7, 2005 | 090008 |
| New London | City of New London (05–01–0174P). | May 12, 2005; May 19, 2005; *The Day*. | Mr. Richard M. Brown, City Manager, City of New London, 181 State Street, New London, Connecticut 06320. | April 19, 2005 | 090100 |
| Florida: Broward | City of Hallandale Beach (05–04–0018P). | March 24, 2005; March 31, 2005; *Sun Sentinel*. | The Honorable Joy Cooper, Mayor, City of Hallandale Beach, 400 South Federal Highway, Hallandale Beach, Florida 33009. | March 9, 2005 | 125110 |
| Idaho: Ada | Unincorporated Areas (04–10–0520P). | March 24, 2005; March 31, 2005; *The Idaho Statesman*. | The Honorable Judy Peavey-Derr, Chairman, Ada County, Board of Commissioners, 200 West Front Street, Boise, Idaho 83702. | June 30, 2005 | 160001 |
| Illinois: | | | | | |
| Cook | City of Hickory Hills (05–05–0128P). | April 21, 2005; April 28, 2005; *Daily Southtown*. | The Honorable Michael Howley, Mayor, City of Hickory Hills, 8652 West 95th Street, Hickory Hills, Illinois 60457. | March 28, 2005 | 170103 |
| Cook | Village of Justice (05–05–0128P). | April 21, 2005; April 28, 2005; *Daily Southtown*. | The Honorable Melvin D. Van Allen, Village President, Village of Justice, 7800 South Archer Road, Justice, Illinois 60458. | March 28, 2005 | 170112 |
| Madison | City of Highland (05–05–0534P). | March 24, 2005; March 31, 2005; *The Highland News Leader*. | The Honorable Bob Bowman, Mayor, City of Highland, P.O. Box 218, Highland, Illinois 62249. | April 4, 2005 | 170445 |

| State and county | Location and case no. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Indiana: Hamilton | Town of Westfield (05–05–0417P). | March 22, 2005; March 29, 2005; *The Noblesville Ledger*. | The Honorable Teresa Otis Skelton, Town Council President, Town of Westfield 130 Penn Street, Westfield, Indiana 46074. | March 10, 2005 ..... | 180083 |
| Iowa: Johnson .... | City of Coralville (05–07–0424P). | May 12, 2005; May 19, 2005; *Iowa City Press-Citizen*. | The Honorable Jim Fausett, Mayor, City of Coralville, 1512 Seventh Street, Coralville, Iowa 52241. | April 25, 2005 ..... | 190169 |
| Kentucky: Warren | City of Bowling Green (04–04–A310P). | March 23, 2005; March 30, 2005; *Park City Daily News*. | The Honorable Elaine Walker, Mayor, City of Bowling Green, 1001 College Street, Bowling Green, Kentucky 42102–0430. | March 9, 2005 ..... | 210219 |
| Michigan: | | | | | |
| Macomb ..... | Township of Macomb (05–05–0281P). | February 18, 2005; February 25, 2005; *Macomb County Legal News*. | The Honorable John D. Brennan, Township Supervisor, Macomb Township, 54111 Broughton Road, Macomb, Michigan 48042. | January 12, 2005 ..... | 260445 |
| Macomb ..... | Township of Washington (04–05–A257P). | January 26, 2005; February 2, 2005; *The Romeo Observer*. | The Honorable Gary Kirsh, Supervisor, Washington Township, P.O. Box 94067, Washington, Michigan 48094. | January 18, 2005 ..... | 260447 |
| Monroe ..... | Town of Bedford (05–05–0658P). | May 5, 2005; May 12, 2005; *The Monroe Evening News*. | The Honorable Walt Wilburn, Township Supervisor, Township of Bedford, 8100 Jackman Road, Box H, Temperance, Michigan 48182. | April 20, 2005 ..... | 260142 |
| Minnesota: Olmsted. | Unincorporated Areas (05–05–1147P). | April 21, 2005; April 28, 2005; *Post Bulletin*. | Mr. Richard Devlin, Olmstead County, Administrator, 151 Fourth Street Southwest, Rochester, Minnesota 55904–3714. | July 28, 2005 ..... | 270626 |
| Missouri: Platte ... | City of Riverside (04–07–A209P). | March 24, 2005; March 31, 2005; *The Landmark*. | The Honorable Betty Burch, Mayor, City of Riverside, 2950 Northwest Vivion Road, Riverside, Missouri 64150. | March 2, 2005 ..... | 290296 |
| Montana: | | | | | |
| Lincoln ..... | City of Libby (04–08–0419P). | March 23, 2005; March 30, 2005; *The Western News*. | The Honorable Anthony Berget, Mayor, City of Libby, P.O. Box 1428, Libby, Montana 59923. | March 1, 2005 ..... | 300042 |
| Lincoln ..... | Unincorporated Areas (04–08–419P). | March 23, 2005; March 30, 2005; *The Western News*. | The Honorable Marianne Roose, Chair, Lincoln County Board of Commissioners, 512 California Avenue, Libby, Montana 59923. | March 1, 2005 ..... | 300157 |
| Nebraska: | | | | | |
| Sarpy ..... | Unincorporated Areas (04–07–A507P). | March 23, 2005; March 30, 2005; *Bellevue Leader*. | The Honorable Inez Boyd, Chair, Sarpy County Board of Commissioners, 1210 Golden Gate Drive, Suite 1116, Papillion, Nebraska 68046–2894. | February 14, 2005 ..... | 310190 |
| Saunders ..... | Unincorporated Areas (04–07–A507P). | March 24, 2005; March 31, 2005; *Wahoo News*. | The Honorable Kenneth Kunci, Chairman, Saunders County Board of Supervisors, 109 North Railway, Prague, Nebraska 68050. | February 14, 2005 ..... | 310195 |
| Nevada: | | | | | |
| Independent City. | City of Carson City (04–09–1128P). | April 7, 2005; April 14, 2005; *Nevada Appeal*. | The Honorable Marv Teixeira, Mayor, City of Carson City, 201 North Carson Street, Suite 1, Carson City, Nevada 89701. | July 14, 2005 ..... | 320001 |
| Washoe ..... | City of Reno (04–09–1534P). | April 14, 2005; April 21, 2005; *Reno Gazette-Journal*. | The Honorable Robert Cashell, Mayor, City of Reno, P.O. Box 1900, Reno, Nevada 89505. | July 21, 2005 ..... | 320020 |
| North Carolina: | | | | | |
| Dare ..... | Unincorporated Areas (04–04–A520P). | October 21, 2004; October 28, 2004; *Coastland Times*. | The Honorable Warren Judge, Chairman, Dare County Board of Commissioners, P.O. Box 1000, Manteo, North Carolina 27954. | October 14, 2004 ..... | 375348 |
| Dare ..... | Unincorporated Areas (05–04–0985P). | March 31, 2005; April 7, 2005; *Coastland Times*. | The Honorable Warren Judge, Chairman, Dare County Board of Commissioners, P.O. Box 1000, Manteo, North Carolina 27924. | March 15, 2005 ..... | 375348 |

| State and county | Location and case no. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Durham | Unincorporated Areas (04–04–A165P). | April 7, 2005; April 14, 2005; *The Herald Sun*. | Mr. Michael M. Ruffin, Durham County, Manager, 200 East Main Street, Second Floor, Durham, North Carolina 27701. | July 14, 2005 | 370085 |
| Mecklenburg | City of Charlotte (04–04–B034P). | April 14, 2005; April 21, 2005; *Charlotte Observer*. | The Honorable Patrick McCrory, Mayor, City of Charlotte, 600 East Fourth Street, Charlotte, North Carolina 28202. | July 21, 2005 | 370159 |
| Mecklenburg | Unincorporated Areas (04–04–B034P). | April 14, 2005; April 21, 2005; *Charlotte Observer*. | Mr. Harry L. Jones, Sr., County Manager, Mecklenburg County, Charlotte-Mecklenburg Government Center, 600 East Fourth Street, 11th Floor, Charlotte, North Carolina 28202. | July 21, 2005 | 370158 |
| Oklahoma: Oklahoma. | City of Oklahoma City (05–06–0201P). | March 23, 2005; March 30, 2005; *The Journal Record*. | The Honorable Mick Cornett, Mayor, City of Oklahoma City, 200 North Walker Avenue, Third Floor, Oklahoma City, Oklahoma 73102. | June 29, 2005 | 405378 |
| Oregon: Clackamas. | Unincorporated Areas (05–10–0129P). | May 5, 2005; May 12, 2005; *The Oregonian*. | The Honorable Martha Schrader, Chairperson, Clackamas County Board of Commissioners, 2051 Kaen Road, Oregon City, Oregon 97045. | August 11, 2005 | 415588 |
| Tennessee: Shelby. | City of Memphis (04–04–A797P). | December 30, 2004; January 6, 2005; *The Commercial Appeal*. | The Honorable Dr. Willie W. Herenton, Mayor, City of Memphis, City Hall, 125 North Main Street, Room 700, Memphis, Tennessee 38103. | December 15, 2004 | 470177 |
| Texas: | | | | | |
| Collin | City of Plano (04–06–A213P). | March 10, 2005; March 17, 2005; *Plano Star Courier*. | The Honorable Pat Evans, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358. | February 25, 2005 | 480140 |
| Dallas | City of Garland (04–06–A335P). | April 29, 2005; May 5, 2005; *Dallas Morning News*. | The Honorable Bob Day, Mayor, City of Garland, 200 North Fifth Street, Garland, Texas 75040. | July 28, 2005 | 485471 |
| Dallas | Town of Sunnyvale (05–06–0552P). | April 14, 2005; April 21, 2005; *The Mesquite News*. | The Honorable Jim Phaup, Mayor, Town of Sunnyvale, 537 Long Creek Road, Sunnyvale, Texas 75182. | July 21, 2005 | 480188 |
| Denton | City of Denton (04–06–A081P). | April 13, 2005; April 20, 2005; *Denton Record Chronicle*. | The Honorable Euline Brock, Mayor, City of Denton, 215 East McKinney Street, Denton, Texas 76201. | July 20, 2005 | 480194 |
| Denton | Unincorporated Areas (04–06–A302P). | April 14, 2005; April 21, 2005; *Denton Record Chronicle*. | The Honorable Mary Horn, Denton County Judge, Courthouse on the Square, 110 West Hickory Street, Second Floor, Denton, Texas 76201–4168. | July 21, 2005 | 480774 |
| Tarrant | City of Arlington (04–06–A299P). | April 14, 2005; April 21, 2005; *Arlington Star-Telegram*. | The Honorable Robert Cluck, M.D., Mayor, City of Arlington, P.O. Box 90231, Arlington, Texas 76004–3231. | July 21, 2005 | 485454 |
| Tarrant | City of Hurst (05–06–0126P). | March 10, 2005; March 17, 2005; *Fort Worth Star-Telegram*. | The Honorable Richard Ward, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, Texas 76054. | February 16, 2005 | 480601 |
| Travis | City of Austin (04–06–A121P). | March 16, 2005; March 23, 2005; *Austin American-Statesman*. | The Honorable Kirk P. Watson, Mayor, City of Austin, P.O. Box 1088, Austin, Texas 78767–2250. | June 22, 2005 | 480624 |
| Utah: Salt Lake | City of Salt Lake City (04–08–0707P). | March 24, 2005; March 31, 2005; *Desert News*. | The Honorable Rocky Anderson, Mayor, City of Salt Lake City, 451 South State Street, Room 306, Salt Lake City, Utah 84111. | February 10, 2005 | 490105 |
| Virginia: Fauquier | Unincorporated Areas (05–03–0157P). | April 14, 2005; April 21, 2005; *The Fauquier Citizen*. | Mr. Paul McCulla, County Administrator, Fauquier County, 10 Hotel Street, Warrenton, Virginia 20186. | July 21, 2005 | 510055 |
| Wisconsin: | | | | | |

| State and county | Location and case no. | Date and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|
| Fond du Lac | Unincorporated Areas (04–05–A486P). | March 24, 2005; March 31, 2005; *Fond du Lac Reporter*. | The Honorable Brenna Garrison-Bruden, County Board Chair, Fond du Lac County, 160 South Macy Street, Fond du Lac, Wisconsin 54935. | April 8, 2005 ..... | 550131 |
| Washington | Unincorporated Areas (05–05–1018P). | May 12, 2005; May 19, 2005; *West Bend Daily News*. | The Honorable Kenneth F. Miller, Chairperson, Washington County Board of Supervisors, 432 East Washington Street, West Bend, Wisconsin 53095. | August 18, 2005 ..... | 550471 |
| Wyoming: Teton | Unincorporated Areas (04–08–0488P). | March 2, 2005; March 9, 2005; *Jackson Hole News*. | The Honorable Larry Jorgenson, Chair, Teton County, Board of Commissioners, P.O. Box 3594, Jackson, Wyoming 83001. | June 1, 2005 ..... | 560094 |

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

Dated: June 22, 2005.

**David I. Maurstad,**

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

[FR Doc. 05–12681 Filed 6–27–05; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

## Final Flood Elevation Determinations

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

**ACTION:** Final rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

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

## PART 67—[AMENDED]

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

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

### § 67.11 [Amended]

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

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground. *Elevation in feet (NGVD) Modified ♦Elevation in feet (NAVD) Modified |
|---|---|---|---|---|
| OK | McAlester (City) Pittsburg County (FEMA Docket No. P7663). | Tributary A | Approximately 4,875 feet downstream of Village Boulevard. | ♦682 |
| | | | Approximately 2,100 feet upstream of Crooked Oak Lane. | ♦756 |
| OK | McAlester (City) Pittsburg County (FEMA Docket No. P7663). | Tributary AA | At the confluence with Tributary A | ♦698 |
| | | | Approximately 3,275 feet upstream of U.S. Highway 69. | ♦754 |
| | | Tributary B | Approximately 490 feet downstream of South C. Street. | ♦687 |
| | | | Approximately 300 feet upstream of U.S. Highway 69 Service Road (2nd crossing). | ♦741 |
| | | Tributary C | Just upstream of Union Pacific Railroad | ♦646 |
| | | | Approximately 550 feet upstream of East Monroe Avenue. | ♦686 |
| | | Tributary D | Just upstream of South F Street | ♦678 |
| | | | Approximately 1,375 feet upstream of East South Avenue. | ♦726 |
| | | Tributary DD | At the confluence with Tributary D | ♦703 |
| | | | Approximately 325 feet upstream of East Seminole Avenue. | ♦715 |
| Maps are available for inspection at 28 East Washington Street, McAlester, Oklahoma. | | | | |
| TX | Eagle Pass (City) Maverick County (FEMA Docket No. P7663). | Eagle Pass Creek | At the confluence with Rio Grande | ♦716 |
| | | | Approximately 200 feet upstream of Vista Hermosa Drive. | ♦790 |
| | | Eagle Pass Creek Tributary 1. | Just upstream of Union Pacific Railroad | ♦726 |
| | | | Approximately 330 feet upstream of Travis Street. | ♦741 |
| | | Eagle Pass Creek Tributary 2. | Just upstream of the confluence with Eagle Pass Creek. | ♦741 |
| | | | Approximately 2,100 feet upstream of North Bibb Avenue. | ♦799 |
| | | Rio Grande | Approximately 1,950 feet downstream of International Union Pacific Railroad Bridge. | ♦710 |
| | | | Approximately 1,950 feet upstream of East Garrison Street. | ♦722 |
| | | Tributary to East Seco Creek. | Approximately 100 feet downstream of U.S. Highway 277. | ♦736 |
| | | | Approximately 1,185 feet upstream of U.S. Highway 277. | ♦744 |
| OK | Eagle Pass (City) Maverick County (FEMA Docket No. P7663). | Unnamed Tributary of Rio Grande. | Approximately 1,620 feet downstream of FM 3443 (1st Crossing). | ♦739 |
| | | | Approximately 1,620 feet upstream of East Main Street. | ♦772 |
| Maps are available for inspection at City Hall, 100 South Monroe Street, Eagle Pass, Texas. | | | | |

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

Dated: June 22, 2005.

**David I. Maurstad,**

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

[FR Doc. 05–12683 Filed 6–27–05; 8:45 am]

**BILLING CODE 9110–12–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 041221358–5065–02; I.D. 062205A]**

### Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Adjustment of the Quarter III Quota Allocation for Loligo Squid

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

**ACTION:** Temporary rule; quota adjustment.

**SUMMARY:** NMFS announces that it has adjusted the commercial quota allocation for the Quarter III fishery for *Loligo* squid in the Exclusive Economic Zone (EEZ). The regulations for the Atlantic mackerel, squid and butterfish fisheries require this adjustment to be made if landings in the Quarter I fishery exceed the commercial quota allocated to that period. This action is necessary to prevent the fishery from exceeding the annual commercial quota and to allow for effective management of this stock.

**DATES:** Effective 0001 hours, July 1, 2005, through 2400 hours, September 30, 2005.

**FOR FURTHER INFORMATION CONTACT:** Eric Dolin, Fishery Policy Analyst, 978–281–9259, Fax 978–281–9135.

**SUPPLEMENTARY INFORMATION:** Regulations governing the Loligo squid fishery are found at 50 CFR part 648. The regulations require annual specifications for maximum sustainable yield, initial optimum yield, allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described in § 648.21.

The final rule for the 2005 annual specifications was published on March 21, 2005 (70 FR 13406). After allocating 255.1 mt (562,399 lb) for research set-aside, the remaining 2005 annual quota for *Loligo* squid of 16,744.9 mt (36,916,191 lb) was allocated to quarters, as shown below.

TABLE. 1. INITIAL *Loligo* SQUID QUARTERLY ALLOCATIONS*

| Quarter | Percent | Metric Tons | Pounds |
|---|---|---|---|
| I (Jan-Mar) | 33.23 | 5,564.3 | 12,267,184 |
| II(Apr-Jun) | 17.61 | 2,948.8 | 6,500,992 |
| III(Jul-Sep) | 17.3 | 2,896.9 | 6,386,572 |
| IV(Oct-Dec) | 31.86 | 5,334.9 | 11,761,443 |
| Total | 100 | 16,744.9 | 36,916,191 |

*Quarterly allocations after 255.1 mt research set-aside deduction.

Section 648.21 requires NMFS to determine if landings in Quarter I result in a quota overage, and to deduct any overage from the quota allocation for Quarter III. The Quarter I quota allocation was 5,564.3 mt (12,267,184 lb). Based on dealer reports and other available information, NMFS has determined that landings in Quarter I were 7,659.8 mt (16,887,113 lb). The Quarter III allocation has been reduced by 2,095.5 mt (4,619,929 lb), resulting in an adjusted allocation of 801.3 mt (1,766,643 lb).

### Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: June 22, 2005.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 05–12743 Filed 6–23–05; 2:57 pm]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No.010319075–1217–02; I.D. 061705A]**

### Fisheries of the Northeastern United States; Tilefish Fishery; Quota Harvested for Full-time Tier 2 Category

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS announces that the percentage of the tilefish annual total allowable landings (TAL) available to the Full-time Tier 2 permit category for the 2005 fishing year has been harvested. In response, commercial vessels fishing under the Full-time Tier 2 tilefish category may not harvest tilefish from within the Golden Tilefish Management Unit for the remainder of the 2005 fishing year (through October 31, 2005). Regulations governing the tilefish fishery require publication of this notification to advise the public of this closure.

**DATES:** Effective 0001 hrs local time, June 28, 2005, through 2400 hrs local time, October 31, 2005.

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

**SUPPLEMENTARY INFORMATION:** Regulations governing the tilefish fishery are found at 50 CFR part 648. The regulations require annual specification of a TAL for federally permitted tilefish vessels harvesting tilefish from within the Golden Tilefish Management Unit. The Golden Tilefish Management Unit is defined as an area of the Atlantic Ocean from the latitude of the VA/NC border (36°33.36′ N. lat.), extending eastward from the shore to the outer boundary of the exclusive economic zone, and northward to the U.S./Canada border. After 5 percent of the TAL is deducted to reflect landings by vessels issued an open-access

Incidental permit category, and after up to 3 percent of the TAL is set aside for research purposes, should research TAL be set aside, the remaining TAL is distributed among the following three tilefish limited access permit categories: Full-time Tier 1 category (66 percent), Full-time Tier 2 category (15 percent), and the Part-time category (19 percent).

The TAL for tilefish for the 2005 fishing year was set at 1.995 million lb (905,172 kg) and then adjusted downward by 5 percent to 1,895,250 lb (859,671 kg) to account for incidental catch. There was no research set-aside for the 2005 fishing year. Thus, the Full-time Tier 2 permit category quota for the 2005 fishing year, which is equal to 15 percent of the TAL, is 284,288 lb (128,951 kg).

The Administrator, Northeast Region, NMFS (Regional Administrator) monitors the commercial tilefish quota for each fishing year using dealer reports, vessel catch reports, and other available information to determine when the quota for each limited access permit category is projected to have been harvested. NMFS is required to publish notification in the **Federal Register** notifying commercial vessels and dealer permit holders that, effective upon a specific date, the tilefish TAL for the specific limited access category has been harvested and no commercial quota is available for harvesting tilefish by that category for the remainder of the fishing year, from within the Golden Tilefish Management Unit.

The Regional Administrator has determined, based upon dealer reports and other available information, that the 2005 tilefish TAL for the Full-time Tier 2 category has been harvested. Therefore, effective 0001 hrs local time, June 28, 2005, further landings of tilefish harvested from within the Golden Tilefish Management Unit by tilefish vessels holding Full-time Tier 2 category Federal fisheries permits are prohibited through October 31, 2005. The 2006 fishing year for commercial tilefish harvest will open on November 1, 2005. Federally permitted dealers are also advised that, effective June 28, 2005, they may not purchase tilefish from Full-time Tier 2 category federally permitted tilefish vessels who land tilefish harvested from within the Golden Tilefish Management Unit for the remainder of the 2005 fishing year (through October 31, 2005).

## Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

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

Dated: June 22, 2005.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 05–12745 Filed 6–23–05; 2:57 pm]

BILLING CODE 3510–22–S

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 648

**[Docket No. 050314072–5126–02; I.D. 062305E]**

## Fisheries of the Northeastern United States; Northeast Multispecies Fishery; 2005 Trip Authorization for Closed Area II Yellowtail Flounder Special Access Program

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

**ACTION:** Temporary rule; notification of maximum number of trips.

**SUMMARY:** NMFS announces that no trips are authorized into the Closed Area (CA) II Yellowtail Flounder Special Access Program (SAP) for the 2005 fishing year. The Administrator, Northeast Region, NMFS (Regional Administrator) has determined that the available catch of Georges Bank (GB) yellowtail flounder is insufficient to support a minimum level of fishing activity within the CA II Yellowtail Flounder SAP for the 2005 fishing year. This action is intended to help achieve optimum yield (OY) in the fishery by allowing Northeast (NE) multispecies days-at-sea (DAS) vessels to achieve, but not exceed, the GB yellowtail flounder total allowable catch (TAC) specified for the Eastern U.S./Canada Area throughout the 2005 fishing year, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act.

**DATES:** Effective June 23, 2005 through April 30, 2006.

**FOR FURTHER INFORMATION CONTACT:** Douglas W. Christel, Fishery Policy Analyst, (978) 281–9141, fax (978) 281–9135.

**SUPPLEMENTARY INFORMATION:**

## Background

Framework Adjustment (FW) 40B was developed by the New England Fishery Management Council (Council) primarily to improve the effectiveness of the effort control program implemented under Amendment 13 to the NE Multispecies Fishery Management Plan (April 27, 2004; 69 FR 22906), including the opportunities developed to target healthy stocks and other measures to facilitate adaptation to the Amendment 13 effort reductions. The final rule implementing measures approved under FW 40B was published on June 1, 2005 (70 FR 31323). Detailed descriptions, justifications, and a summary of the impacts of all of the management measures proposed under FW 40B were included in the proposed and final rules for that action and are not repeated here.

FW 40B implemented several revisions to the CA II Yellowtail Flounder SAP intended to help better achieve OY for the fishery and ensure that the maximum benefits from the GB yellowtail flounder TAC are realized. Among other provisions, FW 40B provided the Regional Administrator with the authority, after consulting with the Council, to adjust the trip limit and determine the total number of trips allowed into this SAP each fishing year, if necessary, in order to adapt to changing stock and fishery conditions. The authority to adjust these measures is intended to ensure that the catch of GB yellowtail flounder within the SAP would not increase the likelihood that the Eastern U.S./Canada Area would be closed due to catching the GB yellowtail flounder TAC before the end of the fishing year. Such a premature closure would likely result in regulatory discards of GB yellowtail flounder and reduce the possibility of fully harvesting the GB cod and GB haddock TAC from the Eastern U.S./Canada Area.

When determining the total number of trips allowed into the CA II Yellowtail Flounder SAP, the Regional Administrator considers specific criteria outlined in FW 40B, including the available TAC for GB yellowtail flounder, recent discards, and the potential catch of GB yellowtail flounder by vessels fishing outside of the SAP. Using these criteria, a formula was developed in FW 40B to assist the Regional Administrator in determining the appropriate number of trips for this SAP on a yearly basis. The suggested formula in FW 40B is as follows: Number of trips = (GB yellowtail flounder TAC - 4,000 mt)/4.54 mt.

Note that 4.54 mt is equivalent to the 10,000–lb (4,536–kg) trip limit established for this SAP. This formula assumes that approximately 4,000 mt of GB yellowtail flounder would be caught by vessels operating in the U.S./Canada Management Area, but outside of the CA II Yellowtail Flounder SAP, based on recent catches by all fisheries. FW 40B authorizes the Regional Administrator to not allow any trips into this SAP if

the available GB yellowtail flounder catch (i.e., the GB yellowtail flounder TAC - 4,000 mt) is not sufficient to support 150 trips with a 15,000–lb (6,804–kg) GB yellowtail flounder trip limit. One hundred and fifty trips at 15,000 lb (6,804 kg) per trip amounts to 1,020 mt of GB yellowtail flounder recommended to support the CA II Yellowtail Flounder SAP. Based on the 4,260–mt TAC of GB yellowtail flounder specified in a recent proposed rule for the 2005 fishing year (April 14, 2005; 70 FR 19724), and using the formula specified in FW 40B, only 260 mt of GB yellowtail flounder are estimated to be available to allow for the CA II Yellowtail Flounder SAP in the 2005 fishing year.

Based on this information, the available 2005 GB yellowtail flounder catch is less than the minimum 1,020 mt recommended to support vessel operations in this SAP for the 2005 fishing year. The Regional Administrator consulted with the Council regarding determining the appropriate number of trips into the CA II Yellowtail Flounder SAP for the 2005 fishing year at its June 21–23, 2005, meeting, and is authorizing zero trips into the CA II Yellowtail Flounder SAP for the 2005 fishing year pursuant to § 648.85(b)(3)(vii).

Under NOAA Administrative Order 205–11, 07/01, dated December 17, 1990, the Undersecretary for Oceans and Atmosphere has delegated authority to sign material for publication in the **Federal Register** to the Assistant Administrator for Fisheries, NOAA.

## Classification

This action is required by § 648.85(b)(3)(vii) and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B) and (d)(3), the Assistant Administrator finds good cause to waive prior notice and opportunity for public comment, as well as the 30–day delayed effectiveness for this action, as notice and comment and delayed effectiveness would be impracticable and contrary to the public interest. NMFS cannot initiate rulemaking for actions implemented by a framework action until that action is approved and implemented through a final rule. NMFS did not receive the final FW 40B package until February 15, 2005. This delayed the review, approval, and implementation of FW 40B. The regulations implemented by FW 40B require the Regional Administrator to consult with the Council before announcing the maximum number of trips into the CA II Yellowtail Flounder SAP for a particular fishing year. Since the authority to modify the maximum number of trips into the SAP did not become effective until June 1, 2005, the first opportunity for the Regional Administrator to formally consult with the Council was at the Council's June 21–23, 2005, meeting. Because the delayed implementation of the measures included in FW 40B and the resulting late consultation with the Council, it would be impracticable for NMFS to pursue notice and comment rulemaking in time to specify the number of trips into the CA II Yellowtail Flounder SAP for the 2005 fishing year prior to the start of the SAP on July 1, 2005.

The public has had an opportunity to comment on the appropriate number of trips into the CA II Yellowtail Flounder SAP through the proposed rule for FW 40B. The proposed rule (March 29, 2005; 70 FR 15803) indicated that preliminary information suggested that there would be insufficient available catch of GB yellowtail flounder to support the CA II Yellowtail Flounder SAP for the 2005 fishing year. During the public comment period, several commenters expressed support for the actions taken through this temporary rule. NMFS received no comments in opposition to the action implemented by this rule during the public comment period for FW 40B.

Failure to waive the 30–day delayed effectiveness would allow the SAP to open on July 1, 2005, resulting in potentially high landings of GB yellowtail flounder until the SAP is closed again after the delayed effectiveness. Increased landings caused by the opening of the SAP on July 1 could contribute to the premature harvest of the GB Yellowtail Flounder TAC, resulting in the closure of access to the Eastern U.S./Canada Area prior to the end of the 2005 fishing year (i.e., before April 30, 2006) and a prohibition on the retention of GB yellowtail flounder in the entire U.S./Canada Management Area by limited access NE multispecies DAS vessels for the remainder of the 2005 fishing year. Such a premature closure and retention prohibition could cause unnecessary additional discards of GB yellowtail flounder, further increasing mortality and the potential that the fishery will exceed the yearly TAC. Exceeding the yearly TAC would result in any TAC overages being deducted from the available TAC allocated to the following fishing year, causing additional economic impacts for the following fishing year. A premature closure and retention prohibition would also decrease opportunities to fish for GB haddock and GB cod in the Eastern U.S./Canada Area, thereby reducing sources of potential vessel revenue and decreasing the chance that OY will be achieved in the fishery. Effort reductions implemented by Amendment 13 resulted in substantial adverse economic impacts to the groundfish fishery. Additional economic impacts resulting from a delayed effectiveness of the measures contained in this rule, taken cumulatively, represent further economic hardships to an already struggling industry. Finally, since this action specifies zero trips into this SAP for the 2005 fishing year, failure to implement this action by July 1, 2005, would result in the opening of the SAP on July 1, 2005, only to be closed again once this action becomes effective. This would cause confusion to the industry. Therefore, a delayed effectiveness would be contrary to the public interest because it could potentially: (1) Lead to additional discards and the associated additional mortality on GB yellowtail flounder (2) result in reduced sources of potential revenue, decreased economic returns, and further adverse economic impacts to the fishing industry; and (3) increase confusion in the fishing industry through rapid closure of the SAP. Therefore, given the likely impacts resulting from a delayed effectiveness of this action as described above, it would be contrary to the public interest to provide further notice and opportunity for public comment and a 30–day delayed effectiveness.

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

Dated: June 22, 2005.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 05–12746 Filed 6–23–05; 2:57 pm]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 70, No. 123
Tuesday, June 28, 2005

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2005–21679; Directorate Identifier 2004–SW–33–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Robinson Helicopter Company Model R22 Series Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes adopting a new airworthiness directive (AD) for the Robinson Helicopter Company (RHC) Model R22 series helicopters. The AD would require replacing each main rotor blade (blade) droop and teeter stop (stop) and teeter stop bracket (bracket) and associated hardware with redesigned and improved airworthy parts. This proposal is prompted by an in-flight break up of a helicopter on which both brackets failed. The actions specified by the proposed AD are intended to prevent failure of the stops and brackets, blade contact with the airframe, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before August 29, 2005.

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

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

You may get the service information identified in this proposed AD from Robinson Helicopter Company, 2901 Airport Drive, Torrance, California 90505, telephone (310) 539–0508, fax (310) 539–5198.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Fred Guerin, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5232, fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2005–21679, Directorate Identifier 2004–SW–33–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

### Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located at the plaza level of the Department of Transportation NASSIF Building in Room PL–401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

### Discussion

This document proposes adopting a new AD for the RHC Model R22 series helicopters. The AD would require replacing the stops and brackets with redesigned, airworthy parts. This proposal is prompted by an accident that involved an in-flight breakup of a helicopter. The helicopter was found to have old part-numbered stops and brackets. While the probable cause of the in-flight breakup has not been determined, we believe the failure of the stops or brackets may have been a contributing factor. Thus, continued flight beyond 3 months with the older part-numbered stops and bracket constitutes an unsafe condition. The actions specified by the proposed AD are intended to prevent failure of the stops and brackets, blade contact with the airframe, and subsequent loss of control of the helicopter.

We have reviewed RHC Service Bulletins SB–78, dated April 26, 1995 (SB–78), and SB–78A, dated May 27, 2004 (SB–78A). The service bulletins describe procedures for replacing the stops and brackets. SB–78A was issued following an accident investigation that revealed the accident helicopter did not have the strengthened stops and brackets installed as specified in SB–78. Failure of the brackets could allow excessive teetering of the main rotor.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require, within 3 months, replacing the stops and brackets with redesigned, airworthy stops and brackets. The actions would be required to be done by following the service bulletin described previously.

There are approximately 2517 helicopters of the affected design in the worldwide fleet. We estimate that this proposed AD would affect 900 helicopters of U.S. registry and would take about 1 work hour per helicopter to

replace the stops and brackets at an average labor rate of $65 per work hour. Required parts would cost about $130 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators would be $87,750, assuming one-half of the U.S. helicopters have the older part-numbered stops and brackets installed and would need to replace them.

**Regulatory Findings**

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

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

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

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

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

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

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Robinson Helicopter Company:** Docket No. FAA–2005–21679; Directorate Identifier 2004–SW–33–AD.

*Applicability:* Model R22 series helicopters, serial numbers (S/N) 0002 through 2519, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the main rotor blade (blade) droop and teeter stop (stop) and teeter stop bracket (bracket), blade contact with the airframe, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 3 months, replace the stops, brackets, and washers with redesigned, airworthy teeter stops, part number (P/N) B151–3, droop stops, P/N A150–1, Revision F, brackets, P/N B 226–2, and washers by following the Compliance Procedure, paragraphs 2, 3, 5, and 6, of Robinson Helicopter Company Service Bulletin SB–78A, dated May 27, 2004.

(b) Replacing the stops, brackets, and washers with redesigned, airworthy stops, brackets, and washers constitutes terminating action for the requirements of this AD.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Los Angeles Aircraft Certification Office (LAACO), FAA, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on June 20, 2005.

**S. Frances Cox,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 05–12688 Filed 6–27–05; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2005–21680; Directorate Identifier 2004–SW–48–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron Canada Model 206A, A–1, B, B–1, L, L–1, L–3, L–4 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes adopting a new airworthiness directive (AD) for the specified Bell Helicopter Textron Canada (BHTC) model helicopters. This proposal would require, before the first flight of each day, checking the tail rotor blade (blade) root doublers (doublers) for an edge void or de-bond on both sides of each blade, and if an edge void or de-bond is found, replacing the unairworthy blade with an airworthy blade. This proposal would also require replacing any affected serial-numbered blade with an airworthy blade. This proposal is prompted by reports of de-bond of the doublers due to inadequate surface preparation resulting in poor adherence of the doublers. The actions specified by this proposed AD are intended to prevent loss of a blade, loss of tail rotor control, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before August 29, 2005.

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

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

You may get the service information identified in this proposed AD from Bell Helicopter Textron Canada, 12,800 Rue

de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2005–21680, Directorate Identifier 2004–SW–48–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

## Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located at the plaza level of the Department of Transportation NASSIF Building in Room PL–401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

## Discussion

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on Model 206A, B, and L series helicopters. Transport Canada advises that an inadequate surface preparation on a limited number of blades resulted in two reported instances of blade root doubler de-bond. They also advise that to ensure blade integrity all suspected blades are to be checked daily until removed from service.

BHTC has issued Alert Service Bulletin Nos. 206–04–101 and 206L–04–131, both dated September 13, 2004, which specify a daily check of the doubler area to verify integrity of the doubler by a pilot as part of the daily pre-flight check. The service bulletins also specify a retirement from service of affected blades, which constitutes terminating action. Transport Canada classified these service bulletins as mandatory and issued AD No. CF–2004–25, dated November 23, 2004, to ensure the continued airworthiness of these helicopters in Canada.

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

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

- Before the first flight of each day, clean each blade and check the doublers for an edge void or de-bond on both sides of each blade. An owner/operator (pilot) holding at least a private pilot certificate may perform the checks. Pilots may perform these checks because they require no tools, can be done by observation, and can be done equally well by a pilot or a mechanic. However, the pilot must enter compliance with these requirements into the helicopter maintenance records by following 14 CFR 43.11 and 91.417(a)(2)(v).
- If an edge void or de-bond is found, before further flight, replace the affected blade with an airworthy blade with a serial number other than those to which this AD applies.
- Within 100 hours time-in-service, replace all affected blades with airworthy blades with a serial number other than those to which this AD applies.

We estimate that this proposed AD would affect 2194 helicopters of U.S. registry. The proposed actions would:

- Take about ¼ work hour to do a daily check for blade edge voids and de-bonds; and
- Take about 4 work hours to replace a blade at an average labor rate of $65 per work hour.
- Cost about $5848 for a replacement blade.

Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $201,058, assuming 26 blades are affected and replaced and assuming 100 daily checks are done.

## Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

## Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority

because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**Bell Helicopter Textron Canada:** Docket No. FAA–2005–21680; Directorate Identifier 2004–SW–48–AD.

*Applicability:* Model 206A, A–1, B, B–1, L, L–1, L–3, L–4 helicopters, with tail rotor blade (blade), part number (P/N) 206–016–201–131, serial numbers with a prefix of ''CS'' and 4820 through 4845, installed, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss of a blade, loss of tail rotor control, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before the first flight of each day, clean each blade and visually check the blade root doublers for an edge void or de-bond on both sides of each blade as depicted in Figure 1 of this AD. An owner/operator (pilot), holding at least a private pilot certificate, may perform this visual check and must enter compliance with this paragraph into the helicopter maintenance records by following 14 CFR sections 43.11 and 91.417(a)(2)(v).

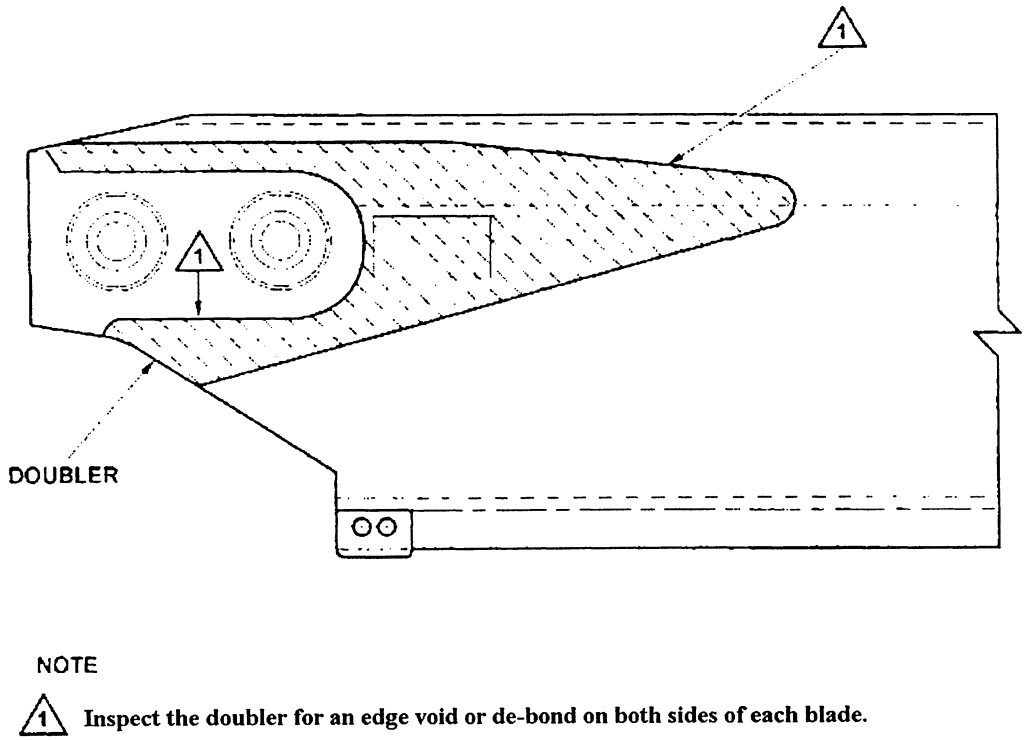


Figure 1

(b) If an edge void or a de-bond is found, before further flight, replace the blade with an airworthy blade with a serial number other than those to which this AD applies.

(c) Within 100 hours time-in-service, replace all affected, serial-numbered blades with airworthy blades with a serial number other than those to which this AD applies.

**Note 1:** Bell Helicopter Textron Alert Service Bulletin Nos. 206–04–101 and 206L–04–131, both dated September 13, 2004, pertain to the subject of this AD.

(d) Replacing an affected, serial-numbered blade with an airworthy blade without an affected serial number contained in the applicability section of this AD constitutes terminating action for the requirements of this AD for that blade.

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

(f) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the blade may be replaced provided that no doubler edge void or de-bond is found during any check or inspection.

**Note 2:** The subject of this AD is addressed in Transport Canada, Canada AD No. CF–2004–25, dated November 23, 2004.

Issued in Fort Worth, Texas, on June 20, 2005.

**S. Frances Cox,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 05–12690 Filed 6–27–05; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2005–21242; Directorate Identifier 2005–NE–09–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Turbomeca Arriel 1B, 1D, 1D1 and 1S1 Turboshaft Engines

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to adopt a new airworthiness directive (AD) that is applicable to certain Turbomeca Arriel 1B, 1D, 1D1 and 1S1 turboshaft engines. This proposal would require initial and repetitive position checks of the gas generator 2nd stage turbine blades on all Turbomeca Arriel 1B, 1D, 1D1 and 1S1 turboshaft engines, and replacement of 2nd stage turbines on 1B and 1D1 engines only. This proposal is prompted by the release of gas generator 2nd stage turbine blades while in service, with full containment of debris. We are proposing this AD to prevent an uncommanded engine in flight shutdown.

**DATES:** We must receive any comments on this proposed AD by August 29, 2005.

**ADDRESSES:** Use one of the following addresses to comment on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Turbomeca, 40220 Tarnos, France; telephone +33 05 59 74 40 00, fax +33 05 59 74 45 15, for the service information identified in this proposed AD.

**FOR FURTHER INFORMATION CONTACT:** Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175, fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2005–21242; Directorate Identifier 2005–NE–09–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

### Examining the AD Docket

You may examine the docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

### Discussion

The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition might exist on Turbomeca, Arriel 1B (modified per TU 148), 1D, 1D1 and 1S1 turboshaft engines. The DGAC advises that sixteen cases of release of gas generator 2nd stage turbine blades occurred in service, with full containment of debris. These events resulted in uncommanded engine in flight shutdown. Although terminating action is still unavailable, mandatory checks of the turbine blades and replacement of the turbine are being required in order to reduce the probability of an uncommanded engine in flight shutdown.

### Relevant Service Information

We have reviewed and approved the technical contents of the following Turbomeca Alert Service Bulletins (ASBs), all dated March 24, 2004: ASB A292 72 0807, for Arriel 1B post TU 148; ASB A292 72 0808, for Arriel 1D; ASB A292 72 0809, for Arriel 1D1; and ASB A292 72 0810, for Arriel 1S1, that describe procedures for initial and repetitive position checks of the 2nd stage turbine blades, and replacement of 2nd stage turbines on 1B and 1D1 engines only. The DGAC classified these ASBs as mandatory and issued airworthiness directive F–2004–047, dated March 31, 2004, in order to ensure the airworthiness of these Turbomeca Arriel 1B, 1D, 1D1 and 1S1 turboshaft engines in France.

### FAA's Determination and Requirements of the Proposed AD

These engines, manufactured in France, are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the DGAC kept us informed of the situation described above. We have examined the DGAC's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. For this reason, we are proposing this AD, which would require initial and repetitive position checks of the 2nd stage turbine blades on Turbomeca Arriel 1B, 1D, 1D1 and 1S1 turboshaft engines, and replacement of 2nd stage turbines on 1B and 1D1 engines only. The proposed AD would require you to

use the service information described previously to perform these actions.

### Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

### Costs of Compliance

There are about 2,557 Turbomeca Arriel 1B, 1D, 1D1 and 1S1 turboshaft engines of the affected design in the worldwide fleet. We estimate that this proposed AD would affect 721 engines installed on helicopters of U.S. registry. We also estimate that it would take about 2 work hours per engine to inspect all 721 engines and 40 hours per engine to replace about 571 2nd stage turbines on 1B and 1D1 engines, and that the average labor rate is $65 per work hour. Required parts would cost about $3,200 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $3,405,530.

### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

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

### Regulatory Findings

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

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

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

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

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

**Turbomeca:** Docket No. FAA–2005–21242; Directorate Identifier 2005–NE–09–AD.

**Comments Due Date**

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by August 29, 2005.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Turbomeca Arriel 1B engines fitted with 2nd stage turbine modification TU 148, and Arriel 1D, 1D1 and 1S1 engines. Arriel 1B engines are installed on but not limited to Eurocopter France AS–350B and AS–350A ''Ecureuil'' helicopters; 1D engines are installed on but not limited to Eurocopter France AS–350B1 ''Ecureuil'' helicopters; 1D1 engines are installed on but not limited to Eurocopter France AS–350B2 ''Ecureuil'' helicopters; and Arriel 1S1 engines are installed on but not limited to Sikorsky Aircraft S–76A and S–76C helicopters.

**Unsafe Condition**

(d) This AD results from the release of gas generator 2nd stage turbine blades while in service, with full containment of debris. We are issuing this AD to prevent an uncommanded engine in flight shutdown.

**Compliance**

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

**Initial Relative Position Check of 2nd Stage Turbine Blades**

(f) Do an initial relative position check of the 2nd stage turbine blades using the Turbomeca service bulletins (SBs) specified in the following Table 1 before reaching any of the intervals specified in Table 1 or within 50 hours time-in-service after the effective date of this AD, whichever occurs later.

TABLE 1.—INITIAL AND REPETITIVE RELATIVE POSITION CHECK INTERVALS OF 2ND STAGE TURBINE BLADE

| Turbomeca engine model | Initial relative position check interval | Repetitive interval | Service bulletin |
|---|---|---|---|
| Arriel 1B (modified per TI 148). | Within 1,200 hours time-since-new (TSN) or time-since-overhaul (TSO) or 3,500 cycles-since-new (CSN) or cycles--since-overhaul (CSO), whichever occurs earlier. | Within 200 hours time-in-service-since-last-relative-position check (TSLRPC) | A292 72 0807, dated March 24, 2004. |
| Arriel 1D | Within 1,200 hours TSN or TSO or 3,500 hours CSN or CSO, whichever occurs earlier. | Within 200 hours TSLRPC | A292 72 0808, dated March 24, 2004. |
| Arriel 1D1 | Within 1,200 hours TSN or TSO or 3,500 hours CSN or CSO, whichever occurs earlier. | Within 150 hours TSLRPC | A292 72 0809, dated March 24, 2004. |
| Arriel 1S1 | Within 1,200 hours TSN or TSO or 3,500 hours CSN or CSO, whichever occurs earlier. | Within 150 hours TSLRPC | A292 72 0810, dated March 24, 2004. |

**Credit for Previous Relative Position Checks**

(g) Relative position checks of 2nd stage turbine blades done using Turbomeca SB A292 72 0263, update 1, 2, 3, or 4, may be used to show compliance with the initial requirements of paragraph (f) of this AD.

**Repetitive Relative Position Check of 2nd Stage Turbine Blades**

(h) Recheck the relative position of 2nd stage turbine blades at the TSLRPC intervals specified in Table 1 of this AD, using the service bulletins indicated.

**Replace 2nd Stage Turbines on 1B and 1D1 Engines**

(i) Replace 2nd stage turbine with a new or overhauled 2nd stage turbine before accumulating 1,500 hours TSN or TSO for Arriel 1D1 engines, and 2,200 hours TSN or TSO for Arriel 1B engines, or by August 31, 2006, whichever occurs later. Overhauled Arriel 1D1 2nd stage turbines must be fitted with new blades; overhauled Arriel 1B 2nd stage turbines may be fitted with overhauled or new blades. Because this is an interim action, all turbines, including those that are new or overhauled, must continue to comply with relative position check requirements of paragraphs (f) and (h).

**Alternative Methods of Compliance**

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

**Related Information**

(k) DGAC airworthiness directive F–2004–047, dated March 31, 2004, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on June 15, 2005.

**Francis A. Favara,**

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

[FR Doc. 05–12692 Filed 6–27–05; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2005–21607; Airspace; Docket No. 05–ACE–17]**

## Proposed Establishment of Class E5 Airspace; Gardner, KS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E5 airspace at Gardner, KS.

**DATES:** Comments for inclusion in Rules Docket must be received on or before July 29, 2005.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–21607/ Airspace Docket No. 05–ACE–17, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2005–21607/Airspace Docket No. 05–ACE–17.'' The postcard will be date/time stamped and returned to the commenter.

### Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### The Proposal

This notice proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing a Class E airspace area extending upward from 700 feet above the surface at Gardner Municipal Airport, KS. A Class E airspace area overlies Gardner Municipal Airport, KS, however, its purpose and description are relative to Olathe, New Century Aircenter, KS and does not fully enclose the NDB or GPS–D Instrument Approach Procedures to Gardner Municipal Airport, KS. This proposal would correct this discrepancy by establishing a Class E airspace area extending upward from 700 feet above the surface within a 6.4 mile-radius of Gardner Municipal Airport, KS excluding that airspace within the Olathe, New Century Aircenter, KS Class D airspace. This will define airspace of appropriate dimensions to protect aircraft departing and executing instrument approach procedures to Gardner Municipal Airport and bring the airspace area into compliance with FAA directives. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9M, 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.

This proposed rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This proposed regulation is within the scope of that authority since it would contain aircraft executing instrument approach procedures to Gardner Municipal Airport.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

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

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

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

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

**§ 71.1 [Amended]**

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

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

* * * * *

**ACE KS E5 Gardner, KS**

Gardner Municipal Airport, KS
(Lat. 38°48′25″ N., long. 94°57′22″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4 mile radius of Gardner Municipal Airport excluding that airspace within the Olathe, New Century Aircenter, KS Class D airspace area.

* * * * *

Issued in Kansas City, MO, on June 20, 2005.

**Elizabeth S. Wallis,**

*Acting Area Director, Western Flight Services Operations.*

[FR Doc. 05–12719 Filed 6–27–05; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 100

**[CGD05–05–005]**

**RIN 1625–AA08**

## Special Local Regulations for Marine Events; Pasquotank River, Elizabeth City, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes a temporary special local regulation for ''Elizabeth City Jaycee Offshore Grand Prix'', a power boat race to be held over the waters of the Pasquotank River adjacent to Elizabeth City, NC. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Pasquotank River during the event.

**DATES:** Comments and related material must reach the Coast Guard on or before July 28, 2005.

**ADDRESSES:** You may mail comments and related material to Commander (oax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, hand-deliver them to Room 119 at the same address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays, or fax them to (757) 398–6203. The Coast Guard Auxiliary and Recreational Boating Safety Branch, Fifth Coast Guard District, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** CWO Morgan Dudley, Marine Events Coordinator, Coast Guard Group Cape Hatteras, at (252) 247–4571.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–05–005), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

On September 23, 24 and 25, 2005, the American Power Boat Association/Super Boats International will sponsor the ''Elizabeth City Jaycee Offshore Grand Prix'', on the waters of the Pasquotank River at Elizabeth City, North Carolina. The event will consist of approximately 40 offshore powerboats participating in high-speed competitive races, to be conducted in heats, traveling counter-clockwise around an oval race course. A fleet of approximately 250 spectator vessels is expected to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

**Discussion of Proposed Rule**

The Coast Guard proposes to establish temporary special local regulations on specified waters of the Pasquotank River. The temporary special local regulations will be enforced from 7:30 a.m. to 6:30 p.m. on September 23, 24 and 25, 2005, and will restrict general navigation in the regulated area during the event. Except for participants and vessels authorized by the Coast Guard Patrol Commander, no person or vessel will be allowed to enter or remain in the regulated area. These regulations are needed to control vessel traffic during the event to enhance the safety of

participants, spectators and transiting vessels.

**Regulatory Evaluation**

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

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

Although this regulation will prevent traffic from transiting a portion of the Pasquotank River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit this section of the Pasquotank River during the event.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only a short period, from 7:30 a.m. to 6:30 p.m. on September 23, 24, and 25, 2005. Although the regulated area will apply to a 4 mile segment of the Intracoastal Waterway channel south of the Elizabeth City Draw Bridge to Pasquotank River Light ''5A'' (LLN 31420), traffic may be allowed to pass through the regulated area with the permission of the Coast Guard patrol commander. In the case where the patrol commander authorizes passage through the regulated area during the event, vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

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

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES**. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office

of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Technical Standards**

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

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

**Environment**

We have analyzed this 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)(h), of the Instruction, from further environmental documentation.

Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

**List of Subjects in 33 CFR Part 100**

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

## PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233, Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 100.35–T05–005 to read as follows:

**§ 100.35–T05–005, Pasquotank River, Elizabeth City, NC**

(a) Regulated area. The regulated area is established for the waters of the Pasquotank River, adjacent to Elizabeth City, NC, from shoreline to shoreline, bounded on the east by a line running northerly from a point near the shoreline in the vicinity of Brickhouse Point at latitude 36°15′52″ N, longitude 076°09′22″ W, thence to latitude 36°17′18″ N, longitude 076°08′47″ W, and bounded on the west by the Elizabeth City Draw Bridge. All coordinates reference Datum NAD 1983.

(b) Definitions:

(1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Cape Hatteras. Designation of Patrol Commander will be made by Commander, Coast Guard Sector North Carolina effective July 29, 2005.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Group Cape Hatteras with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. Assignment and approval of Official Patrol will be made by Commander, Coast Guard Sector North Carolina effective July 29, 2005.

(c) *Regulations:*

(1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) The operator of a vessel in the regulated area shall stop the vessel immediately when instructed to do so by the Official Patrol and then proceed as directed. When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) Enforcement period. This section will be enforced from 7:30 a.m. to 6:30 p.m. on September 23, 24 and 25, 2005.

Dated: June 20, 2005.

**Sally Brice-O'Hara,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 05–12730 Filed 6–27–05; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 51, 72, 73, 74, 77, 78, and 96

**[OAR–2003–0053; FRL–7927–9]**

**RIN 2060–AM95**

## Availability of Additional Information Supporting the Proposed Rule To Include Delaware and New Jersey in the Clean Air Interstate Rule, and Reopening of Comment Period for the Proposed Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of data availability (NODA) and reopening of public comment period.

**SUMMARY:** We are soliciting comment on modeling information relevant to our May 12, 2005, proposal to include the States of Delaware and New Jersey within the scope of the Clean Air Interstate Rule (CAIR) for purposes of assessing significance of contribution to downwind States' attainment of the National Ambient Air Quality Standard (NAAQS) for fine particulate matter ($PM_{2.5}$) (70 FR 25408). Note that we are soliciting comment only on this modeling information, and are not reopening, reconsidering, or otherwise seeking comment on any aspect of the CAIR. This information is summarized in a table listing the combined contributions of emissions of sulfur dioxide ($SO_2$) and nitrogen oxides ($NO_X$) from Delaware and New Jersey, to annual average $PM_{2.5}$ concentrations in projected 2010 nonattainment counties in other States within the Eastern United States. This table is included in Section III below.

Detailed background information describing the rulemaking may be found in two previously published actions:

1. Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Final Rule, 70 FR 25162, May 12, 2005; and,

2. Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule; Proposed Rule, 70 FR 25408, May 12, 2005.

These actions and the table listed above are available in the public docket (Docket Number OAR–2003–0053) and

are also available for public review on the Web site for this rulemaking at *http://www.epa.gov/cleanairinterstaterule.* We have chosen to include material for this rulemaking as part of the CAIR docket. However, this is a separate rulemaking, and we are not soliciting comment on any aspect of the CAIR rule. We may place additional documents in the docket, and if we do so, we will announce their availability by posting a notice on the CAIR Web site shown above.

In addition, we are reopening the comment period for the Proposed Rule to Include Delaware and New Jersey in the Clean Air Interstate Rule so it coincides with the comment period for this NODA.

**DATES:** Comments on both this NODA and the Proposed Rule to Include Delaware and New Jersey in the CAIR must be received on or before July 19, 2005. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the comment period.

**ADDRESSES:** Submit your comments, identified by Docket Number OAR–2003–0053, by one of the following methods:

A. Federal Rulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. Agency Web site: *http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.

C. E-mail: *A–AND–R–Docket@epa.gov.*

D. Mail: Air Docket, ATTN: Docket Number OAR–2003–0053, Environmental Protection Agency, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

E. Hand Delivery: EPA Docket Center, 1301 Constitution Avenue, NW., Room B102, Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

*Instructions:* Direct your comments to Docket ID No. OAR–2003–0053. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the Federal regulations.gov Web sites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA is unable to read your comment and contact you for clarification due to technical difficulties, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) entitled ''EPA Dockets; EPA's New Electronic Public Docket and Comment System.'' For additional instructions on submitting comments, go to Unit I of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the EPA Docket Center, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** For general questions concerning today's action, please contact Jan King, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C539–02, Research Triangle Park, NC 27711, telephone (919) 541–5665, e-mail at *king.jan@epa.gov.* For legal questions, please contact Steven Silverman, U.S. EPA, Office of General Counsel, Mail Code 2344A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 564–5523, e-mail at *silverman.steven@epa.gov.* For questions regarding air quality modeling analyses, please contact Norm Possiel, U.S. EPA, Office of Air Quality Planning and Standards, Emissions Modeling and Analysis Division, D243–01, Research Triangle Park, NC 27711, telephone (919) 541–5692, e-mail at *possiel.norm@epa.gov.* For questions regarding the emissions inventories of electric generating units (EGUs) and State budgets, please contact Misha Adamantiades, U.S. EPA, Office of Atmospheric Programs, Clean Air Markets Division, Mail Code 6204J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone (202) 343–9093, e-mail at *adamantiades.mikhail@epa.gov.* For questions regarding the emissions inventories for non-EGU sources, please contact Marc Houyoux, U.S. EPA, Office of Air Quality Planning and Standards, Emissions Modeling and Analysis Division, Mail Code D205–01, Research Triangle Park, NC 27711, telephone (919) 541–4330, e-mail at *houyoux.marc@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Additional Information on Submitting Comments

### *A. How Can I Help EPA Ensure That My Comments Are Reviewed Quickly?*

To expedite review of your comments by Agency staff, you are encouraged to send a separate copy of your comments, in addition to the copy you submit to the official docket, to Joann Allman, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Mail Code C539–02, Research Triangle Park, NC 27711, telephone (919) 541–1815, e-mail *allman.joann@epa.gov.* If you e-mail the copy of your comments to Ms. Allman, put ''comment for Docket Number OAR–2003–0053'' in the subject line to alert Ms. Allman that a comment is included.

### *B. What Should I Consider as I Prepare My Comments for EPA?*

1. *Submitting CBI.* Do not submit CBI information to EPA through EDOCKET, regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one

complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Send or deliver information identified as CBI only to the following address: Roberto Morales, U.S. EPA, Office of Air Quality Planning and Standards, Mail Code C404–02, Research Triangle Park, NC 27711, telephone (919) 541–0880, e-mail at *morales.roberto@epa.gov,* Attention Docket Number OAR–2003–0053.

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

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Explain why you agree or disagree.

iii. Describe any assumptions and provide any technical information and/or data that you used.

iv. Provide specific examples to illustrate your concerns, and suggest alternatives.

v. Make sure to submit your comments by the comment period deadline identified.

## II. Rulemaking Information

The EPA has also established a website for this rulemaking at *http://www.epa.gov/cleanairinterstaterule.* The Web site includes the rulemaking actions and certain other related information that the public may find useful.

### *A. New Information Placed in the Docket*

We are making available for public comment new information relating to the inclusion of Delaware and New Jersey in the CAIR for purposes of their contribution to $PM_{2.5}$ air quality problems. The information is shown in the table below. This table has also been placed in the docket for this rulemaking and on the Web site listed above.

The information in the table lists the combined contribution of emissions of $SO_2$ and $NO_X$ from Delaware and New Jersey to annual average $PM_{2.5}$ concentrations in projected 2010 nonattainment counties in other States within the Eastern United States. The EPA determined the $PM_{2.5}$ contributions listed in this table by applying the same ''zero-out'' modeling technique used in the CAIR rule to the projected 2010 Base Case $SO_2$ and $NO_X$ emissions from New Jersey and Delaware. The rationale for evaluating the contributions from Delaware and New Jersey using the combined $SO_2$ and $NO_X$ emissions in both States is described in the proposed rule entitled, ''Inclusion of Delaware and New Jersey in the Clean Air Interstate Rule'' (70 FR 25408, May 12, 2005). Details on the $PM_{2.5}$ modeling platform, zero-out modeling technique, and procedures for calculating interstate contributions are provided in the report ''Technical Support Document for the Final Clean Air Interstate Rule—Air Quality Modeling,'' March 2005 (Docket Number OAR–2003–0053–2151). The 2010 Base Case emissions in Delaware and New Jersey and the procedures for calculating these emissions can be found in the report ''Clean Air Interstate Rule Emissions Inventory Technical Support Document,'' March 2005 (Docket Number OAR–2003–0053–2047).

The table below shows that the combined contribution of emissions of $SO_2$ and $NO_X$ from Delaware and New Jersey to annual average $PM_{2.5}$ concentrations in New York County, New York is projected to be 0.23 μg/m³, which is above the 0.2 μg/m³ used in the CAIR as the air quality factor for assessing significance of contribution to downwind States' nonattainment [1] (70 FR 251723).

CONTRIBUTIONS FROM $SO_2$ AND $NO_X$ EMISSIONS IN DELAWARE AND NEW JERSEY TO ANNUAL AVERAGE $PM_{2.5}$ IN PROJECTED 2010 NONATTAINMENT COUNTIES IN OTHER STATES WITHIN THE EASTERN UNITED STATES

| Downwind Nonattainment Counties | | $PM_{2.5}$ Contributions from DE + NJ (μg/m³) |
|---|---|---|
| State | County | |
| Alabama | Jefferson Co | < 0.05 |
| Alabama | Russell Co | < 0.05 |
| District of Columbia | District of Columbia | 0.09 |
| Georgia | Bibb Co | < 0.05 |
| Georgia | Clarke Co | < 0.05 |
| Georgia | Clayton Co | < 0.05 |
| Georgia | Cobb Co | < 0.05 |
| Georgia | DeKalb Co | < 0.05 |
| Georgia | Floyd Co | < 0.05 |
| Georgia | Fulton Co | < 0.05 |
| Georgia | Walker Co | < 0.05 |
| Illinois | Cook Co | < 0.05 |
| Illinois | Madison Co | < 0.05 |
| Illinois | St. Clair Co | < 0.05 |
| Indiana | Clark Co | < 0.05 |
| Indiana | Dubois Co | < 0.05 |
| Indiana | Lake Co | < 0.05 |
| Indiana | Marion Co | < 0.05 |
| Indiana | Vanderburgh Co | < 0.05 |
| Kentucky | Fayette Co | < 0.05 |
| Kentucky | Jefferson Co | < 0.05 |
| Maryland | Anne Arundel Co | 0.12 |
| Maryland | Baltimore City | 0.13 |
| Michigan | Wayne Co | < 0.05 |
| New York | New York Co | 0.23 |
| North Carolina | Catawba Co | < 0.05 |
| North Carolina | Davidson Co | < 0.05 |

[1] There are three counties in Pennsylvania for which the Delaware-New Jersey contributions are projected to be close to the 0.2 μg/m³ air quality factor level. These are Lancaster and Philadelphia Counties (at 0.18 μg/m³), and Delaware County (at 0.19 μg/m³).

CONTRIBUTIONS FROM $SO_2$ AND $NO_X$ EMISSIONS IN DELAWARE AND NEW JERSEY TO ANNUAL AVERAGE $PM_{2.5}$ IN PROJECTED 2010 NONATTAINMENT COUNTIES IN OTHER STATES WITHIN THE EASTERN UNITED STATES—Continued

| Downwind Nonattainment Counties | | $PM_{2.5}$ Contributions from DE + NJ ($\mu g/m^3$) |
|---|---|---|
| State | County | |
| Ohio | Butler Co | < 0.05 |
| Ohio | Cuyahoga Co | < 0.05 |
| Ohio | Franklin Co | < 0.05 |
| Ohio | Hamilton Co | < 0.05 |
| Ohio | Jefferson Co | < 0.05 |
| Ohio | Lawrence Co | < 0.05 |
| Ohio | Mahoning Co | < 0.05 |
| Ohio | Montgomery Co | < 0.05 |
| Ohio | Scioto Co | < 0.05 |
| Ohio | Stark Co | < 0.05 |
| Ohio | Summit Co | < 0.05 |
| Pennsylvania | Allegheny Co | < 0.05 |
| Pennsylvania | Beaver Co | < 0.05 |
| Pennsylvania | Berks Co | 0.16 |
| Pennsylvania | Cambria Co | < 0.05 |
| Pennsylvania | Dauphin Co | 0.11 |
| Pennsylvania | Delaware Co | 0.19 |
| Pennsylvania | Lancaster Co | 0.18 |
| Pennsylvania | Philadelphia Co | 0.18 |
| Pennsylvania | Washington Co | < 0.05 |
| Pennsylvania | Westmoreland Co | < 0.05 |
| Pennsylvania | York Co | 0.14 |
| Tennessee | Hamilton Co | < 0.05 |
| Tennessee | Knox Co | < 0.05 |
| West Virginia | Berkeley Co | 0.05 |
| West Virginia | Brooke Co | < 0.05 |
| West Virginia | Cabell Co | < 0.05 |
| West Virginia | Hancock Co | < 0.05 |
| West Virginia | Kanawha Co | < 0.05 |
| West Virginia | Marion Co | < 0.05 |
| West Virginia | Marshall Co | < 0.05 |
| West Virginia | Ohio Co | < 0.05 |
| West Virginia | Wood Co | < 0.05 |

We may place additional documents in the docket, and if we do so, we will announce their availability by posting a notice on the CAIR Web site: *http://www.epa.gov/cleanairinterstaterule.*

*B. Reopening of Comment Period For the May 12, 2005 Proposed Rule*

The EPA has received a request to reopen the comment period for the May 12 proposal to be co-extensive with the comment period to this NODA. The EPA believes this request is reasonable and accordingly is reopening the period for comment until July 19, 2005.

Dated: June 21, 2005.

**Mary E. Henigin,**

*Acting Director, Office of Air Quality Planning and Standards.*

[FR Doc. 05–12706 Filed 6–27–05; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF HOMELAND SECURITY

## Federal Emergency Management Agency

## 44 CFR Part 67

**[Docket No. FEMA–P–7693]**

## Proposed Flood Elevation Determinations

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

**ACTION:** Proposed rule.

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

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

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

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

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division

Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

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

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

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

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

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

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

**List of Subjects in 44 CFR Part 67**

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

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

## PART 67—[AMENDED]

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

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

**§ 67.4 [Amended]**

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

| Source of flooding and location of referenced elevation | ♦Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|
| | Existing | Modified | |
| Artichoke Creek: | | | |
| At County Highway 27 | None | ♦1,085 | Big Stone County (Unincorporated Areas). |
| Approximately 6,800 feet upstream of County Highway 27. | None | ♦1,085 | |
| Big Stone Lake: | | | |
| Approximately 1,056 feet upstream of U.S. Highway 12 | ♦971 | ♦972 | Big Stone County (Unincorporated Areas). City of Ortonville. |
| At the confluence of the Little Minnesota River | ♦971 | ♦972 | |
| County Ditch No. 2: | | | |
| At the confluence with Five Mile Creek | None | ♦1,002 | Big Stone County (Unincorporated Areas). |
| Approximately 3,190 feet upstream of County Highway 81. | None | ♦1,115 | |
| County Ditch No. 4: | | | |
| At the confluence with the Minnesota River Tailwaters | ♦949 | ♦950 | Big Stone County (Unincorporated Areas). City of Odessa. |
| Approximately 1,170 feet upstream of County Highway 21. | None | ♦961 | |
| County Ditch No. 4 Diversion Channel: | | | |
| At the confluence with County Ditch No. 4 | None | ♦950 | Big Stone County (Unincorporated Areas). City of Odessa. |
| At the divergence from County Ditch No. 4 | None | ♦958 | |
| Fish Creek: | | | |
| At the confluence with Big Stone Lake | ♦971 | ♦972 | Big Stone County (Unincorporated Areas). |
| Approximately 3,550 feet upstream of State Highway 28. | None | ♦1,108 | |
| Five Mile Creek: | | | |
| At the confluence with Marsh Lake | ♦946 | ♦948 | Big Stone County (Unincorporated Areas). |
| At the confluence of County Ditch No. 2 | None | ♦1,002 | |
| Golf Lake: Entire shoreline | None | ♦1,095 | Big Stone County (Unincorporated Areas). City of Graceville. |
| Lannon Lake: Entire shoreline | None | ♦1,097 | Big Stone County (Unincorporated Areas) City of Graceville |
| Little Minnesota River: | | | |
| At the confluence with Big Stone Lake | ♦971 | ♦972 | Big Stone County (Unincorporated Areas). |
| Approximately 680 feet upstream of northeastern county boundary. | ♦971 | ♦972 | |
| Meadow Brook: | | | |
| At the confluence with Big Stone Lake | ♦971 | ♦972 | Big Stone County (Unincorporated Areas). |
| Approximately 830 feet upstream of County Highway 6 | None | ♦1,143 | |
| Minnesota River: | | | |

| Source of flooding and location of referenced elevation | ♦Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|
| | Existing | Modified | |
| Approximately 1.8 miles downstream of the confluence with Five Mile Creek. | ♦946 | ♦948 | Big Stone County (Unincorporated Areas).<br>City of Odessa.<br>City of Ortonville. |
| At the confluence of the Little Minnesota River | ♦971 | ♦972 | |
| Minnesota River Tailwaters: | | | |
| At the confluence with the Minnesota River | ♦948 | ♦949 | Big Stone County (Unincorporated Areas). |
| Approximately 430 feet upstream of U.S. Highway 75 | ♦949 | ♦950 | |
| Stony Run: | | | |
| At the confluence with the Minnesota River | ♦958 | ♦959 | Big Stone County (Unincorporated Areas).<br>City of Odessa. |
| Approximately 20,520 feet upstream of U.S. Highway 75/State Highway 7. | None | ♦1,017 | |
| Unnamed Tributary: | | | |
| At the confluence with Big Stone Lake | ♦971 | ♦972 | Big Stone County (Unincorporated Areas). |
| Approximately 18,030 feet upstream of State Highway 7. | None | ♦1,056 | |
| West Toqua Lake | None | ♦1,089 | Big Stone County (Unincorporated Areas). |

**Addresses**

**Unincorporated Areas of Big Stone County, Minnesota.**

Maps are available for inspection at the Planning and Zoning Office, 20 Southeast 2nd Street, Ortonville, Minnesota.

Send comments to The Honorable David Torgerson, Chairman, Big Stone County Board of Commissioners, 20 Southeast 2nd Street, Ortonville, Minnesota 56278.

**City of Graceville, Big Stone County, Minnesota.**

Maps are available for inspection at 415 Studdart Avenue, Graceville, Minnesota.

Send comments to The Honorable Audrey Rahlien, Mayor, City of Graceville, 415 Studdart Avenue, Graceville, Minnesota 56240.

**City of Odessa, Big Stone County, Minnesota.**

Maps are available for inspection at 214 Bloomington Avenue South, Odessa, Minnesota.

Send comments to The Honorable Catherine Teske, Mayor, City of Odessa, 214 Bloomington Avenue South, Odessa, Minnesota 56276.

**City of Ortonville, Big Stone County, Minnesota.**

Maps are available for inspection at the Ortonville City office, 315 Madison Avenue, Ortonville, Minnesota.

Send comments to The Honorable David Dinnel, Mayor, City of Ortonville, 315 Madison Avenue, Ortonville, Minnesota 56278.

| | | | |
|---|---|---|---|
| Ohio River (Vicinity of the Village of Powhatan Point): | | | |
| Approximately 1.4 miles downstream of the confluence of Captina Creek. | ♦646 | ♦645 | Village of Powhatan Point. |
| Approximately 0.17 mile upstream of the confluence of Captina Creek. | ♦647 | ♦646 | |
| Ohio River (Vicinity of the Village of Shadyside): | | | |
| Approximately 0.15 mile upstream of the confluence of Wegee Creek. | ♦654 | ♦653 | Village of Shadyside<br>Belmont County (Unincorporated Areas). |
| Approximately 0.37 mile upstream of the confluence of Wegee Creek. | ♦654 | ♦653 | |
| Ohio River (Vicinity of the City of Martins Ferry): | | | |
| Approximately 0.25 mile upstream of the Aetnaville Highway. | ♦659 | ♦658 | City of Martins Ferry.<br>Belmont County (Unincorporated Areas). |
| Approximately 0.12 mile upstream of the confluence of Glenn's Run. | ♦661 | ♦660 | |

**Addresses**

**Unincorporated Areas of Belmont County, Ohio**

Maps are available for inspection at the Belmont County Courthouse, 101 Main Street, St. Clairesville, Ohio 43906.

Send comments to Mr. Mark Thomas, President, County Board of Commissioners, 101 Main Street, Clairesville, OH 43906.

**City of Martin's Ferry, Belmont County, Ohio**

Maps are available for inspection at City Hall, 35 South 5th Street, Martins Ferry, Ohio.

Send comments to The Honorable Lloyd L. Shrodes, Mayor, City of Martins Ferry, 35 South 5th Street, Martins Ferry, Ohio 43935.

**Village of Powhatan Point, Belmont County, Ohio.**

Maps are available for inspection at Village Hall, 104 Mellott Street, Powhatan Point, Ohio.

Send comments to The Honorable William Anthony Pratt, Mayor, Village of Powhatan Point, 104 Mellott Street, Powhatan Point, Ohio 43942.

**Village of Shadyside, Belmont County, Ohio.**

Maps are available for inspection at Village Hall, 50 East 39th Street, Shadyside, Ohio.

Send comments to The Honorable Edward L. Marling, Mayor, Village of Shadyside, 50 East 39th Street, Shadyside, Ohio 43947.

| | | | |
|---|---|---|---|
| Permars Run: | | | |
| Approximately 740 feet downstream of Cliff Avenue | None | ♦708 | Village of Steubenville.<br>Jefferson County (Unincorporated Areas). |
| Approximately 8,095 feet upstream of Cliff Avenue | None | ♦892 | |

| Source of flooding and location of referenced elevation | ♦Elevation in feet (NAVD) | | Communities affected |
|---|---|---|---|
| | Existing | Modified | |

**Addresses**

**Unincorporated Areas of Jefferson County, Ohio.**

Maps are available for inspection at the Jefferson County Regional Planning Commission, 500 Market Street, Room 614, Steubenville, Ohio.

Send comments to Dr. Thomas E. Graham, President, Board of Commissioners, County Courthouse, 500 Market Street, Steubenville, Ohio 43952.

**City of Steubenville, Jefferson County, Ohio.**

Maps are available for inspection at 238 South Lake Erie, Steubenville, Ohio.

Send comments to The Honorable Domenick Mucci, Jr. Mayor, City of Steubenville, 300 Market Street, Steubenville, Ohio 43952.

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

Dated: June 22, 2005.

**David I. Maurstad,**

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

[FR Doc. 05–12682 Filed 6–27–05; 8:45 am]

BILLING CODE 9110–12–P

# Notices

Federal Register
Vol. 70, No. 123
Tuesday, June 28, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Motor Vehicles; FY 2004 Alternative Fuel Vehicle (AFV) Report

**AGENCY:** Department of Agriculture.

**ACTION:** Notice of Availability of USDA FY 2004 AFV Report.

**SUMMARY:** In accordance with the Energy Policy Act of 1992 (EPAct) (42 U.S.C. 13211–13219) as amended by the Energy Conservation Reauthorization Act of 1998 (Pub. L. 105–388), and Executive Order (EO) 13149, ''Greening the Government Through Federal Fleet and Transportation Efficiency,'' the Department of Agriculture's FY 2004 AFV report is available on the following Department of Agriculture Web site: *http://www.usda.gov/energyandenvironment/altFuel/altFuel.htm.*

**FOR FURTHER INFORMATION CONTACT:** James Michael, Jr., (202) 720–8616.

Dated: June 22, 2005.

**W.R. Ashworth,**

*Director, Office of Procurement and Property Management.*

[FR Doc. 05–12675 Filed 6–27–05; 8:45 am]

**BILLING CODE 3410–98–M**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. FV05–993–3 NC]**

### Notice of Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Dried Prunes Produced in California-Prune Dehydrator Survey, Marketing Order 993.

**DATES:** Comments on this notice must be received by August 29, 2005.

**FOR FURTHER INFORMATION CONTACT:** Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *moab.docketclerk@usda.gov.*

Small businesses may request information on this notice 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:**

*Title:* Dried Prunes Produced in California, Marketing Order 993.

*OMB Number:* 0581–0211.

*Expiration Date of Approval:* February 28, 2006.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), marketing order programs are established if favored in referendum among producers. The Department of Agriculture (USDA) is authorized to oversee the order's operations and issue regulations recommended by a committee or board of representatives from each regulated commodity industry. The Prune Marketing Committee (Committee) is responsible for locally administering the California Dried Prune Marketing Order, M.O. No. 993 (order).

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the dried prune marketing order program (7 CFR part 993), which has been operating since 1949.

The California dried prune marketing order authorizes the issuance of grade and size regulations, inspection requirements, and volume regulations, when in effect. Regulatory provisions apply to dried prunes shipped both within and outside the production area to any market, except those specifically exempt. The order also has authority for research and development projects. Import grade and conditions requirements are implemented on dried prunes imported into the United States, pursuant to section 608(e)(1) of the AMAA.

When a voluntary prune plum diversion program is implemented under the order, the Committee is required to survey commercial prune dehydrators to determine dried weight equivalents for fresh prune plums to be diverted. The Committee will obtain commercial dehydrators' annual dry-away ratios for the preceding five years and will compute a five-year average dry-away ratio for each dehydrator. The Committee will then average those ratios, compute a five-year average dry-away ratio for each producing region, and will apply that ratio to diverted prune plums in those regions.

The survey is needed so the Committee can compute and announce dried weight equivalents for fresh prune plums for use by those choosing to participate in a voluntary diversion program. The survey will be used when a voluntary diversion program is implemented.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the Committee. Authorized Committee employees and the industry are the primary users of the information and AMS is the secondary user.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .25 hours per response.

*Respondents:* Commercial prune dehydrators.

*Estimated Number of Respondents:* 17.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 4.25 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

Upon OMB approval, this information collection will be merged into the information collection currently approved under OMB No. 0581–0178, Vegetable and Specialty Crop Marketing Orders.

Comments should reference OMB No. 0581–0211 and the California Dried Prune Marketing Order No. 993, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–2491, Fax: (202) 720–8938; Fax: (202) 720–8938; or e-mail: *moab.docketclerk@usda.gov.* All comments received will be available for public inspection during regular business hours at the same address.

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.

Dated: June 23, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–12697 Filed 6–27–05; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. FV05–993–4 NC]**

### Notice of Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Dried Prunes Produced in California-Prune Handler Compensation Survey, Marketing Order 993.

**DATES:** Comments on this notice must be received by August 29, 2005.

*Additional Information or Comments:* Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.*

Small businesses may request information on this notice 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:**

*Title:* Dried Prunes Produced in California, Marketing Order 993.

*OMB Number:* 0581–0208.

*Expiration Date of Approval:* February 28, 2006.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674), marketing order programs are established if favored in referendum among producers. The Department of Agriculture (USDA) is authorized to oversee the order's operations and issue regulations recommended by a committee or board of representatives from each regulated commodity industry. The Prune Marketing Committee (Committee) is responsible for locally administering the California Dried Prune Marketing Order, M.O. No. 993 (order).

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the dried prune marketing order program (7 CFR part 993), which has been operating since 1949.

The California dried prune marketing order authorizes the issuance of grade and size regulations, inspection requirements, and volume regulations, when in effect. Regulatory provisions apply to dried prunes shipped both within and outside the production area to any market, except those specifically exempt. The order also has authority for research and development projects. Import grade and conditions requirements are implemented on dried prunes imported into the United States, pursuant to section 608(e)(1) of the AMAA.

Under the order, handlers are compensated for necessary services performed in connection with reserve prunes including, but not limited to, inspection, receiving, storing, grading and fumigation. To assist the Committee in formulating the compensation rates, current costs associated with those services will be obtained through a survey voluntarily submitted by dried prune handlers. The Committee will compute average costs, based on the number of handlers participating in the survey, and will announce the compensation rate for handling reserve prunes.

This survey is needed so that the Committee can compute the average industry cost for holding reserve prunes. It will also allow the Committee to evaluate this information, update the compensation rate, and reimburse handlers for actual costs incurred in holding reserve prunes. This survey will be used when a reserve pool is recommended by the Committee.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the Committee. Authorized Committee employees and the industry are the primary users of the information and AMS is the secondary user.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .25 hours per response.

*Respondents:* Dried Prune Handlers who handle reserve prunes.

*Estimated Number of Respondents:* 22.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 5.5 hours.

Comments are invited on: (1) Whether the proposed collection of information

is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on 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.

Upon OMB approval, this information collection will be merged into the information collection currently approved under OMB No. 0581–0178, Vegetable and Specialty Crop Marketing Orders.

Comments should reference OMB No. 0581–0211 and the California Dried Prune Marketing Order No. 993, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW Stop 0237, Washington, DC 20250–0237; Tel: (202) 720–2491, Fax: (202) 720–8938; Fax: (202) 720–8938; or E-mail: *moab.docketclerk@usda.gov.* All comments received will be available for public inspection during regular business hours at the same address.

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.

Dated: June 23, 2005.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 05–12698 Filed 6–27–05; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 02–088–6]**

**RIN 0579-AB47**

### Agency Information Collection Activities; OMB Approval Received

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act, this notice announces the Office of Management and Budget's approval of a collection of information contained in the Animal and Plant Health Inspection Service's final rule regarding the possession, use, and transfer of select agents and toxins.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, MRPBS, APHIS, 4700 River Road Unit 123, Riverdale, MD 20737–1238; (301) 734–7477.

**SUPPLEMENTARY INFORMATION:**

#### Background

In an interim rule published in the **Federal Register** on December 13, 2002 (67 FR 76908–76938, Docket No. 02–088–1) and effective on February 11, 2003, the Animal and Plant Health Inspection Service (APHIS) established regulations in 7 CFR part 331 and 9 CFR part 121 governing the possession, use, and transfer of biological agents and toxins that have been determined to have the potential to pose a severe threat to public health and safety, to animal health, to plant health, or to animal or plant products (*i.e.*, select agents and toxins).

On March 18, 2005, we published in the **Federal Register** (70 FR 13242–13292, Docket No. 02–088–4) a final rule that adopts, with changes, the December 2002 interim rule. The final rule includes certain regulatory provisions that differ from those included in the December 2002 interim rule. Some of those provisions involve changes from the information collection requirements set out in the December 2002 interim rule, which were approved by the Office of Management and Budget (OMB) under OMB control number 0579–0213.

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*), the information collection and recordkeeping requirements included in the final rule were submitted for emergency approval to OMB. OMB approved the collection of information requirements with respect to the final rule under OMB control number 0579–0213 (expires October 31, 2005).

Done in Washington, DC, this 22nd day of June 2005.

**Elizabeth E. Gaston,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E5–3351 Filed 6–27–05; 8:45 am]

BILLING CODE 3410–34–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 05–007–3]**

### Ventria Bioscience; Availability of Environmental Assessment and Finding of No Significant Impact for Field Tests of Genetically Engineered Rice Expressing Lysozyme

**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 and reached a finding of no significant impact for confined field tests of rice plants genetically engineered to express the protein lysozyme. The environmental assessment provides a basis for our conclusion that these field tests will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared for these field tests.

**DATES:** *Effective Date*: June 21, 2005.

**ADDRESSES:** You may read the environmental assessment, the finding of no significant impact, and any comments that we received on Docket No. 05–007–1 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.

You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Levis Handley, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301)734–5721. To obtain copies of the environmental assessment, contact Ms. Ingrid Berlanger, at (301) 734–4885; e-mail *ingrid.e.berlanger@aphis.usda.gov.* The environmental assessment and finding of no significant impact are also available on the Internet at *http://*

*www.aphis.usda.gov/brs/aphisdocs/05_11702r_ea.pdf.*

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release into the environment of a regulated article.

On October 28, 2004, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS permit number 04–309–01r) from Ventria Bioscience, Sacramento, CA, for a permit for a confined field planting of rice *(Oryza sativa)* plants genetically engineered to express a gene coding for the protein lysozyme, rice line LZ159–53. The application was for a field trial in Scott County, MO. On February 23, 2005, APHIS published a notice in the **Federal Register** (70 FR 8762–8763, Docket No. 05–007–1) announcing the availability of an environmental assessment (EA) for this confined field planting. The 30-day comment period ended on March 25, 2005.

On April 27, 2005, while APHIS was evaluating these comments, we received a request from Ventria Bioscience to plant rice line LZ159–53 in a second site in Washington County, NC (APHIS permit number 05–117–02r). Because many of the issues are similar for the two field tests, APHIS chose to extend the comment period to gather additional comments that specifically address any new issues that may exist for the North Carolina location. On May 13, 2005, APHIS published a second **Federal Register** notice (70 FR 25522–25524, Docket No. 05–007–2) extending the comment period on Docket No. 05–007–1 for a period of 20 days.

APHIS has considered the comments from both comment periods and the comments received during the intervening period. APHIS received 607 comments. Comments were received from rice growers, rice marketing and processing groups, agricultural support businesses, consumer groups, university professionals, private individuals, industry trade organizations, large rice purchasers, Federal, State and local government representatives, and growers of crops other than rice. Five hundred fifty respondents did not support the issuance of a permit for a field trial of rice expressing lysozyme. Forty-nine commenters did support granting a permit for a field trial for rice that expresses lysozyme. Two commenters provided information only and conveyed no opinion on the proposed field trial. The remaining six comments were duplications of submitted comments.

The majority of the commenters expressed concern that rice from this field trial may inadvertently become mixed with rice intended for food or feed use. Commenters were concerned that birds, mammals, water, or human error might move small amounts of rice from the permitted field into commercially grown rice or rice products. Commenters also suggested that hybridization may occur with weedy rice types and allow the lysozyme gene to persist in the environment. Commenters also focused on potential market loss for commercial rice if genetically engineered rice were to be grown in the same geographic area. Several of these commenters also expressed concern for food safety if this rice were incorporated in general commodity rice. Supporters of the field trial commented on the safety of the trial, the closed production design for the field trial, and the economic and health benefits that could result from the production of rice that expresses lysozyme.

APHIS evaluated the impacts on the human environment in the EA, and we have responded to comments in an attachment to the finding of no significant impact (FONSI), which is available as indicated under the heading, **FOR FURTHER INFORMATION CONTACT**. Between the close of the previous comment period and the publication of this notice, Ventria Bioscience has withdrawn its application to conduct a field test in Scott County, MO. However, because many of the issues in Missouri are similar to those in North Carolina and the public expressed a great deal of interest in the Missouri test site, APHIS has addressed the comments from both **Federal Register** notices in an attachment to the FONSI.

## Background

The subject rice plants have been genetically engineered, using micro-projectile bombardment, to express human lysozyme protein. Expression of the gene is controlled by the rice glutelin 1 promoter, the rice glutelin 1 signal peptide, and the NOS (nopaline synthase) terminator sequence from *Agrobacterium tumefaciens.* The gene is expressed only in the endosperm. In addition, the plants contain the coding sequence for the gene hygromycin phosphotransferase *(hpt)*, an enzyme which confers tolerance to the antibiotic hygromycin. This gene is a selectable marker that is only expressed during plant cell culture and is not expressed in any tissues of the mature plant. Expression of the gene is controlled by the rice glucanase 9 *(Gns 9)* promoter and the Rice Alpha Amylase 1A *(RAmy1A)* terminator.

The genetically engineered rice plants are considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from plant pathogens. The purposes of the field tests are for pure seed production and for the extraction of lysozyme for a variety of research and commercial products. The planting will be conducted using multiple measures to ensure strict confinement. In addition, the experimental protocols and field plot design, as well as the procedures for termination of the field tests, are designed to ensure that none of the subject rice plants persist in the environment beyond the termination of the experiments.

Pursuant to its regulations in 7 CFR Part 340, promulgated under the Plant Protection Act of 2000, APHIS has determined that this field trial will not pose a risk of the introduction or dissemination of a plant pest for the following reasons:

1. The field trial is confined. Regulated articles are not likely to be removed from the field site through transport by water or animals. Accidental transport of regulated articles from the site by humans is minimized by strict standard operating procedures and permit conditions.

2. Rice is predominately self-fertilizing, has short pollen viability, and the sites are several miles from commercial rice crops. Therefore, it is extremely unlikely that cross-pollination could occur with commercial rice.

3. The nos sequence is from the soil-inhabiting bacterial plant pathogen, Agrobacterium sp. and does not encode a protein. It does not cause plant disease and has a history of safe use in a number of genetically engineered plants (*e.g.*, rice, corn, cotton and soybean varieties). The regulatory sequences from rice are the *Gns9* promoter, *Gt1*

promoter, *gt1* signal peptide, and the *RAmyl 1A* terminator. None of the DNA regulatory sequences can cause plant disease by themselves or in conjunction with the genes that were introduced into the transgenic rice lines.

4. Lysozyme is expressed predominantly in seed. Levels of expression in the remainder of the plant are not detectable.

5. Given the history of safe use of lysozyme supplements in food and oral hygiene products and as nutritional supplements, APHIS concludes that humans are unlikely to be significantly affected by incidental contact with this rice that may occur during this field trial.

6. Based on the lack of toxicity of the proteins that will be produced and the prescribed permit conditions to minimize any seed remaining on the soil surface, APHIS concludes that there will be no significant effect on any native floral or faunal species in Scott County, MO, or Washington County, NC.

The EA and FONSI were 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 provisions 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). Copies of the EA and FONSI are available as indicated under the heading, **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 22nd day of June 2005.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E5–3350 Filed 6–27–05; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 05–006–3]**

### Ventria Bioscience; Availability of Environmental Assessment and Finding of No Significant Impact for Field Tests of Genetically Engineered Rice Expressing Lactoferrin

**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 and reached a finding of no significant impact for confined field tests of rice plants genetically engineered to express the protein lactoferrin. The environmental assessment provides a basis for our conclusion that these field tests will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared for these field tests.

**DATES:** *Effective Date:* June 21, 2005.

**ADDRESSES:** You may read the environmental assessment, the finding of no significant impact, and any comments that we received on Docket No. 05–006–1 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.

You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Levis Handley, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5721. To obtain copies of the environmental assessment, contact Ms. Ingrid Berlanger, at (301) 734–4885; email *ingrid.e.berlanger@aphis.usda.gov.* The environmental assessment and finding of no significant impact are also available on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/05_11701r_ea.pdf.*

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.'' A permit must be obtained or a notification acknowledged before a regulated article may be introduced. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, or release into the environment of a regulated article.

On October 28, 2004, the Animal and Plant Health Inspection Service (APHIS) received a permit application (APHIS permit number 04–302–01r) from Ventria Bioscience, Sacramento, CA, for a permit for a confined field planting of rice (*Oryza sativa*) plants genetically engineered to express a gene coding for the protein lactoferrin, rice line LF164–12. The application was for a field trial in Scott County, MO. On February 23, 2005, APHIS published a notice in the **Federal Register** (70 FR 8763, Docket No. 05–006–1) announcing the availability of an environmental assessment (EA) for this confined field planting. The 30-day comment period ended on March 25, 2005.

On April 27, 2005, while APHIS was evaluating these comments, we received a request from Ventria Bioscience to plant rice line LF164–12 in a second site in Washington County, NC (APHIS permit number 05–117–01r). Because many of the issues are similar for the two field tests, APHIS chose to extend the comment period to gather additional comments that specifically address any new issues that may exist for the North Carolina location. On May 13, 2005, APHIS published a second **Federal Register** notice (70 FR 25521–25522, Docket No. 05–006–2) extending the comment period on Docket No. 05–006–1 for a period of 20 days.

APHIS has considered the comments from both comment periods and the comments received during the intervening period. APHIS received 676 comments. Comments were received from rice growers, rice marketing and processing groups, agricultural support businesses, consumer groups, university professionals, private individuals, industry trade organizations, large rice purchasers, Federal, State and local government representatives, and growers of crops other than rice. Five hundred eighty-six respondents did not support the issuance of a permit for a field trial of rice expressing lactoferrin. Forty-eight commenters did support granting a permit for a field trial for rice that expresses lactoferrin. Two commenters provided information only and conveyed no opinion on the proposed field trial. The remaining 40 comments were duplications of submitted comments.

The majority of the commenters expressed concern that rice from this field trial may inadvertently become mixed with rice intended for food or feed use. Commenters were concerned that birds, mammals, water, or human error might move small amounts of rice from the permitted field into commercially grown rice or rice products. Commenters also suggested that hybridization may occur with weedy rice types and allow the lactoferrin gene to persist in the environment. Commenters also focused on potential market loss for commercial rice if genetically engineered rice were to be grown in the same geographic area. Several of these commenters also expressed concern for food safety if this rice were incorporated in general commodity rice. Supporters of the field trial commented on the safety of the trial, the closed production design for the field trial, and the economic and health benefits that could result from the production of rice that expresses lactoferrin.

APHIS evaluated the impacts on the human environment in the EA, and we have responded to comments in an attachment to the finding of no significant impact (FONSI), which is available as indicated under the heading, **FOR FURTHER INFORMATION CONTACT**. Between the close of the previous comment period and the publication of this notice, Ventria Bioscience has withdrawn its application to conduct a field test in Scott County, MO. However, because many of the issues in Missouri are similar to those in North Carolina and the public expressed a great deal of interest in the Missouri test site, APHIS has addressed the comments from both **Federal Register** notices in an attachment to the FONSI.

**Background**

The subject rice plants have been genetically engineered, using micro-projectile bombardment, to express human lactoferrin protein. Expression of the gene is controlled by the rice glutelin1 promoter, the rice glutelin 1 signal peptide, and the NOS (nopaline synthase) terminator sequence from *Agrobacterium tumefaciens.* The gene is expressed only in the endosperm. In addition, the plants contain the coding sequence for the gene hygromycin phosphotransferase (*hpt*), an enzyme which confers tolerance to the antibiotic hygromycin. This gene is a selectable marker that is only expressed during plant cell culture and is not expressed in any tissues of the mature plant. Expression of the gene is controlled by the rice glucanase 9 (*Gns 9*) promoter and the Rice Alpha Amylase 1A (*RAmy1A*) terminator.

The genetically engineered rice plants are considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from plant pathogens. The purposes of the field tests are for pure seed production and for the extraction of lactoferrin for a variety of research and commercial products. The planting will be conducted using multiple measures to ensure strict confinement. In addition, the experimental protocols and field plot design, as well as the procedures for termination of the field tests, are designed to ensure that none of the subject rice plants persist in the environment beyond the termination of the experiments.

Pursuant to its regulations in 7 CFR 340, promulgated under the Plant Protection Act of 2000, APHIS has determined that this field trial will not pose a risk of the introduction or dissemination of a plant pest for the following reasons:

1. The field trial is confined. Regulated articles are not likely to be removed from the field site through transport by water or animals. Accidental transport of regulated articles from the site by humans is minimized by strict standard operating procedures and permit conditions.

2. Rice is predominately self-fertilizing, has short pollen viability, and the sites are several miles from commercial rice crops. Therefore, it is extremely unlikely that cross-pollination could occur with commercial rice.

3. The nos sequence is from the soil-inhabiting bacterial plant pathogen, *Agrobacterium* sp. and does not encode a protein. It does not cause plant disease and has a history of safe use in a number of genetically engineered plants (*e.g.*, rice, corn, cotton and soybean varieties). The regulatory sequences from rice are the *Gns9* promoter, *Gt1* promoter, *gt1* signal peptide, and the *RAmyl 1A* terminator. None of the DNA regulatory sequences can cause plant disease by themselves or in conjunction with the genes that were introduced into the transgenic rice lines.

4. Lactoferrin is expressed predominantly in seed. Levels of expression in the remainder of the plant are not detectable.

5. Given the history of safe use of lactoferrin supplements in food and oral hygiene products and as nutritional supplements, APHIS concludes that humans are unlikely to be significantly affected by incidental contact with this rice that may occur during this field trial.

6. Based on the lack of toxicity of the proteins that will be produced and the prescribed permit conditions to minimize any seed remaining on the soil surface, APHIS concludes that there will be no significant effect on any native floral or faunal species in Scott County, MO, or Washington County, NC.

The EA and FONSI were 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 provisions 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). Copies of the EA and FONSI are available as indicated under the heading, **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 22nd day of June 2005.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. E5–3353 Filed 6–27–05; 8:45 am]

**BILLING CODE 3410–34–P**

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### Angeles National Forest, California, Antelope-Pardee 500-kV Transmission Project

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of intent to prepare a joint environmental impact statement/report.

**SUMMARY:** Notice is hereby given that the USDA Forest Service, together with the California Public Utilities Commission (CPUC), will prepare a joint Environmental Impact Statement (EIS) and Environmental Impact Report (EIR) in response to applications received from Southern California Edison for construction of a new 25.6-mile 500-kilovolt (kV) transmission line between the proponent's existing 220-kV Antelope and Pardee substations that are located in Los Angeles County, California. The Forest Service is the lead Federal agency for the preparation of this EIS/EIR in compliance with the National Environmental Policy Act (NEPA) and all other applicable laws, executive orders, regulations, and direction. The CPUC is the lead State of California agency for the preparation of the EIS/EIR in compliance with the California Environmental Quality Act

(CEQA), California Public Resource Code Division 13, and all other applicable laws and regulations. Both agencies have determined an EIS/EIR is needed to effectively analyze the proposal and evaluate impacts. The new 500-kV transmission line would replace the existing 100-foot right-of-way 66 kV-line along 17.5 miles of the proposed route. Approximately 13 miles of the Antelope-Pardee 500-kV Transmission Project would be located in a 160-foot right-of-way on National Forest System land (managed by the Angeles National Forest). Approximately three miles of the proposed project would be constructed in a new right-of-way outside of the Angeles National Forest. The proposed project also includes an expansion and upgrade of the Antelope Substation from 220 kV to 500 kV, and the relocation of several existing 66-kV subtransmission lines near the Antelope Substation. The USDA Forest Service and the CPUC invite written comments on the scope of this proposed project. In addition, the agencies give notice of this analysis so that interested and affected individuals are aware of how they may participate and contribute to the final decision.

**DATES:** Comments concerning the scope of the analysis must be received by July 29, 2005. Two public information and scoping meetings are proposed to provide information about the proposed project to the public and to allow people to comment on the proposed project. The draft EIS/EIR is expected in September 2005 and the final EIS/EIR is expected in December 2005.

**ADDRESSES:** To request a copy of the draft or final EIS/EIR and/or to send written comments, please write to the Angeles National Forest and/or California Public Utilities Commission, c/o Aspen Environmental Group, 30423 Canwood Street, Suite 215, Agoura Hills, CA 91301.

E-mail communications are also welcome; however, please remember to include your name and a return address in the email message. E-mail messages should be sent to *antelope-pardee@aspeneg.com.* Information about this application and the environmental review process will be posted on the Internet at: *http://www.cpuc.ca.gov/environment/info/aspen/antelopepardee/antelopepardee.htm.* This site will be used to post all public documents during the environmental review process and to announce up-coming public meetings.

Public meeting locations will be held at 6:30 p.m. at the following locations: Desert Inn Hotel, June 29, 2005, 44219 Sierra Highway, Lancaster, CA 93534; and Santa Clarita Activity Center, July 14, 2005, 20880 Centre Point Parkway, Santa Clarita, CA 91350.

**FOR FURTHER INFORMATION CONTACT:** For additional information related to the project on National Forest System land, contact Marian Kadota, Planning Forester, Forest Service, 6755 Hollister Avenue, Suite 150, Goleta, CA 93117; phone: (805) 961–5732. For additional information related to the project on non-National Forest System land, contact John Boccio, California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, CA 94102; phone: (415) 703–2641. Project information can also be requested by leaving a voice message or sending a fax to the Project Information Hotline at (661) 215–5152.

**SUPPLEMENTARY INFORMATION:**

## Proposed Action

Southern California Edison would construct, use, and maintain a new 25.6-mile 500-kV transmission line between the proponent's existing 220-kV Antelope and Pardee substations that are located in Los Angeles County, California. The proposed transmission line will cross approximately 13 miles of National Forest System land managed by the Angeles National Forest. To accomplish the proposed action, the Forest Service Responsible Official would have Southern California Edison remove a 66-kV transmission line (along with its ancillary improvements) and would authorize a 50-year term Special Use Easement for a 13-mile, 160-foot wide right-of-way, for construction, use, and maintenance of a portion of the 25.6-mile 500-kV line along that same transmission line route. The authorization will include ancillary improvements on National Forest System lands including towers, access roads to construct and maintain the line, and a fiber optical ground wire along the line as a secondary telecommunication path. This proposed action would involve lands managed by the Santa Clara/Mojave Rivers Ranger District, Angeles National Forest in portions of Sections within Township 5 North, Range 15 West; Township 5 North, Range 16 West; Township 6 North, Range 14 West; and Township 6 North, Range 15 West, San Bernardino Base and Meridian. This authorization would be part of the CPUC issuance of a Certificate of Public Convenience and Necessity to permit construction of the new 25.6-mile 500-kV transmission line along with the ancillary improvements.

The proposed transmission system off National Forest System lands includes three miles of new right-of-way, the relocation of sections of 66-kV and 12-kV facilities, and an expansion and upgrade of the Antelope Substation from 220 kV to 500 kV, including the physical expansion of the Antelope Substation by 31 acres. Ancillary improvements also include towers and the construction of two telecommunication paths between Antelope and Pardee substations. Lands other than National Forest System lands that would be impacted are located in portions of Sections within Township 4 North, Range 16 West; Township 7 North, Range 13 West; and, Township 7 North, Range 14 West, San Bernardino Base and Meridian. Construction activities associated with the proposed action would include grading areas to upgrade improvements to the Antelope Substation, 114 new towers, repairing existing access and spur roads along with the temporary use and construction of spur roads to approximately 20 tower locations, and the temporary use of approximately 24 new pulling locations and 15 new splicing locations.

The transmission line would be initially energized at 220 kV with the intent to help accommodate up to 4,400 megawatts (MW) of potential wind generation located north of Antelope, California in the future by energizing the system to 500 kV.

## Purpose and Need for Action

The purpose for this action is to upgrade the transmission system from Antelope Substation located near Lancaster, California to the Pardee Substation located near Santa Clarita, California. The existing transmission path from the Antelope to Vincent (located south of Palmdale, California) substations is fully loaded (at capacity) and Southern California Edison has identified the need for additional transmission and substation facilities between the Antelope and Pardee substations. This upgrade is needed to aid in interconnecting and integrating energy generated from a proposed 201–MW wind project located 8.5 miles northwest of the Antelope Substation located near Lancaster, California into Southern California Edison's electrical system.

## Background

Southern California Edison has proposed that the construction of a 500-kV transmission system would help to accommodate up to 4,400 MW of potential proposed wind generation that may be located north of Antelope, and would avoid the future construction, tearing down, and replacement of

multiple 220-kV facilities with 500-kV facilities. The proposed 500-kV transmission line would prevent overloading of the existing transmission facilities in order to allow the 201 MW to be safely transferred to serve system load.

Under Sections 210 and 212 of the Federal Power Act (16 U.S.C. 824 (i) and (k)) and Sections 3.2 and 5.7 of the California Independent System Operator's Tariff, Southern California Edison is obligated to interconnect and integrate this wind energy project into its system. In addition, the 2001 National Energy Policy goals are to increase domestic energy supplies, modernize and improve our nation's energy infrastructure, and improve the reliability of the delivery of energy from its sources to points of use. Executive Order 13212 encourages increased production and transmission of energy in a safe and environmentally sound manner. According to Executive Order 13212, for energy related projects, agencies shall expedite their review of permits or take other actions as necessary to accelerate the completion of such projects. The agencies shall take such actions to the extent permitted by law and regulations, and where appropriate. Based on the 1987 Angeles National Forest Land and Resource Management Plan, the proposed route is within a designated utility corridor. The proposal complies with the Angeles National Forest Land and Resources Management Plan, which requires utility companies to upgrade size of transmission facilties to maximum capacity within existing corridors before new utility corridors are considered.

**Possible Alternatives**

Presently, the USDA Forest Service and the CPUC have identified preliminary action alternatives for consideration in the environmental analysis. The preliminary action alternatives include two other alternative routes for the proposed 500-kV transmission line, a construction alternative to locate all or portions of the proposed transmission line underground, and an alternative for the types and number of towers that would be used.

The alternatives currently under consideration (besides the proposed action) are:

- The No-Action Alternative, under which the proposed 500-kV transmission line would not be constructed and no expansion activities at the Antelope Substation would occur.
- The Los Angeles Department of Water and Power (LADWP) Transmission Line Route Alternative that would construct the 500-kV transmission line along a 22.8-mile alternative route between the Antelope and Pardee substations. The route would travel within portions of the existing LADWP right-of-way, and would traverse the Angeles National Forest for 14.4 miles.
- The Non-National Forest System Land Alternative that would avoid National Forest lands. This alternative will be developed during the environmental review process.
- The Underground Alternative that would construct all or portions of the 500-kV transmission line underground along the proposed project route.
- The Tower, Conductor, and Voltage Alternative that would use single-circuit, 500-kV towers along the entire project route in place of the double-circuit, 500-kV towers that have been proposed along portions of the route.

The final alternatives analyzed in detail will depend on the issues raised during public scoping and further investigation of the feasibility of alternatives.

**Lead and Cooperating Agencies**

The USDA Forest Service and the CPUC will be joint lead agencies in accordance with 40 CFR 1501.5(b), and are responsible for the preparation of the EIS/EIR. The Forest Service will serve as the lead agency under NEPA. The CPUC will serve as the lead agency under CEQA.

Scoping will determine if additional cooperating agencies are needed.

**Responsible Official**

The Forest Service responsible official for the preparation of the EIS/EIR is Jody Noiron, Forest Supervisor, Angeles National Forest, 701 N. Santa Anita Avenue, Arcadia, CA 91006.

**Nature of Decision To Be Made**

The Forest Supervisor for the Angeles National Forest will decide whether or not to have Southern California Edison remove the 66-kV line (along with the ancillary improvements) and authorize a 50-year term Special Use Easement for a 13-mile, 160-foot wide right-of-way for contruction, use, and maintenance of a 500-kV line along that same transmission line route (or alternate route). The authorization will include ancillary improvements on National Forest System lands needed to maintain this system (*e.g.*, towers, roads, communication equipment). If this alternative is approved, the Forest Supervisor will also decide what mitigation measures and monitoring will be required. The Forest Supervisor will only make a decision regarding impacts on National Forest System lands. The Forest Supervisor will not have a decision to make if the CPUC selects an alternative for the Antelope-Pardee 500-kV Transmission Project that does not involve National Forest System lands.

**Scoping Process**

Public participation will be especially important at several stages during the analysis. The lead agencies will be seeking information, comments, and assistance from Federal, State, local agencies, and other individuals and organizations that may be interested in or affected by the proposed project. This input will be used in preparation of the draft EIS/EIR. The scoping process includes:

- Inviting the participation of affected Federal, State, and local agencies, and affected Native American tribes, the proponent of the action and other interested persons.
- Determining the scope and the significant issues to be analyzed in depth in the EIS.
- Identifying and eliminating from detailed study the issues that are not significant or that have been covered by prior environmental review.
- Indicating any public environmental assessments and other EISs that are being or will be prepared that are related to but are not part of the scope of this impact statement.
- Identifying potential environmental effects of the alternatives identified to date. Two scoping meetings are proposed to provide information about the proposed project to the public and to allow people to comment on the proposed project. The scoping meetings will be held on the following dates, locations and times: Desert Inn Hotel, June 29, 2005, 6:30 p.m., 44219 Sierra Highway, Lancaster, CA 93534; Santa Clarita Activity Center, July 14, 2005, 6:30 p.m., 20880 Centre Point Parkway, Santa Clarita, CA 91350.

**Preliminary Issues**

A number of potential impacts were identified in the Proponent's Environmental Assessment Antelope Transmission Project, Segment 1 issued by Southern California Edison on December 9, 2004. The following preliminary issues were identified in this report related to the proposed project: Visual impacts; air quality impacts; impacts to biological, cultural, and geological resources; impacts resulting from hazards and hazardous materials; impacts to hydrology and water quality; land use and noise impacts; impacts to public services and utilities; recreation impacts; and

impacts to traffic and transportation. Other issues identified are impacts to future forest management projects (*e.g.*, fuel hazard reduction projects and fire fighting strategies), Electric and Magnetic Fields and Health Effects, and impacts from noxious weeds.

**Permits or Licenses Required**

A 50-year term Special Use Easement for the construction, maintenance, and use of the 500-kV transmission line would be authorized to Southern California Edison by the Regional Director of Natural Resource Management of the Forest Service, and a Certificate of Public Convenience and Necessity would be issued by the California Public Utility Commission as part of this decision. Additional permits that may be required of Southern California Edison to construct the proposed project could include: A Permit to Operate issued by the South Coast Air Quality Management District, a National Pollutant Discharge Elimination System General Construction Permit issued by California's Regional Water Quality Control Board, a Section 404 Permit (per Section 404 of the Clean Water Act) issued by the U.S. Army Corps of Engineers, and a Streambed Alteration Agreement (per Section 1601 of the California Fish and Game Code) issued by the California Department of Fish and Game.

**Comment Requested**

This notice of intent initiates the scoping process that guides the development of the EIS/EIR. The Forest Service is seeking public and agency comment on the proposed project to identify major issues to be analyzed in depth and assistance in identifying potential alternatives to be evaluated. Comments received to this notice, including the names and addresses of those who comment, will be considered as part of the public record on this proposed project, and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality. Where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted, without names and addresses, within a specified number of days.

**Early Notice of Importance of Public Participation in Subsequent Environmental Review**

A draft EIS/EIR will be prepared for comment. The comment period on the draft EIS/EIR will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, that it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS/EIR.

To assist the Forest Service in identifying and considering issues and concerns on the proposed project, comments on the draft EIS/EIR should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS/EIR or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA at 40 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: June 22, 2005.

**Susan R. Swinson,**

*Acting Forest Supervisor.*

[FR Doc. 05–12691 Filed 6–27–05; 8:45 am]

BILLING CODE 3410–11–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Iowa, Kansas, Missouri, Nebraska and Oklahoma Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Iowa, Kansas, Missouri, Nebraska and Oklahoma Advisory Committees will convene at 1:30 p.m. and adjourn at 3:30 p.m. (c.s.t.) on Thursday, July 28, 2005. The purpose of the conference call is to plan for future activities in FY 2005–06.

This conference call is available to the public through the following call-in number: 1–800–597–0731, access code number 41684738. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office 913–551–1400 and TTY 913–551–1414), by 2 p.m. (c.s.t.) on Friday, July 22, 2005.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, June 28, 2005.

**Ivy L. Davis,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. 05–12734 Filed 6–27–05; 8:45 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Alabama, Arkansas, Louisiana and Mississippi Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on

Civil Rights, that a conference call of the Alabama, Arkansas, Louisiana and Mississippi Advisory Committees will convene at 1:30 p.m. and adjourn at 3:30 p.m. (c.s.t.) on Tuesday, July 26, 2005. The purpose of the conference call is to discuss and plan future activities in FY 2005–06.

This conference call is available to the public through the following call-in number: 1–800–473–6926, access code number 41684704. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office 913–551–1400 (TDD 913–551–1414), by 2 p.m. on Friday, July 22, 2005.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated in Washington, DC, June 16, 2005.

**Ivy L. Davis,**

*Acting Chief, Regional Programs Coordination Unit.*

[FR Doc. 05–12736 Filed 6–27–05; 8:45 am]

**BILLING CODE 6335–01–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–428–830]**

### Notice of Rescission, in Part, of Antidumping Duty Administrative Review: Stainless Steel Bar from Germany.

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** June 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Audrey Twyman or Andrew Smith, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3534 and 202–482–1276, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department of Commerce (the ''Department'') received timely requests for an administrative review of the antidumping duty order on stainless steel bar from Germany with respect to Stahlwerk Ergste Westig GmbH and Ergste Westig South Carolina (collectively ''SEW''), and BGH Edelstahl Freital GmbH, BGH Edelstahl Siegen GmbH, BGH Edelstahl Lippendorf GmbH, and BGH Edelstahl Lugau GmbH (collectively ''BGH''). On April 22, 2005, the Department published the initiation of an administrative review of SEW and BGH, covering the period March 1, 2004, through February 28, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 20862 (April 22, 2005). On June 14, 2005, SEW timely withdrew its request for an administrative review. SEW's request was the only request for an administrative review of SEW's U.S. sales.

**Rescission, in Part, of the Administrative Review**

Pursuant to the Department's regulations, the Department will rescind an administrative review ''if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review.'' 19 CFR 351.213(d)(1). Since SEW submitted a timely withdrawal of its request for review, and since this was the only request for a review of SEW, the Department is rescinding its antidumping administrative review of SEW in accordance with 19 CFR 351.213(d)(1). Based on this rescission, the administrative review of the antidumping duty order on stainless steel bar from Germany covering the period March 1, 2004, through February 28, 2005, now covers only BGH.

**Assessment**

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Antidumping duties for this rescinded company shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

We are issuing and publishing this determination and notice in accordance with section 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: June 22, 2005.

**Barbara E. Tillman,**

*Acting Deputy Assistant Secretary for Import Administration.*

[FR Doc. 05–12739 Filed 6–27–05; 8:45 am]

**BILLING CODE 3510–DS–S**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–475–819]**

### Certain Pasta from Italy: Final Results of the Eighth Countervailing Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On April 8, 2005, the U.S. Department of Commerce (''the Department'') published in the **Federal Register** its preliminary results of the administrative review of the countervailing duty order on certain pasta from Italy for the period January 1, 2003, through December 31, 2003. We preliminarily found that the countervailing duty rates during the period of review for all of the producers/exporters under review are less than 0.5 percent and are, consequently, *de minimis*. We did not receive any comments on our preliminary results, and we have made no further revisions. The final net subsidy rates for the reviewed companies are listed below in the section entitled ''Final Results of Review.''

**EFFECTIVE DATE:** June 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Brandon Farlander or Marc Rivitz, AD/CVD Operations, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0182 and (202) 482–1382, respectively.

**SUPPLEMENTARY INFORMATION:**

**Case History**

On July 24, 1996, the Department published a countervailing duty order on certain pasta (''pasta'' or ''subject merchandise'') from Italy. *See Notice of Countervailing Duty Order and Amended Final Affirmative Countervailing Duty Determination: Certain Pasta From Italy*, 61 FR 38544 (July 24, 1996). On July 1, 2004, the Department published a notice of ''Opportunity to Request Administrative Review'' of this countervailing duty order for calendar year 2003, the period

of review (''POR''). *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 39903 (July 1, 2004). On July 30, 2004, we received requests for reviews from the following four producers/exporters of Italian pasta: Pastificio Antonio Pallante S.r.l. (''Pallante''); Pastificio Corticella S.p.A. (''Corticella'')/Pastificio Combattenti S.p.A. (''Combattenti'') (collectively, ''Corticella/Combattenti''); Pasta Lensi S.r.l. (''Lensi'');[1] and Pastificio Carmine Russo S.p.A./Pastificio Di Nola S.p.A. (collectively, ''Russo/Di Nola''). In accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the review on August 30, 2004. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 69 FR 52857 (August 30, 2004).

On September 7, 2004, we issued countervailing duty questionnaires to the Commission of the European Union, the Government of Italy (''GOI''), Pallante, Corticella/Combattenti, Lensi, and Russo/Di Nola. We received responses to our questionnaires in October and November 2004. We issued supplemental questionnaires to the respondents in November 2004, and received responses to our supplemental questionnaires in November and December 2004.

On September 15, 2004, Russo/Di Nola withdrew its request for review. Pallante withdrew its request for review on October 28, 2004. Based on withdrawals of the requests for review, we rescinded this administrative review for both Russo/Di Nola and Pallante. *See Certain Pasta from Italy: Preliminary Results and Partial Rescission of the Eighth Countervailing Duty Administrative Review*, 70 FR 17971 (April 8, 2005) (''*Preliminary Results*'').

Since the publication of the *Preliminary Results*, we invited interested parties to submit briefs or request a hearing. The Department did not conduct a hearing in this review because none was requested, and no briefs were received.

## Scope of the Order

Imports covered by the order are shipments of certain non–egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, Bioagricoop S.r.l., QC&I International Services, Ecocert Italia, Consorzio per il Controllo dei Prodotti Biologici, Associazione Italiana per l'Agricoltura Biologica, or Codex S.r.L. In addition, based on publicly available information, the Department has determined that, as of August 4, 2004, imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by Bioagricert S.r.l. are also excluded from this order. *See* memorandum from Eric B. Greynolds to Melissa G. Skinner, dated August 4, 2004, which is on file in the Department's Central Records Unit (''CRU'') in Room B–099 of the main Department building.

The merchandise subject to review is currently classifiable under subheadings 1901.90.9095 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

## Scope Rulings

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, which is on file in the CRU.

(2) On July 30, 1998, the Department issued a scope ruling finding that multipacks consisting of six one–pound packages of pasta that are shrink–wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* letter from Susan H. Kuhbach to Barbara P. Sidari, dated July 30, 1998, which is available in the CRU.

(3) On October 23, 1997, the petitioners filed an application requesting that the Department initiate an anti–circumvention investigation of Barilla S.r.L. (''Barilla''), an Italian producer and exporter of pasta. The Department initiated the investigation on December 8, 1997. *See Initiation of Anti–Circumvention Inquiry on Antidumping Duty Order on Certain Pasta From Italy*, 62 FR 65673 (December 15, 1997). On October 5, 1998, the Department issued its final determination that, pursuant to section 781(a) of the Tariff Act of 1930, as amended (''the Act''), circumvention of the antidumping order on pasta from Italy was occurring by reason of exports of bulk pasta from Italy produced by Barilla which subsequently were repackaged in the United States into packages of five pounds or less for sale in the United States. *See Anti–Circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998).

(4) On October 26, 1998, the Department self–initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four ounces is within the scope of the antidumping and countervailing duty orders. *See* memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, which is available in the CRU.

(5) On April 27, 2000, the Department self–initiated an anti–circumvention inquiry to determine whether Pastificio Fratelli Pagani S.p.A.'s importation of pasta in bulk and subsequent repackaging in the United States into packages of five pounds or less constitutes circumvention with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b). *See Certain Pasta from Italy: Notice of Initiation of Anti–circumvention Inquiry of the Antidumping and Countervailing Duty Orders*, 65 FR 26179 (May 5, 2000). On September 19, 2003, we published an affirmative finding of the anti–circumvention inquiry. *See Anti–Circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy: Affirmative Final Determinations of Circumvention of Antidumping and*

[1] Lensi is the successor-in-interest to IAPC Italia S.r.l. *See Notice of Final Results of Antidumping and Countervailing Duty Changed Circumstances Reviews: Certain Pasta from Italy*, 68 FR 41553 (July 14, 2003).

*Countervailing Duty Orders*, 68 FR 54888 (Sept. 19, 2003).

**Period of Review**

The period for which we are measuring subsidies, or POR, is January 1, 2003, through December 31, 2003.

**Final Results of Review**

Neither the petitioners nor respondents commented on the preliminary results, and we found that no changes were warranted. Therefore, we have made no changes to the net countervailable subsidy rates for the POR.

In accordance with 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for each producer/exporter covered by this administrative review. Listed below are the programs we examined in the review and our findings with respect to each of these programs. For a complete analysis of the programs found to be countervailable and terminated, *see Preliminary Results.*

| Producer/Exporter | Net Subsidy Rate |
|---|---|
| Pasta Lensi S.r.l. ..... | 0.00 percent |
| Pastificio Corticella S.p.A./Pastificio Combattenti S.p.A. .... | 0.06 percent *(de minimis)* |

*I. Program Determined to Confer Subsidies During the POR*

A. Export Marketing Grants Under Law 304/90 .....0.06 percent

Note: applies to Corticella/Combattenti only.

*II. Programs Determined Not to Confer Subsidies During the POR*

A. Social Security Reductions and Exemptions - Sgravi
B. Brescia Chamber of Commerce Grants

*III. Programs Determined Not To Have Been Used During the POR*

A. Industrial Development Grants Under Law 488/92
B. Industrial Development Loans Under Law 64/86
C. European Regional Development Fund Grants
D. Law 236/93 Training Grants
E. Law 1329/65 Interest Contributions (Sabatini Law) (Formerly Lump–Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy)
F. Development Grants Under Law 30 of 1984
G. Law 908/55 Fondo di Rotazione Iniziative Economiche (Revolving Fund for Economic Initiatives) Loans
H. Industrial Development Grants Under Law 64/86
I. Law 317/91 Benefits for Innovative Investments
J. Tremonti Law 489/94 (Formerly Law Decree 357/94)
K. Ministerial Decree 87/02
L. Law 10/91 Grants to Fund Energy Conservation
M. Law 341/95 Interest Contributions on Debt Consolidation Loans (Formerly Debt Consolidation Law 341/95)
N. Regional Tax Exemptions Under IRAP
O. Corporate Income Tax (IRPEG) Exemptions
P. Export Restitution Payments
Q. VAT Reductions Under Laws 64/86 and 675/55
R. Export Credits Under Law 227/77
S. Capital Grants Under Law 675/77
T. Retraining Grants Under Law 675/77
U. Interest Contributions on Bank Loans Under Law 675/77
V. Interest Grants Financed by IRI Bonds
W. Preferential Financing for Export Promotion Under Law 394/81
X. Urban Redevelopment Under Law 181
Y. Grant Received Pursuant to the Community Initiative Concerning the Preparation of Enterprises for the Single Market (PRISMA)
Z. Industrial Development Grants under Law 183/76
AA. Interest Subsidies Under Law 598/94
AB. Duty–Free Import Rights
AC. Remission of Taxes on Export Credit Insurance Under Article 33 of Law 227/77
AD. European Social Fund Grants
AE. Law 113/86 Training Grants
AF. European Agricultural Guidance and Guarantee Fund

The calculations will be disclosed to the interested parties in accordance with 19 CFR 351.224(b).

Because the countervailing duty rates for all of the above–noted companies are either less than 0.5 percent and, consequently, *de minimis*, or zero, we will instruct U.S. Customs and Border Protection (''CBP'') to liquidate entries of these companies during the period January 1, 2003, through December 31, 2003, without regard to countervailing duties in accordance with 19 CFR 351.106(c)(1). The Department will issue appropriate instructions directly to CBP within 15 days of publication of these final results of this review.

For all other companies that were not reviewed (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.L., which are excluded from the order), the Department has directed CBP to assess countervailing duties on all entries between January 1, 2003, and December 31, 2003, at the rates in effect at the time of entry.

Since the countervailable subsidy rate is *de minimis*, the Department will instruct CBP to continue to suspend liquidation of entries, but to collect no cash deposits of estimated countervailing duties for the above–noted companies of all shipments of the subject merchandise from the producers/exporters under review that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non–reviewed firms (except Barilla G. e R. F.lli S.p.A. and Gruppo Agricoltura Sana S.r.L., which are excluded from the order), we will instruct CBP to collect cash deposits of estimated countervailing duties at the most recent company–specific or all–others rate applicable to the company. These rates shall apply to all non–reviewed companies until a review of a company assigned these rates is requested.

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 22, 2005.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 05–12740 Filed 6–27–05; 8:45 am]

BILLING CODE 3510–DS–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 062305A]**

### Gulf of Mexico Fishery Management Council; Public Meetings

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

**ACTION:** Notice of Public Hearings.

**SUMMARY:** The Gulf of Mexico Fishery Management Council (Council) will convene will hold a series of public workshops to provide information

about, and seek input on, ecosystem objectives for fisheries management.

**DATES:** The workshops will be held from July 11 through August 3 at nine locations throughout the Gulf of Mexico. For specific dates and times see **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** The workshops will be held in the following locations: Fort Myers Beach, Tampa, Key West, and Panama City, Florida; St. Rose, Louisiana; Biloxi, Mississippi; Orange Beach, Alabama; and Galveston and Corpus Christi, Texas. For specific dates and times see **SUPPLEMENTARY INFORMATION.**

*Council address:* Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Atran, Population Dynamics Statistician, Gulf of Mexico Fishery Management Council; telephone: 813.228.2815.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico Fishery Management Council (Council) will hold a series of public workshops to provide information about, and seek input on, ecosystem objectives for fisheries management. The Gulf of Mexico Fishery Management Council (Council) is one of four Councils participating in a pilot project to develop an ecosystem approach to fisheries management (the four Councils in the pilot project are New England, Mid-Atlantic, South Atlantic, and Gulf of Mexico).

One of the initial tasks of this project for the Council is to hold a series of public meetings seeking input regarding ecosystem objectives for fisheries management. The purpose of these meetings will be to facilitate wide-ranging discussions with stakeholder groups and the general public in eight topic areas: (1) views regarding the adequacy of current approaches for addressing ecosystem considerations, (2) the nature of ecosystem-based management and the goals to be achieved in addressing ecosystem issues, (3) the nature of the public decision making processes within the Council for addressing management tradeoffs, consistent with identified goals, (4) mechanisms for considering activities outside the Council's purview but influencing ecosystem productivity, (5) the boundaries of sub-regional ecosystems within the Gulf of Mexico, (6) the types of management measures that would be incorporated into ecosystem approaches for fishery management, consistent with the identified goals, (7) the specific regional issues that need to be addressed in a fisheries ecosystem plan (FEP), (8) techniques for determining success of ecosystem-based management, and (9) other issues considered important to the stakeholders in the Gulf region.

The public workshops will be conducted by an independent facilitator, who will report the results to the Council at its September 2005 meeting in New Orleans, LA. The workshops will begin at 7 p.m. and conclude no later than 9 p.m. at the following locations and dates:

*Monday, July 11, 2005*, DiamondHead Beach Resort, 2000 Estero Boulevard, Fort Myers Beach, FL 33931, 888.627.1595;

*Monday, July 18, 2005*, Best Western The Westshore Hotel, 1200 North Westshore Boulevard, Tampa, FL 33607, 813.282.3636;

*Tuesday, July 19, 2005*, DoubleTree Grand Key Resort, 3990 S. Roosevelt Boulevard, Key West, FL 33040, 888.310.1540;

*Monday, July 25, 2005*, Mississippi Department of Marine Resources, 1141 Bayview Drive, Biloxi, MS 39530, 228.374.5000;

*Tuesday, July 26, 2005*, Orange Beach Community Center, 4849 Wilson Boulevard, Orange Beach, AL 36561, 251.981.6028;

*Wendesday, July 27, 2005*, NMFS Panama City Lab, 3500 Delwood Beach Road, Panama City, FL 32408, 850.234.6541;

*Monday, August 1, 2005*, New Orleans Airport Ramada Inn and Suites, 110 James Drive East, St. Rose, LA 70087, 504.466.1355;

*Tuesday, August 2, 2005*, The San Luis Resort, 5222 Seawall Boulevard, Galveston Island, TX 77551, 409.744.1500;

*Wednesday, August 3, 2005*, Omni Corpus Christi Hotel, Bayfront Tower, 900 North Shoreline, Corpus Christi, TX 78401, 361.887.1600.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by June 27, 2005.

Dated: June 23, 2005.

**Emily Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E5–3344 Filed 6–27–05; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 062305B]**

## Gulf of Mexico Fishery Management Council; Public Meetings

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene public meetings.

**DATES:** The meetings will be held July 11–15, 2005.

**ADDRESSES:** These meetings will be held at the DiamondHead Beach Resort, 2000 Estero Boulevard, Fort Myers Beach, Florida.

*Council address:* Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL, 33607 (as of July 1, 2005).

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813.228.2815.

**SUPPLEMENTARY INFORMATION:**

### Council

*Wednesday, July 13, 2005*

*10:45 a.m.* – Convene.

11:00 a.m. – 12 noon – The Council will hear a presentation on the licensing of liquefied natural gas (LNG) facilities.

1:30 p.m. – 6 p.m. – Receive public testimony on the preliminary Red Grouper Regulatory Amendment.

*Thursday, July 14, 2005*

8:30 a.m. – 8:40 a.m. – Receive the SSC Selection Committee Report (CLOSED SESSION).

8:40 a.m. – 11:30 a.m. – Receive public testimony on (a) the preliminary Red Grouper Regulatory Amendment, (b) Reef Fish Amendment 18A/EA, (c) Charter Vessel Permit Moratorium Extension (CMP17/RF 25) and (d) Exempted fishing permits (if any).

1 p.m. – 1:30 p.m. Receive a presentation on a Permits Information Management System.

1:30 p.m. – 1:35 p.m. – Receive the SSC Selection Committee Report.

1:35 p.m. – 1:50 p.m. – Receive the AP Selection Committee Report.

1:50 p.m. – 5 p.m. – Receive the Reef Fish Management Committee Report.

*Friday, July 15, 2005*

8:30 a.m. – 9:30 a.m. – Receive the Shrimp Management Committee report.

9:30 a.m. – 10 a.m. – Receive the Coral Management Committee report.

10 a.m. – 10:15 a.m. – Receive the Joint Budget/Personnel Committee Report.

10:15 a.m. – 10:45 a.m. – Receive the Sustainable Fisheries/Ecosystem Committee Report.

10:45 a.m. – 11:15 a.m. – Receive the joint Reef Fish/Mackerel Management Committees Report.

11:15 a.m. – 11:30 a.m. – Receive the NRC Recreational Data Meeting report.

11:30 a.m. – 11:45 a.m. – Other Business.

**Committee**

*Monday, July 11, 2005*

8:30 a.m. – 8:45 a.m. – The Scientific and Statistical (SSC) Selection Committee will meet in closed session to appoint SSC members.

8:45 a.m. – 10 a.m. – The Advisory Panel (AP) Selection Committee will meet to develop the structure of the Ad Hoc Red Grouper Individual Fishing Quota (IFQ) AP.

10 a.m. – 10:45 a.m. – – The Coral Management Committee will meet to review the recommendations of the Coral SSC on coral reef research and other matters.

10:45 a.m. – 11:30 a.m. – The Joint Budget/Personnel Committee will meet to consider options recommended by staff under the Family Medical Leave Act (FMLA) revision to the SOPPs.

1 p.m. – 5:30 p.m. – – The Reef Fish Management Committee will review the new red snapper stock assessment conducted under the SouthEast Data, Assessment and Review (SEDAR) process, which yields a peer-reviewed assessment. They will also review the recommendations of the SSC, SEP and Red Snapper AP on this assessment. The Committee will review Draft Reef Fish Amendment 26 for a red snapper IFQ program and select their preferred alternatives for management measures for public hearings. The Reef Fish Management Committee will review public hearing summaries, public letters, AP recommendations, SSC recommendations, Federal recommendations and committee recommendations on Reef Fish Amendment 18A/EA, which addresses the grouper fishery and make recommendations to Council. The Committee will then review public hearing comments on the interim red grouper rule and select preferred alternatives for a regulatory amendment that will be presented at public hearings in August.

*Tuesday, July 12, 2005*

8:30 a.m. – 11:30 a.m. – The Reef Fish Management Committee resumes.

1 p.m. – 4 p.m. – The Shrimp Management Committee will hear a presentation on bycatch reduction devices (BRDs), review a preliminary scoping document on Amendment 14 and hear a report on the status of shrimp stocks.

4 p.m. – 5:30 p.m. – The Sustainable Fisheries/Ecosystem Committee will meet to consider the recommendations of the Ecosystem SSC and to develop recommendations to Congress on amendments to the Magnuson-Stevens Fishery Conservation and Management Act.

*Wednesday, July 13, 2005*

8:30 a.m. – 9:30 a.m. – The joint Sustainable Fisheries/Ecosystem Committee continues.

9:30 a.m. – 10:30 a.m. – The Joint Reef Fish/Mackerel Management Committees will review public hearing summaries, public letters, AP recommendations, SEP comments, SSC recommendations and committee recommendations on Final Generic Amendment for Extension of Charter Vessel Permit Moratorium and make recommendations to the Council.

Although other non-emergency issues not on the agendas may come before the Council and Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (M-SFCMA), those issues may not be the subject of formal action during these meetings. Actions of the Council and Committees will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the M-SFCMA, provided the public has been notified of the Council's intent to take action to address the emergency. The established times for addressing items on the agenda may be adjusted as necessary to accommodate the timely completion of discussion relevant to the agenda items. In order to further allow for such adjustments and completion of all items on the agenda, the meeting may be extended from, or completed prior to the date established in this notice.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by June 27, 2005.

Dated: June 23, 2005.

**Emily Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E5–3345 Filed 6–27–05; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 062305C]**

### North Pacific Fishery Management Council; Notice of Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The North Pacific Fishery Management Council (Council)/Board of Fisheries (BOF) Interim Joint Protocol committee will meet on July 14, 2005, at Anchorage at the Hilton Hotel.

**DATES:** The meeting will be held July 14, 2005, from 8:30am – 5 pm.

**ADDRESSES:** The meeting will be held at the Hilton Hotel, 500 w 3rd Avenue, Anchorage, AK.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

**FOR FURTHER INFORMATION CONTACT:** Council staff, Phone: 907-271-2809.

**SUPPLEMENTARY INFORMATION:**

**Agenda**

A further review of the BOF proposals for a State water pollock fishery in the Central and Western GOA areas and the Aleutian Islands a review of additional information on the pollock fisheries in these regions, information on P cod harvests in these areas, and additional information on Steller sea lions receive a report from NMFS on their preliminary review of a revised proposal for a state water pollock fishery in the Central GOA continued work to refine the proposals and determine what steps need to be taken next.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

June 23, 2005

**Emily Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E5–3363 Filed 6–27–05; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 121504B]**

### Endangered Species; Permits

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

**ACTION:** Issuance of permit for incidental take of threatened species.

**SUMMARY:** Notice is hereby given that on June 9, 2005, as authorized by the provisions of the Endangered Species Act, NMFS issued a permit (PRT–1488) to the Humboldt Bay Municipal Water District, Eureka, California subject to certain conditions set forth therein. The permit was granted only after NMFS determined that it was applied for in good faith, that granting the permit will not be to the disadvantage of the threatened species, and that it will be consistent with the purposes and policy set forth in the Endangered Species Act, as amended.

**DATES:** Effective June 9, 2005 through June 9, 2055.

**ADDRESSES:** Additional information on this permit action may be requested by contacting NOAA Fisheries, 1655 Heindon Road, Arcata, CA 95521 (phone: 707-825-5160, fax: 707-825-4840). The applications and related documents are available for review in the indicated office, by appointment.

**FOR FURTHER INFORMATION CONTACT:** John P. Clancy, Arcata, CA (phone: 707–825–5175, fax: 707–825–4840, e-mail: *John.P.Clancy@noaa.gov*).

**SUPPLEMENTARY INFORMATION:** On August 1, 2003, a notice was published in the Federal Register (68 FR 148, August 1, 2003), that an application had been filed with the National Marine Fisheries Service by the Humboldt Bay Municipal Water District, Eureka, California, for a permit to incidentally take, pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (16 U.S.C. 1539), as amended, Southern Oregon/Northern California Coasts Coho Salmon (*Oncorhynchus kisutch*), California Coastal Chinook Salmon (*Oncorhynchus tshawytscha*), and Northern California steelhead (*Oncorhynchus mykiss*) on the Mad River pursuant to the terms of the Humboldt Bay Municipal Water District Habitat Conservation Plan for its Mad River Operations.

Dated: June 21, 2005.

**Susan Pultz,**

*Acting Division Chief, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 05–12755 Filed 6–27–05; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D.060905A]**

### Marine Mammals; File No. 1073–1777

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

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Dr. Kathy Carlstead, Honolulu Zoo, 151 Kapahulu Ave., Honolulu, HI 96815, has been issued a permit to import marine mammal specimens for purposes of scientific research.

**ADDRESSES:** The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; and

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Rm 1110, Honolulu, HI 96814–4700; phone (808)973–2935; fax (808)973–2941.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Skidmore or Amy Sloan, (301)713–2289.

**SUPPLEMENTARY INFORMATION:** On January 24, 2005, notice was published in the **Federal Register** (70 FR 3365) that a request for a scientific research permit to import samples from marine mammal species under NMFS jurisdiction had been submitted by the above-named individual. The requested permit has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Holder is authorized to import into the United States approximately 24 blood samples, 150 fecal samples, and 150 saliva samples from 3 captive false killer whales *Pseudorca crassidens* from Ocean Adventure in the Philippines. The applicant will be studying stress in false killer whales using behavioral observations, non-invasive glucocorticoid assessment and analysis of blood profile panels. The permit has been issued for five years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: June 16, 2005.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 05–12744 Filed 6–27–05; 8:45 am]

BILLING CODE 3510–22–S

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 061405D]**

### Marine Mammals; File No. 358–1787 and Permit No. 821–1588–02

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

**ACTION:** Receipt of applications.

**SUMMARY:** Notice is hereby given that the following applicants have applied in due form for a permit or permit amendment to conduct research on marine mammals:

File No. 358–1787: Alaska Department of Fish and Game, D ivision of Wildlife Conservation, 1255 West 8th Street, Juneau, AK 99802 (Principal Investigator: Robert Smalls, Ph.D.); and

Permit No. 821–1588–02: Texas A&M University, Department of Marine Biology, 5007 Avenue U, Galveston, TX 77551 (Principal Investigator: Randall Davis, Ph.D.).

**DATES:** Written, telefaxed, or e-mail comments must be received on or before July 28, 2005.

**ADDRESSES:** The applications and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

Files 358–1787 and 821–1588: Assistant Regional Administrator for Protected Resources, Alaska Region,

NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7235; fax (907)586–7012; and

File 821–1588: Assistant Regional Administrator for Protected Resources, Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, phone (727)824–5312; fax (727)824–5309. Written comments or requests for a public hearing on these applications should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on these particular requests would be appropriate.

Comments may also be submitted by facsimile at (301)427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing email comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 358–1787 or 821–1588.

**FOR FURTHER INFORMATION CONTACT:** Ruth Johnson or Tammy Adams (301)713–2289.

**SUPPLEMENTARY INFORMATION:** The subject permit and permit amendment are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

### Permit Application

File No. 358–1787: The ADF&\G has requested a permit to conduct scientific research on harbor seals (*Phoca vitulina*), spotted seals (*P. largha*), ringed seals (*P. hispida*), ribbon seals (*P. fasciata*) and bearded seals (*Erignathus barbatus*). The seals would be captured, handled, sampled, tagged and released. The overall objective is to describe the ecology and behavior of these seal species. Harbor seals are the primary species to be studied to: monitor harbor seal population trends in Alaska, describe the movements, diving behavior, and haulout patterns; determine feeding habits and prey requirements; assess health status and physiology; and examine life history parameters. The applicant requests authority for incidental mortality of five harbor seals and one each of the ice seals annually. Seals would be incidentally harassed during capture activities and fecal collection.

### Permit Amendment

Permit No. 821–1588–02 authorizes the Holder to capture, sample, handle, and tag Weddell seals (Leptonychotes weddelli) on McMurdo Sound, Antarctica, and elephant seals (Mirounga angustirostris) on Ano Nuevo Island, California. The Permit also authorizes the Holder to approach, photograph, biopsy sample, and tag sperm whales (Physeter macrocephalus), conduct Level B harassment activities on small cetaceans in the Gulf of Mexico, and import/export marine mammal parts.

The Holder now requests to amend the permit to allow capture, sampling, handling and tagging of Northern fur seals (Callorhinus ursinus) on the Pribilof Islands, Alaska. The objective of this study is to characterize the movements, foraging behavior and habitat-associations of northern fur seal pups during their first winter at sea. Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 16, 2005.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 05–12753 Filed 6–27–05; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

**[I.D. 051005C]**

## Marine Mammals; Files No. 369–1757–00 and 522–1785–00

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

**ACTION:** Issuance of permits.

**SUMMARY:** Notice is hereby given that Bruce R. Mate, Ph.D., Holder/Principal Investigator, Oregon State University, Hatfield Marine Science Center, 2030 SE Marine Science Drive, Newport, OR 97365, and Randall S. Wells, Ph.D., Sarasota Dolphin Research Program, c/o Mote Marine Laboratory, 1600 Ken Thompson Parkway, Sarasota, FL 34236, have each been issued a permit to take marine mammals for scientific research.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment(See **SUPPLEMENTARY INFORMATION** for addresses.

**FOR FURTHER INFORMATION CONTACT:** Ruth Johnson or Carrie Hubard, (301)713–2289 or email: *ruth.johnson@noaa.gov*.

**SUPPLEMENTARY INFORMATION:** On August 3, 2004 (69 FR 46521) and March 21, 2005 (70 FR 13481), notice was published in the **Federal Register** that a request for a scientific research permit to take marine mammals had been submitted by the above-named individuals. The requested permits have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit 369–1757–00 authorizes the Holder to approach and harass during tagging/biopsy sampling activities, up to 25 of the following species per stock not to exceed 50 of each species within a year: humpback whales (*Megaptera novaeangliae*), blue whales (*Balaenoptera musculus*), fin whales (*Balaenoptera physalus*), gray whales (*Eschrichtius robustus*), southern right whales (*Eubalaena australis*), bowhead whales (*Balaena mysticetus*), and sperm whales (*Physeter macrocephalus*) in U.S. and foreign waters of the North Atlantic (including Gulf of Mexico), North Pacific (including Hawaii), Arctic and Indian Oceans, Beaufort, Bering and Chukchi Seas, and international waters of the Mediteranean Sea annually for five years. Up to 200 of each species may be incidentally harassed annually. Some whales will be tagged twice. After tagging, whales will be approached for photo-identification, behavioral observation and assessment of possible tag effects. North Pacific right whales and North Atlantic right whales are not authorized in this permit. The permit also authorizes opportunistic tagging of up to 100 killer whales (*Orcinus orca*) over a five-year period not to exceed 20 in a single year. Southern resident killer whales are not authorized in this permit. Additionally, the permit allows non-invasive Level B harassment (photo-identification and behavioral observation) of other non-target non-listed marine mammal species encountered during tagging activities, and import/export of biopsy specimens

and baleen from beach-cast whales. These samples may be imported/exported on a worldwide basis.

Permit 522–1785–00 authorizes the Holder to capture 120 individual bottlenose dolphins (*Tursiops truncatus*) and examine, sample, mark, tag and release in the shallow coastal waters of central west Florida and photo-id and biopsy sample of 500 dolphins over a five-year period. Observational studies of population structure, population dynamics, life history, social structure, genetic structure including paternity patterns, and human interactions are being conducted. In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents are available and may be reviewed in the following locations:

All permits: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521;

File 369–1757–00: Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

File 369–1757–00: Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

File 369–1757–00: Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

File 369–1757–00: Pacific Islands Regional Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396; phone (808)943–1221; fax (808)943–1240;

File 369–1757–00: Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (508)281–9250; fax (508)281–9371; and

File 369–1757–00 and 522–1785–00: Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5300.

Dated: May 30, 2005.

**Stephen L. Leathery,**

*Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 05–12756 Filed 6–27–05; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 060105A]**

### Notice of Availability of Draft Stock Assessment Reports

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

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** NMFS reviewed the Alaska, Atlantic, and Pacific regional marine mammal stock assessment reports (SARs) in accordance with the Marine Mammal Protection Act (MMPA). SARs for marine mammals in the Alaska, Atlantic, and Pacific regions were revised according to new information. NMFS solicits public comments on draft 2005 SARs.

**DATES:** Comments must be received by September 26, 2005.

**ADDRESSES:** Send comments or requests for copies of reports to: Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226, Attn: Stock Assessments. Comments may also be sent via facsimile (fax) to 301–427–2580 or via email to *mmsar.2005@noaa.gov*.

Copies of the Pacific Regional SARs may be requested from Cathy Campbell, Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213.

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center, NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115–0070.

Copies of the Atlantic and Gulf of Mexico Regional SARs may be requested from Gordon Waring, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543.

Copies of the Pacific Regional SARs may be requested from Cathy Campbell, Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802-4213.

**FOR FURTHER INFORMATION CONTACT:** Tom Eagle, Office of Protected Resources, 301–713–2322, ext. 105, e-mail *Tom.Eagle@noaa.gov*; Robyn Angliss 206–526–4032, e-mail *Robyn.Angliss@noaa.gov*, regarding Alaska regional stock assessments; Gordon Waring, 508-495-2311, e-mail *Gordon.Waring@noaa.gov*, regarding Atlantic regional stock assessments; or Cathy Campbell, 562–280–4060, e-mail *Cathy.E.Campbell@noaa.gov*, regarding Pacific regional stock assessments.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

The 2005 draft stock assessment reports are available in electronic form via the Internet at *http://www.nmfs.noaa.gov/pr/PR2/Stock__Assessment__Program/sars.html*.

#### Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 et seq.) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every 3 years for non-strategic stocks. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in the Alaska, Atlantic, and Pacific regions to incorporate new information. NMFS solicits public comments on the draft 2005 SARs.

SARs for marine mammal stocks in the Alaska and Atlantic regions were updated to include all new information that has become available since the 2003 reports were completed. In the Alaska region, reports for 27 stocks were revised, and nine were not changed. For the Atlantic region, 43 revised reports are available, and 12 SARs were not revised. Reports in the Pacific region were updated with information

available since the 2004 SARs were completed. Reports for five Pacific marine mammal stocks were revised, and reports for 55 stocks were not revised.

**Alaska Reports**

Changes in fishery definitions in the proposed List of Fisheries for 2005 caused minor changes in most of the 36 reports for Alaska stocks because six Federal fisheries in the Alaska region were separated into 22 fisheries (69 FR 70094, December 2, 2004). These reclassifications required fishery-specific mortality levels to be recalculated for stocks incidentally seriously injured or killed in each of the newly-defined fisheries.

The status of the Central North Pacific stock of Pacific white-sided dolphins was changed from non-strategic to strategic. Low-levels of human-caused mortality and serious injury continued; however, the abundance estimate for the stock is now more than 8 years old and no longer used to calculate a Potential Biological Removal (PBR) level.

The Eastern North Pacific stock of transient killer whales was separated into three stocks, a change initiated by NMFS' recognition of AT1 killer whales as a separate stock after reviewing a petition to designate the AT1 group of transient killer whales as a depleted stock under the MMPA (69 FR 31231, June 3, 2004). The remaining transient killer whales in the North Pacific Ocean were divided into two stocks, the Gulf of Alaska, Aleutian Islands, Bering Sea transient stock and the West Coast transient stock. The AT1 transient stock is designated as a strategic stock due to its depleted status under the MMPA, and the other two stocks are non-strategic.

Using estimates based upon surveys of humpback whales in Hawaii, the maximum net productivity rate for both stocks of humpback whales in Alaska (Western North Pacific and Central North Pacific stocks) was estimated to be 7 percent. In addition, the SAR for humpback whales, Central North Pacific stock, was revised to include separate abundance, PBR, and mortality estimates for the southeast Alaska feeding aggregation.

Although neither status was changed, abundance estimates and PBR increased for both stocks of Steller sea lions. The increase in the abundance estimate of the Eastern U.S. stock of Steller sea lions was more than 40 percent.

Declines in counts of northern fur seal pups in the Pribilof Islands began in 1998 and continued through 2004 at an annual rate exceeding 5 percent. The abundance estimate of this stocks, which is derived from pup counts, declined by more than 200,000 individuals to 688,028. Direct human-caused mortality continues to be a small portion of the calculated PBR, and the stock remains identified as strategic due to its designation as depleted under the MMPA.

The point estimate for gray whale abundance declined by more than 9,000 whales since the last SAR update. Some evidence suggests this stock may have reached carrying capacity, and the decline is a response to environmental limitations. Although the 2000/2001 estimate is incomplete because whales continued to migrate after the normal migration period ended in 2001, the 2001/2002 effort observed a more normal migration period and still produced a smaller abundance estimate. There is also concern that the animals may not have migrated as far south as the observer locations during both surveys, such as occurred in 1992/1993.

An initial minimum estimate for fin whale abundance (5,703) is now available. This is actually an estimate of the size of the population west of the Kenai Peninsula as the full range of Alaska fin whales has not been surveyed.

**Atlantic Reports**

The status of Atlantic short-finned and long-finned pilot whale stocks changed from strategic to non strategic. For stocks in the Atlantic Ocean, many reports were updated to include new abundance estimates derived from an integrated, multi-platform survey in summer 2004 along the coast of the entire eastern seaboard of the U.S.

All of the reports for marine mammals stocks in the northern Gulf of Mexico were updated from the 2003 final SARs to include new abundance or mortality estimates. In addition, information on the status of three stocks of coastal bottlenose dolphins (Eastern Gulf of Mexico, Northern Gulf of Mexico, and Western Gulf of Mexico) was combined into a single report for 2005 (Gulf of Mexico coastal stocks) to reduce duplication of text. The report for bottlenose dolphin, Northern Gulf of Mexico Coastal stocks, showed that the status of each of the three stocks changed from non-strategic to strategic. The abundance and PBR estimates for each stock changed to undefined because the abundance estimates were more than 8 years old and no longer considered reliable, and human-caused mortality and serious injury continued.

**Pacific Reports**

Among the changes in reports for the Pacific region, only short-finned pilot whales, California/Oregon/Washington stock, changed status. The PBR for this stock was increased from 1.19 to 1.2, and human-caused mortality decreased from 1.2 to 1.0. Consequently, the stock is designated as non-strategic because human-caused mortality is less than the calculated PBR.

The reports for Southern Resident killer whales and Hawaiian monk seals were updated with new abundance estimates. Reports for Eastern North Pacific humpback whales and California harbor seals were updated with new abundance and mortality estimates. The report for false killer whales, Hawaii stock, was updated with a new PBR estimate (reflecting a change in the recovery factor) and new mortality estimates. For this stock, reported human-caused mortality or serious injury was limited only to that occurring in the Exclusive Economic Zone around the Hawaiian archipelago to be consistent with the reported range of the stock (and abundance estimate).

Dated: June 21, 2005.

**Donna S. Wieting,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 05–12754 Filed 6–27–05; 8:45 am]

**BILLING CODE 3510–22–S**

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Proposed Information Collection; Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning a web-based senior service recruitment system, called ''Join Senior Service Now'' (JASON), that enables Americans ages

55 and over who are interested in volunteering to match their interests and talents with community homeland security and other critical community needs that have been identified by local Senior Corps grant projects. Use of the system is entirely voluntary. This system was deployed in 2002 and can be accessed by the public at the following Web site: *www.joinseniorservice.org.* The system is also a component of the USA Freedom Corps Volunteer Opportunities Search Engine.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

**DATES:** Written comments must be submitted to the individual and office listed in the **ADDRESSES** section August 29, 2005.

**ADDRESSES:** You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, National Senior Service Corps; Attention Ms. Angela Roberts, Associate Director, Room 9305; 1201 New York Avenue, NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) Electronically through the Corporation's e-mail address system: *aroberts@cns.gov.*

**FOR FURTHER INFORMATION CONTACT:** Angela Roberts, (202) 606–5000, ext. 111, or by e-mail at *aroberts@cns.gov.*

**SUPPLEMENTARY INFORMATION:** The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

**Background**

Americans over the age of 55 are a rapidly growing segment of the population, and the 60-plus population will double during the first quarter of this century. Concurrently, older Americans are one of the fastest growing cohorts utilizing the Internet for a myriad of purposes. A logical extension of these facts is that seniors will increasingly turn to the Internet to locate volunteer opportunities.

The Senior Corps' programs enroll Americans ages 55 and over, and more than 1,300 local Foster Grandparent, Senior Companion, and RSVP projects are engaged in ongoing volunteer recruitment. Many local Senior Corps project directors have indicated that a viable and identity-specific presence on the Internet would be beneficial to their recruitment efforts. The majority of Senior Corps projects indicate that they experience difficulties in recruiting, even with the expanding population of eligible participants. A web-based system can help to tap more efficiently into the target population.

Senior Corps volunteers serve with local projects of the RSVP (Retired and Senior Volunteer Program), the Foster Grandparent Program (FGP) and the Senior Companion Program (SCP). Individuals learn about these opportunities through a variety of means, including public service announcements, posters, advertisements, and visits to the Corporation's Web site and Web sites of local projects. These media and others direct interested individuals to the JASON website at *www.joinseniorservice.org.*

Prospective volunteers have the opportunity to find senior service projects of interest to them in two ways:

(1) The JASON system ''Fast Match'' feature allows individuals to search for volunteer opportunities by providing their ZIP code and the distance they are willing to travel. They also have the option to narrow their search by selecting one or more areas of service and/or entering one or more key words. They receive a listing of opportunities within the Senior Corps grantee network that match their service, distance, and/or other specifications and preferences.

(2) Prospective volunteers can also register with the system. Registration allows individuals the option of expressing interest in volunteering with senior service projects of their choosing and of sending certain information about themselves to the volunteer recruiters of those projects. To register, individuals enter the following four required data elements into a web-based form: (1) An e-mail address where they can be contacted that also serves as their unique User ID; (2) a password of their choosing that must be correctly entered before allowing access to information; their current age by pre-defined age ranges and categories; and (4) the age at which they began volunteering. Individuals are required to provide their age because different programs have different minimum age requirements.

Demographic information requested helps the Corporation understand the general aggregate profile of demographics of users, in particular, seniors using web-based tools. Descriptive information allow a potential volunteer to tell the project's recruiter any additional information they wish to, as well as to provide the project and the Corporation with information on the effectiveness of various ways of advertising the website. Contact information is collected for the sole purpose of permitting the recruiter from projects to which the registrant has expressed interest to contact the individual about the particular volunteer opportunities they are interested in.

**Current Action**

The Corporation seeks to renew approval of the JASON system. The revised system will be used in the same manner as the existing system, which is scheduled to expire on November 30, 2005.

*Type of Review:* Renewal.

*Agency:* Corporation for National and Community Service.

*Title:* National Senior Service Corps ''Join Senior Service Now'' (JASON) web-based recruitment system: *www.joinseniorservice.org.*

*OMB Number:* 3045–0078.

*Agency Number:* None.

*Affected Public:* Prospective senior volunteers.

*Total Respondents:* 440,000.

*Frequency:* At the discretion of respondents.

*Average Time Per Response:* 0.25 hours for initial response; 0.7 hours for subsequent responses.

*Estimated Total Burden Hours:* 32,323.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 21, 2005.

**Tess Scannell,**

*Director, National Senior Service Corps.*

[FR Doc. 05–12674 Filed 6–27–05; 8:45 am]

**BILLING CODE 6050–$$–P**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent to Prepare an Environmental Impact Statement on an Application for a Department of the Army Permit Under Section 404 of the Clean Water Act by the Angelina & Neches River Authority for the Construction of Lake Columbia, a Proposed 10,000-Surface-Acre Water Supply Reservoir in Smith and Cherokee Counties, TX

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers, Forth Worth District (USACE) has received an application for a Department of the Army permit under Section 404 of the Clean Water Act (CWA) from the Angelina & Neches River Authority (ANRA) to construct Lake Columbia. In accordance with the National Environmental Policy Act (NEPA0 of 1969 (42 U.S.C. 4321 *et seq.*), the USACE has determined that issuance of such a permit may have a significant impact on the quality of the human environment and, therefore, requires the preparation of an Environmental Impact Statement (EIS).

The USACE intends to prepare an EIS to assess the environmental, social, and economic effects of issuances of a Department of the Army permit under Section 404 of the CWA for discharges of dredged and fill material into waters of the United States (U.S.) associated with the construction of the proposed water supply reservoir. In the EIS, the USACE will assess potential impacts associated with a range of alternatives.

**DATES:** A public scoping meeting will be held on Thursday, August 18, 2005, from 3 p.m. to 9 p.m.

**ADDRESSES:** The public scoping meeting location is the Norman Activity Center, 526 East Commerce Street, Jacksonville, TX 75766.

**FOR FURTHER INFORMATION CONTACT:** For further information and/or questions about the proposed action and EIS, please contact Mr. Brent J. Jasper, Regulatory Project Manager, by letter at Regulatory Branch, CESWF–PER–R, U.S. Army Corps of Engineers, P.O. Box 17300, Forth Worth, Texas 76102–0300 or by telephone at (817) 886–1733.

**SUPPLEMENTARY INFORMATION:**

1. *Description of the Proposed Project:* The proposed dam site would be located on Mud Creek approximately three miles downstream (south) of U.S. Highway 79 east of Jacksonville. The proposed project would involve the discharge of dredged and fill material into approximately 220 acres of waters of the U.S. associated with the construction of Lake Columbia. Proposed filling activities would occur in conjunction with the construction of the dam, spillway, and staging areas. The project would impound approximately 14 miles of Mud Creek and its tributaries, and would inundate approximately 10,000 surface acres at a conservation pool elevation of 315 feet National Geodetic Vertical Dautum (NGVD). The project would adversely impact approximately 5,746.5 acres of waters of the U.S. associated with clearing, excavation, filling, and inundation.

The purpose of the proposed project is to provide water for a five-county region of East Texas, including Angelina, Cherokee, Nacogdoches, Rusk, and Smith counties. Lake Columbia would impound approximately 195,500 acre-feet of water and would provide a firm yield of 85.090 acre-feet per year.

The proposed project would likely adversely impact 5,746.5 acres of waters of the U.S. as a result of dam construction and inundation of areas within the conservation pool. Waters of the U.S. affected would include the following: 3,689 acres of forested wetlands, of which 3,652 acres are bottomland hardwood forest, 144 acres of scrub-shrub wetlands, 1,518 acres of emergent wetlands, 47 acres (204,864 linear feet) of intermittent streams, 255 acres (370,128 linear feet) of perennial streams, 63 acres of ponds, 0.5 acre of a forested hillside seep wetland, and 30 acres (14,256 linear feet) of a channelized reach of Mud Creek. The project would also result in the inundation of 2,245 acres of deciduous upland forest, 235 acres of upland shrubland, and 2,381 acres of upland grassland.

2. *Alternatives:* Alternatives available to the USACE are to: (1) Issue the Department of the Army permit; (2) issue the Department of the Army permit with special conditions; or (3) deny the Department of the Army permit. Alternatives available to ANRA include: (1) Constructing Lake Columbia as proposed by ANRA; (2) constructing Lake Columbia as proposed by ANRA, with modifications; (3) developing or acquiring other water supply sources; or (4) no action.

3. *Scoping and Public Involvement Process:* A public meeting (open house format) to gather information on the scope of the EIS, including the issues to be addressed in detail in the document will be conducted (see **DATES** and **ADDRESSES**).

4. *Significant Issues:* Issues to be given significant analysis in the EIS are likely to include, but will not be limited to: the effects of the lake on the immediate and adjacent property owners, nearby communities, downstream hydraulics and hydrology, streams, wetlands, surface water quality, groundwater quantity and quality, geologic resources, vegetation, fish and wildlife, threatened and endangered species, soils, prime farmland, noise, light, aesthetics, historic and pre-historic cultural resources, socioeconomics, land use, public roads, and air quality.

5. *Cooperating Agencies:* At this time, no other federal or state agencies are expected to be cooperating agencies in preparation of the EIS. However, numerous federal and state agencies, including the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the Texas Commission on Environmental Quality, the Texas Parks and Wildlife Department, the Texas Historical Commission, and the Texas Water Development Board are expected to be involved in the preparation of, and provide comments on, the EIS.

6. *Additional Review and Consultation:* Compliance with other federal and state requirements that will be addressed in the EIS include, but will not be limited to, State water quality certification under Section 401 of the Clean Water Act, protection of water quality under the Texas Polluant Discharge Elimination System, protection of air quality under the Texas Air Quality Act, protection of endangered and threatened species under Section 7 of the Endangered Species Act, and protection of cultural resources under Section 106 of the National Historic Preservation Act.

7. *Availability of the Draft EIS:* The Draft EIS is projected to be available by June 2006. A public hearing will be conducted following the release of the Draft EIS.

**Brenda S. Bowen,**

*Army Federal Register Liaison Officer.*

[FR Doc. 05–12705 Filed 6–27–05; 8:45 am]

**BILLING CODE 3710–20–M**

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent to Prepare a Draft Environmental Impact Statement for the Success Dam Seismic Remediation Project, CA

**AGENCY:** Department of the Army, U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** Pursuant to the National Environmental Policy Act of 1969, as amended, the U.S. Army Corps of Engineers, Sacramento District (Corps), intends to prepare a Draft Environmental Impact Statement (EIS) for the Federal action to remediate seismic dam safety concerns at the Lake Success Project located on the Tule River, near Porterville, CA. The proposed action is being conducted through the Corps' Dam Safety Assurance Program for the evaluation of existing dams.

**ADDRESSES:** Submit questions or comments regarding the subject dam safety project to Mr. Matt Davis, U.S. Army Corps of Engineers, 1325 J. Street, Sacramento, CA 95814–2922, fax (916) 557–7856, or e-mail: *Matthew.G.Davis@usace.army.mil.* Requests to be placed on a mailing list for this project should also be sent to this address.

**FOR FURTHER INFORMATION CONTACT:** Mr. Matt Davis, (916) 557–6708.

**SUPPLEMENTARY INFORMATION:** 1. *Background Information.* Based on current engineering knowledge, the Corps has determined that Success Dam near Porterville, CA, in Tulare County, has a fairly high likelihood of failure in the event of an earthquake. All studies that have been conducted show that the dam is likely to fail under relatively low levels of earthquake shaking. The estimated probability of a damaging earthquake that would breach or overtop the dam in its current condition is 1 in 285. Historical records indicate that at least three times between 1857 and 1952, earthquakes shook the future Success Dam site sufficiently that the current dam would have been seriously damaged with a likely release of the reservoir had the dam been present. However, no such earthquakes have occurred in the 44 years since the dam was built. Given the potential for seismicity at and near the Success Dam, along with the characteristics of the materials comprising the dam and its foundation, remediation work is required to prevent loss of life, extensive downstream damage, functional loss of the project, and loss of all project benefits. The project is currently being operated at a reduced capacity to deal with the risk until a permanent solution is implemented to address the dam safety concern.

2. *Proposed Action and Alternatives.* The Corps' tentatively preferred alternative is to construct a new roller compacted concrete (RCC) dam immediately downstream of the existing earthen dam. In addition to the no-action alternative, other alternatives to be evaluated include a new earthen embarkment dam immediately downstream of the existing dam, and modifications to the existing dam consisting of upstream jet grout with removal and replacement of the downstream foundation. The proposed RCC dam alternative would not provide any additional storage capacity beyond the existing dam. However, additional storage for flood protection and irrigation water would be provided under the separately authorized dam spillway raise project. Construction of the spillway raise project may be integrated into the construction of the dam safety project. The exact nature and extent of alternatives will be determined based on public and agency input during the scoping period and preparation of the Draft EIS.

3. *Issues to be Addressed.* The Draft EIS will address environmental issues concerning the proposed action. Issues will be identified based on public input during the scoping period and during preparation of the Draft EIS. Issues identified initially as potentially significant include: hydrology, biological resources, recreation, land use, visual quality, traffic safety, cultural resources, noise, and air quality.

4. *Public Involvement.* The Corps will hold a public scoping meeting to receive public comments and to solicit input regarding environmental issues of concern to the public and the alternatives that should be addressed in the Draft EIS. The public scoping meeting place, data and time will be advertised in the Draft EIS. The public scoping meeting place, date and time will be advertised in advance in local newspapers, and meeting announcement letters will be sent to interested parties. Written comments may also be submitted via mail and should be directed to Mr. Matt Davis (*see* **ADDRESSES**).

5. *Cooperating Agencies.* Federal agencies interested in participating as a Cooperating Agency are requested to submit a letter of intent to Colonel Ronald N. Light, District Engineer (*see* **ADDRESSES**).

6. *Availability of Draft EIS.* The Corps intends to issue the Draft EIS in the spring of 2006. The Corps will announce availability of the draft in the **Federal Register** and other media, and will provide the public, organizations, and agencies with an opportunity to submit comments, which will be addressed in the Final EIS.

Dated: June 13, 2005.

**Ronald N. Light,**

*Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 05–12704 Filed 6–27–05; 8:45 am]

BILLING CODE 3710–EZ–M

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Biomass Research and Development Technical Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces an open meeting of the Biomass Research and Development Technical Advisory Committee under the Biomass Research and Development Act of 2000. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that agencies publish these notices in the **Federal Register** to allow for public participation. This notice announces the meeting of the Biomass Research and Development Technical Advisory Committee.

**DATES:** July 19, 2005; 8:30 a.m.

**ADDRESSES:** Washington Marriott, 1221 22nd Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Neil Rossmeissl, Designated Federal Officer for the Committee, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–7766.

**SUPPLEMENTARY INFORMATION:** *Purpose of Meeting:* To provide advice and guidance that promotes research and development leading to the production of biobased industrial products.

*Tentative Agenda:* Agenda will include discussions on the following:

- Reevaluation of Vision targets
- Evaluation of Committee accomplishments
- Development of recommendations to incoming Committee members

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Biomass Research and Development Technical Advisory Committee. To attend the meeting and/or to make oral

statements regarding any of the items on the agenda, you should contact Neil Rossmeissl at 202–586–7766 or the Biomass Initiative at *laura.neal@ee.doe.gov* (email). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chair of the Committee will make every effort to hear the views of all interested parties. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. The Chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 23, 2005.

**R. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 05–12702 Filed 6–27–05; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Northern New Mexico

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

**DATES:** Wednesday, July 27, 2005; 1 p.m.–8:30 p.m.

**ADDRESSES:** Jemez Complex, Santa Fe Community College, 6401 Richards Avenue, Santa Fe, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or E-mail: *mmanzanares@doeal.gov.*

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda*

1 p.m.—Call to Order by Deputy Designated Federal Officer (DDFO), Ted Taylor
- Establishment of a Quorum
- Welcome and Introductions by Chairman, Tim DeLong
- Approval of Agenda
- Approval of Minutes of May 21, 2005

1:15 p.m.—Board Business
- A. Report from Chairman, Tim DeLong
- B. Report from Department of Energy, DDFO, Ted Taylor
- C. Report from Executive Director, Menice S. Manzanares
- D. Consideration and Action on Bylaws Amendment Number 7
- E. New Business

2 p.m.—Break

2:15 p.m.—Reports
- A. Waste Management Committee, Jim Brannon
- B. Community Involvement Committee, Grace Perez
- C. Environmental Monitoring, Surveillance and Remediation Committee, Chris Timm
- D. Comments from Ex-Officio Members

4 p.m.—Presentation by Michael Brooks, Agency for Toxic Substances and Disease Registry—*Public Health Assessment for Los Alamos National Laboratory (Public Comment Release)*

5 p.m.—Dinner Break

6 p.m.—Public Comment

6:15 p.m.—Consideration and Action on Recommendation 2005–5, Grace Perez
- Consideration and Action on Recommendation 2005–6, Chris Timm

6:30 p.m.—Presentation Regarding Well Drilling Techniques for the Los Alamos National Laboratory Groundwater Program

8 p.m.—Comments from Board and Ex-Officio Members

8:20 p.m.—Recap of Meeting: Issuance of Press Releases, Editorials, etc.

8:30 p.m.—Adjourn.

This agenda is subject to change at least one day in advance of the meeting.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes of this meeting will be available for public review and copying at the Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org.*

Issued at Washington, DC on June 23, 2005.

**R. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 05–12701 Filed 6–27–05; 8:45 am]

**BILLING CODE 6405–01–P**

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### U.S. Department of Energy's Fleet Alternative Fuel Vehicle Acquisition

**AGENCY:** Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

**ACTION:** Notice of Availability of the U.S. Department of Energy's Annual Report on its Alternative Fuel Vehicle Acquisition for Fiscal Year 2004.

**SUMMARY:** In compliance with the Energy Policy Act of 1992 and Executive Order 13149, this notice announces the availability of the fiscal year 2004 report which summarizes the U.S. Department of Energy's (DOE) compliance with the annual alternative fuel vehicle (AFV) acquisition requirement for its agency 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 (Public Law 102–486, 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 light-duty vehicle acquisitions AFVs, beginning in fiscal year 1999. In fiscal year 2004, DOE exceeded its EPAct requirements for the sixth consecutive year. As a result of its AFV acquisitions and biodiesel fuel use, DOE in fiscal year 2004 achieved a 99 percent compliance rate, which is 24 percentage points higher than the 75 percent AFV requirement. DOE also expects to exceed its EPAct requirements in fiscal years 2005 and 2006.

In addition to emphasizing compliance with EPAct, E.O. 13149 set a goal for each agency to reduce vehicular petroleum consumption by 20 percent by the end of fiscal year 2005, compared to fiscal year 1999 levels. E.O. 13149 specifies that each agency should improve the fuel efficiency of its new conventional light-duty vehicles and increase the use of alternative fuels in its AFVs. In fiscal year 2004, 21 percent of the fuel used in DOE's AFVs was alternative fuel and DOE achieved a 2.1 mile per gallon increase in fuel economy in its conventional light-duty vehicles as compared to fiscal year 1999. This combined with EPAct AFV acquisitions, led to a reduction in petroleum consumption of 1.8 percent compared to fiscal year 1999.

Pursuant to 42 U.S.C. 13218, each covered agency, including DOE, must report its annual acquisitions of alternative fuel vehicles to Congress, as required. These annual reports must also be placed on a publicly available Web site and their availability, including the Web site address, must be published in the **Federal Register**.

The DOE report for fiscal year 2004 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 June 22, 2005.

**David K. Garman,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 05–12703 Filed 6–27–05; 8:45 am]

**BILLING CODE 6450–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7929–3]**

## Clean Air Act Federal Operating Permit Program; Notice of Final Permit Actions for Federal Operating Permits

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This is notice that 24 Federal Tribal Operating permits have been issued from EPA Region VIII. These permits grant approval to the facilities identified in the permits to operate the air emission sources identified in the permits in accordance with the terms and conditions of the respective permits.

**FOR FURTHER INFORMATION CONTACT:** If you have any questions or would like a copy of any of the permits listed below, please contact Monica Morales, Air Technical Assistance Unit, Mailcode 8P–AR, EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6936, *morales.monica@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that EPA Region 8 has issued Federal operating permits to the applicants listed in the table below:

| Company name | Facility name | Permit No. | Reservation | Issuance date | Effective date |
|---|---|---|---|---|---|
| Red Cedar Gathering Co | Antler Gas Plant | V–SU–0019–00.00 | Southern Ute | 11/22/00 | 12/1/00 |
| BP America Production Co. | Florida River CF | V–SU–0022–00.00 | Southern Ute | 6/5/01 | 6/5/01 |
| Devon SFS Operating Inc. | Riverton Dome GP | V–WR–0002–00.00 | Wind River | 5/23/01 | 7/2/01 |
| El Paso Natural GS | Bondad CS | V–SU–0028–00.00 | Southern Ute | 6/25/01 | 7/25/01 |
| Red Willow UC | Coyote Gulch CS | V–SU–0017–00.00 | Southern Ute | 7/1/01 | 7/1/01 |
| Plum Creek Northwest Lumber Inc.. | Pablo Saw Mill Facility | V–FH–0001–00.00 | Flathead | 8/3/01 | 8/3/01 |
| Peak Sulfur Co | Riverton Facility | V–WR–0003–00.00 | Wind River | 11/1/01 | 12/1/01 |
| Williston Basin Interstate Pipeline Co. | Hardin CS | V–C–0001–00.00 | Crow | 6/17/02 | 7/27/02 |
| Red Cedar Gathering Co | Outlaw CS | V–SU–0033–02.00 | Southern Ute | 1/30/03 | 2/10/03 |
| BP American Production Co. | Wolf Point CS | V–SU–0034–02.00 | Southern Ute | 2/27/03 | 3/9/03 |
| Conoco Phillips Co | Sunnyside CS | V–SU–0032–02.00 | Southern Ute | 2/27/03 | 4/7/03 |
| Williams Service Field Co | PLA–9 Central Delivery Point. | V–SU–0014–00.00 | Southern Ute | 2/27/03 | 4/7/03 |
| Red Cedar Gathering Co | Animas CS | V–SU–0035–02.00 | Southern Ute | 5/1/03 | 5/1/03 |
| Questar | Red Wash 24B GP | V–OU–0001–00.00 | Uintah & Ouray | 7/3/03 | 7/13/03 |
| Northwest Pipeline | La Plata B CS | V–SU–0029–00.00 | Southern Ute | 11/19/03 | 11/19/03 |
| Transwestern Pipeline Co | La Plata A CS | V–SU–0013–00.00 | Southern Ute | 11/19/03 | 10/24/03 |
| Williams Field Service Co | Ignacio Plant | V–SU–0027–00.00 | Southern Ute | 11/19/03 | 11/29/03 |
| Conoco Phillips Co | Argenta CDP CF | V–SU–0030–01.00 | Southern Ute | 1/9/04 | 1/19/04 |
| Red Cedar Gathering Co | Pump Canyon CS | V–SU–0036–02.00 | Southern Ute | 1/9/04 | 1/19/04 |
| Red Cedar Gathering Co | Homstead CS | V–SU–0037–03.00 | Southern Ute | 1/9/04 | 1/19/04 |
| BP America Production Co. | Dry Creek CF | V–SU–0038–03.00 | Southern Ute | 1/9/04 | 1/19/04 |
| SG Interests Inc. | South Ignacio Central Delivery. | V–SU–0031–01.00 | Southern Ute | 4/2/04 | 4/2/04 |
| BP America Production Co. | Miera CF | V–SU–0039–04.00 | Southern Ute | 5/3/04 | 5/3/04 |
| Red Cedar Gathering Co | La Posta CS | V–SU–0040–04.00 | Southern Ute | 1/13/05 | 2/14/05 |

These permits grant approval to the facilities identified in the permits to operate the air emission sources identified in the permits in accordance with the terms and conditions of the respective permits. This notice is published in accordance with 40 CFR 71.11(l)(7), which requires notice of any final agency action regarding a Federal operating permit to be published in the **Federal Register**.

The Federal part 71 operating permits issued by EPA to the facilities identified above incorporate all applicable air quality requirements and require monitoring to ensure compliance with these requirements. Submittal of periodic reports of all required monitoring, as well as submittal of an annual compliance certification, are also required. The Federal operating permits have a term not to exceed five years, and a timely and complete application for permit renewal must be submitted to EPA prior to permit expiration in order to continue operation of the permitted source.

The provisions of 40 CFR part 71 govern issuance of these permits. EPA published a notice and opportunity to comment in a newspaper of general circulation in the area of the facility for each permit issued. In accordance with the requirements of 40 CFR 71.11(j), EPA responded to all comments received on these permits. Pursuant to 40 CFR 71.11(i), EPA provided copies of the final permits to the applicant and each person who submitted written comments on a permit or requested notice of the final permit decision. No one petitioned for a review of any of the final permits by the Environmental Appeals Board within 30 days of receipt of the final permits in accordance with 40 CFR 71.11(l). Thus, pursuant to 40 CFR 71.11(i) and (l) the listed permits became final on the dates indicated in the table above. Since no one petitioned the Environmental Appeals Board within 30 days of receipt of the final permits, and such an action is a prerequisite to seeking judicial review of final agency action (see 40 CFR 71.11(l)(4)), the 24 final permits issued to the facilities listed in Table 1 are not subject to the judicial review process provisions of section 307(b) of the Clean Air Act.

40 CFR 71.11(l)(7) requires notice of any final agency action regarding a federal operating permit to be published in the **Federal Register**. This notice satisfies that requirement.

Dated: June 17, 2005.

**Kerrigan G. Clough,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 05–12709 Filed 6–27–05; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7928–1]**

## Notice of Availability of ''Award of Grants and Cooperative Agreements for the Special Projects and Programs Authorized by the Agency's FY 2005 Appropriations Act''

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of document availability.

**SUMMARY:** EPA is announcing the availability of a memorandum entitled ''Award of Grants and Cooperative Agreements for the Special Projects and Programs Authorized by the Agency's Fiscal Year (FY) 2005 Appropriations Act.'' This memorandum provides information and guidelines on how EPA will award and administer grants for the special projects and programs identified in the State and Tribal Assistance Grants (STAG) account of the Agency's FY 2005 Appropriations Act (Pub. L. 108–447). The STAG account provides budget authority for funding identified water, wastewater and groundwater infrastructure projects, as well as budget authority for funding the United States-Mexico Border Program, the Alaska Rural and Native Villages Program, and the Long Island Sound Restoration Program. Each grant recipient will receive a copy of this document from EPA.

**ADDRESSES:** The subject memorandum may be viewed and downloaded from EPA's homepage, *http://www.epa.gov/owm/mab/owm0329.pdf.*

**FOR FURTHER INFORMATION CONTACT:** Benjamin J. Hamm, (202) 564–0648 or *hamm.ben@epa.gov.*

Dated: June 13, 2005.

**James A. Hanlon,**

*Director, Office of Wastewater Management.*

[FR Doc. 05–12707 Filed 6–27–05; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7929–2]**

## Notice of Meeting of the EPA's Children's Health Protection Advisory Committee (CHPAC)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the next meeting of the Children's Health Protection Advisory Committee (CHPAC) will be held July 12–14, 2005 at the Hotel Washington, Washington, DC. The CHPAC was created to advise the Environmental Protection Agency on science, regulations, and other issues relating to children's environmental health.

**DATES:** The Science and Regulatory Work Groups will meet Tuesday, July 12. Plenary sessions will take place Wednesday, July 13 and Thursday, July 14.

**ADDRESSES:** Hotel Washington, 515 15th Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Contact Joanne Rodman, Office of Children's Health Protection, USEPA, MC 1107A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–2188, *rodman.joanne@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The meetings of the CHPAC are open to the public. The Science and Regulatory Work Groups will meet Tuesday, July 12 from 9 a.m. to 5 p.m. The plenary CHPAC will meet on Wednesday, July 13 from 9 a.m. to 5:30 p.m., with a public comment period at 5 p.m., and on Thursday, July 14 from 9 a.m. to 11:45 a.m.

The plenary session will open with introductions and a review of the agenda and objectives for the meeting. Agenda items include highlights of the Office of Children's Health Protection (OCHP) activities and a presentation on EPA's Voluntary Children's Chemical Evaluation Program (VCCEP). Other potential agenda items include a presentation on Human Testing Policy.

Dated: June 22, 2005.

**William H. Sanders,**

*Acting Director, Office of Children's Health Protection.*

### Draft Agenda

*Tuesday, July 12, 2005*

Work Group Meetings

*Wednesday, July 13, 2005*

9 Welcome, Introductions, Review Meeting Agenda
9:15 Highlights of Recent OCHP Activities
9:45 Science Work Group Status Report
10:45 Discussion: Climate Change Comment Letter
12 Lunch
1:30 Presentation: EPA's Voluntary Children's Chemical Evaluation Program
2:15 Regulatory Work Group Status Report
3:30 Discussion: Regulatory Work Group Comment Letters
5 Public Comment
5:30 Adjourn for the Day

*Thursday, July 14, 2005*

9 Discussion of Day One
9:15 Presentation: ANPRM on Human Testing Policy
10 Discuss and Agree on Recommendations
11:45 Wrap Up/Next Steps

[FR Doc. 05–12708 Filed 6–27–05; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7929–8]**

## Notice of a Public Meeting: Expert Panel Workshop on Lead in Plumbing Fittings and Fixtures

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of public meeting.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is convening an expert panel workshop to discuss issues associated with the Lead and Copper Rule (LCR). This workshop will examine and discuss potential issues associated with lead in plumbing fittings and fixtures, including their potential to leach lead into water, existing standards and test protocols, utility challenges, and manufacturer perspectives.

**DATES:** The workshop on Lead in Plumbing Fittings and Fixtures will be held on Tuesday, July 26, 2005, 8 a.m. to 5 p.m., eastern time (ET) and Wednesday, July 27, 2005, 8 a.m. to 3 p.m. (ET).

**ADDRESSES:** The workshop will be held at the Washington Marriott, 1221 22nd Street, NW., Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** The Safe Drinking Water Hotline at 1–800–426–4791, Monday through Friday between 9 a.m. and 5 p.m. (ET), to register for this workshop as an observer. There is no charge for attending this workshop, but seats are limited, so register as soon as possible. For administrative meeting information, call Brian Murphy, HDR/ Economic and Engineering Services, Inc., at 503–223–3033 or by e-mail at *brian.murphy@hdrinc.com.* For technical information, contact Kira Smith, Office of Ground Water and Drinking Water, U.S. EPA, 1200 Pennsylvania Ave., NW., (MC 4607M), Washington, DC 20460, at 202–564–1629, or by e-mail at *smith.kira@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Members of the public may attend as observers at the workshop and provide comments during a designated 60-minute period on Tuesday, July 26, 2005. Individual oral comments should be limited to no more than 5 minutes and it is preferred that only one person present the statement on behalf of a group or organization. Written comments may be provided at the meeting or may be sent to Kira Smith at the mail or e-mail addresses listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

### Special Accommodations

Any person needing special accommodations at this meeting, including wheelchair access, should contact Brian Murphy at the number or email address listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Requests for special accommodations should be made at least five days in advance of the workshop.

Dated: June 22, 2005.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 05–12714 Filed 6–27–05; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7929–4]**

## Science Advisory Board Staff Office; Notification of an Upcoming Science Advisory Board Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces a public teleconference meeting of the chartered SAB to discuss two draft SAB reports.

**DATES:** July 13, 2005, 3–5 p.m. (eastern time).

**ADDRESSES:** The meeting for this review will be held by telephone only.

**FOR FURTHER INFORMATION CONTACT:** Members of the public who wish to obtain further information regarding this teleconference meeting may contact Mr. Thomas O. Miller, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board via phone (202–343–9982) or e-mail at *miller.tom@epa.gov.*

The SAB Mailing address is: U.S. EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meeting announced in this notice, may be found on the SAB Web site at: *http://www.epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:** The purpose of this SAB telephone conference meeting is to conduct a final public review and discussion of two draft SAB reports. One is *Identifying and Calculating Economic Benefit That Goes Beyond Avoided and/or Delayed Costs: An SAB Advisory* and the other is *Advisory Review of EPA's Draft Ecological Benefits Assessment Strategic Plan; An Advisory by the SAB Committee on Valuing the Protection of Ecological Systems and Services.* The focus of the meeting is to consider whether: (i) The original charge questions to the SAB review panel have been adequately addressed in the draft report; (ii) the draft report is clear and logical; (iii) the conclusions drawn, or recommendations made in the draft report, are supported by the body of the report; and (iv) if there are any obvious technical errors, omissions, or issues that are inadequately dealt with in the draft report.

1. *Illegal Competitive Advantage (ICA) Background Information*—EPA's Office of Enforcement and Compliance Assurance (OECA) requested that the EPA Science Advisory Board review the OECA White Paper entitled Identifying and Calculating Economic Benefit that Goes Beyond Avoided and/or Delayed Costs, dated May 25, 2003. The White Paper addressing ''illegal competitive advantage'' (ICA) issues is related to EPA's policy of recapturing violators' economic benefit from environmental noncompliance. Most of the Agency's cases involving this type of economic benefit focus on the financial gain that arises from delayed and/or avoided pollution control costs. In these situations, the Agency calculates the economic benefit using the Benefits

(BEN) computer model. EPA's White Paper provides an approach to capture economic benefits from situations that are not covered by the BEN model's focus on avoided and/or delayed expenditures. Accordingly, the SAB Staff Office formed an Ad Hoc Panel to review the EPA White Paper. This was announced in a notice in the **Federal Register** of August 6, 2003 (68 FR 46604) in which the SAB Staff Office solicited nominations for Panel membership. The Panel held several meetings to discuss and draft its advisory as announced in **Federal Register** notices published on June 25, 2004 (69 FR 35599) and January 6, 2005 (70 FR 1244). The SAB ICA Quality Review Committee reviewed the draft report resulting from the SAB review at its meeting on April 29, 2005 (70 FR 17688). These notices can be found on the SAB Web site at: *http://www.epa.gov/sab/panels/icaebapanel.html.*

2. *Background on the Advisory Report on EPA's draft Ecological Benefits Assessment Strategic Plan.* EPA's Office of Policy, Economics and Innovation, representing an Agency workgroup charged with drafting an Ecological Benefits Assessment Strategic Plan for the Agency, requested that the SAB Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS) conduct an advisory review of the draft plan (draft review document available on the Web at *http://yosemite.epa.gov/ee/epa/eed.nsf/Webpages/SABReview.html).* The C-VPESS held a public advisory meeting on January, 25, 2005 to be briefed and to deliberate on the draft plan and related charge questions and approved a consensus draft of the advisory report at a public meeting on April 12–13, 2005. Notices of those public meetings were published in the **Federal Register** (70 FR 1244; 70 FR 15085–15086).

*Availability of Review Material for the Board Meeting:* The Draft reports that are the subject of this meeting are available on the SAB Web site at: *http://www.epa.gov/sab/panels/icaebapanel.html.*

*Procedures for Public Comment:* The SAB Staff Office accepts written public comments of any length, and accommodates oral public comments whenever possible. The SAB Staff Office expects that public statements presented at SAB meetings will not repeat previously submitted oral or written statements. Oral Comments: In general, each individual or group requesting an oral presentation at a teleconference meeting will usually be limited to no more than three minutes per speaker, and no more than fifteen minutes total. Interested parties should contact the DFO noted above in writing via e-mail at least one week prior to the meeting to be placed on the public speaker list for the meeting. Speakers should provide an electronic copy of their comments to the DFO for distribution to interested parties and participants in the meeting. Written Comments: Although written comments are accepted until the date of the meeting, written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format).

Dated: June 21, 2005.

**Anthony F. Maciorowski,**

*Acting Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 05–12710 Filed 6–27–05; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7929–5]**

### Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 6922(h)(1), notice is hereby given of a proposed administrative settlement concerning the Custom Plating Superfund Site (Site). The Site is located within a warehouse complex at 3215 Peachtree, Suite 138, Balch Springs, Dallas County, Texas.

The settlement requires the Settling Party Peachtree Assets to pay a total of $120,000.00 for reimbursement of past response costs to the EPA Hazardous Substance Superfund. The settlement includes a covenant not to sue which includes, but is not limited to: (1) Any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund pursuant to sections 106(b)(2), 107, 111, 112, and 113 of CERCLA, 42 U.S.C. 9606(b)(2), 9607, 9611, 9612, or 9613; (2) any claim arising out of the response actions at or in connection with the Site; and, (3) any claim against the United States pursuant to sections 107 and 113 of CERCLA, 42 U.S.C. 9607 and 9613, relating to the Site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733.

**DATES:** Comments must be submitted on or before July 28, 2005.

**ADDRESSES:** The proposed settlement and additional background information relating to the settlement are available for public inspection at 1445 Ross Avenue, Dallas, Texas 75202–2733. A copy of the proposed settlement may be obtained from Dan Hochstetler, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–6569. Comments should reference the Custom Plating Superfund Site, Balch Springs, Texas, EPA Docket Number CERCLA 6–09–05 and should be addressed to Dan Hochstetler at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Gloria Moran, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–3193.

Dated: June 20, 2005.

**Richard E. Greene,**

*Regional Administrator, Region 6.*

[FR Doc. 05–12711 Filed 6–27–05; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies

owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 22, 2005.

A. **Federal Reserve Bank of New York** (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

*1. The Adirondack Trust Company Employee Stock Ownership Trust*, Saratoga Springs, New York; to acquire 50 additional voting shares of 473 Broadway Holding Corporation, and to acquire 1000 additional shares of The Adirondack Trust Company, both of Saratoga Springs, New York.

B. **Federal Reserve Bank of Chicago** (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. Generations Bancorp, Inc.*, Waukesha, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Foundations Bank (in organization), Waukesha, Wisconsin.

Board of Governors of the Federal Reserve System, June 22, 2005.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 05–12700 Filed 6–27–05; 8:45 am]

**BILLING CODE 6210–01–S**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement AA161]**

### LIVE STRONG Cancer Survivorship Resource Center Notice of Intent To Fund Single Eligibility Award

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2005 funds for a cooperative agreement program to support the development and the expansion of the Lance Armstrong Foundation's (LAF) ''LIVE STRONG'' Program by enhancing the ''LIVE STRONG'' Cancer Survivorship Resource center to serve as a national resource for cancer patients, survivors, and their family and friends. The successful implementation of the program will result in the LAF developing, implementing and evaluating the LIVE STRONG Cancer Survivorship Resource Center. This initiative does not duplicate the National Cancer Institute's (NCI) efforts but is intended to complement NCI's LIVE STRONG efforts because of the strategies, channels, or other assets the LAF provides. The Catalog of Federal Domestic Assistance number for this program is 93.283.

**B. Eligible Applicant**

Assistance will be provided only to the Lance Armstrong Foundation as cited in the Departments of Labor, Health and Human Services, and Education and Related Appropriations Bill, 2005, Senate Report No. 108–345, September 15, 2004.

Congressional language directs CDC to provide the funding to LAF. The specific language is as follows: ''The Committee applauds the partnership between CDC and the Lance Armstrong Foundation [LAF] to address the needs of the nearly 10 million cancer survivors by expanding the agency's State-based comprehensive cancer control program to include issues of survivorship, as outlined in the recently released National Action Plan for Cancer Survivorship. The Committee supports the development and expansion of Live Strong to serve as a national resource for cancer patients, survivors, and their family and friends. Therefore, the Committee provides $1,000,000 to enhance the Live Strong cancer survivorship resource center.''

In 2004 CDC and LAF joined forces to lead a public health effort to address the issues faced by the growing number of cancer survivors, caregivers, and their families. Through this collaboration *A National Action Plan for Cancer Survivorship: Advancing Public Health Strategies* was developed. LAF continues to serve as a cornerstone bridging cancer survivorship and public health. The FY 2005 Senate Report recognized the unique work of the LAF through its ''LIVE STRONG'' program and directed CDC to provide funding to the LAF to enhance their ''LIVE STRONG'' initiative in support of *A National Action Plan for Cancer Survivorship: Advancing Public Health Strategies.* The *LAF* is in a unique position to educate people living with cancer, their friends and family, and health care professionals about battling cancer. This funding assistance to LAF will enhance a previously established resource center that assists individuals' understanding of some of the physical, emotional and practical issues that may be part of dealing with the disease. Sharing knowledge and support through this unique resource will help people fighting cancer and their loved ones.

**C. Funding**

Approximately $730,000 is available in FY 2005 to fund this award August 31, 2005 and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

**D. Where To Obtain Additional Information**

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Steven L. Reynolds, MPH, Project Officer, Associate Director for Program and Policy, Division of Cancer Prevention and Control, 4770 Buford Highway, NE., Mailstop K–56, Atlanta, GA 30341, Telephone: 770–488–4260, E-mail: *RLReynolds@cdc.gov.*

Dated: June 22, 2005.

**William P. Nichols,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 05–12694 Filed 6–27–05; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Board of Scientific Counselors Meeting, National Institute for Occupational Safety and Health (NIOSH)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

*Name:* Board of Scientific Counselors (BSC), NIOSH.

*Time and Date:* 10 a.m.–3:30 p.m., July 21, 2005.

*Place:* National Institute for Occupational Safety and Health, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people. Visiting members of the public must present valid identification (U.S. Federal ID, State Driver's License, or other State-sanctioned ID) for entry to Taft Laboratories and must be escorted by facility staff at all times while inside the facility.

*Purpose:* The Secretary, Department of Health and Human Services; the Assistant Secretary for Health; and by delegation the Director, Centers for Disease Control and Prevention, are authorized under Sections 301 and 308 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors shall provide guidance to the Director, NIOSH, on research and preventions programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of NIOSH: (1) Conform to appropriate scientific standards, (2) address current, relevant needs, and (3) produce intended results.

*Matters To be Discussed:* Agenda items include a report from the Director of NIOSH; progress reports by BSC working groups on the National Occupational Research Agenda and the health hazard evaluation program, NIOSH emergency/terrorism preparedness, a tour of the Taft Laboratories, and closing remarks.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Roger Rosa, Executive Secretary, BSC, NIOSH, CDC, 200 Independence Avenue, SW., Room 715H, Washington, DC 20201, telephone (202) 205–7856, fax (202) 260–4464.

The Director, Management Analysis and Services Office, has been delegated the authority to sign Federal Register notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: June 22, 2005.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 05–12689 Filed 6–27–05; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2001D–0262] (formerly Docket No. 01–0262)**

### Draft ''Guidance for Food and Drug Administration Reviewers: Premarket Notification Submissions for Automated Testing Instruments Used in Blood Establishments;'' Withdrawal of Guidance

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; withdrawal.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the withdrawal of a draft guidance that was issued on August 3, 2001.

**DATES:** June 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Paul E. Levine, Jr., Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of August 3, 2001 (66 FR 40708), FDA announced the availability of a draft document entitled ''Guidance for FDA Reviewers: Premarket Notification Submissions for Automated Testing Instruments Used in Blood Establishments.'' This draft guidance is being withdrawn because it no longer reflects the following: (1) All of the information FDA reviewers should expect to be included in a premarket notification submitted to the Center for Biologics Evaluation and Research for such devices and (2) the recommended approach FDA reviewers should take in reviewing premarket submissions for automated instruments testing used in blood establishments. In the future, FDA may issue for public comment draft special control guidances on instrumentation for blood borne pathogen donor screening and immunohematology testing.

Dated: June 20, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–12763 Filed 6–27–05; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2005D–0240]**

### Draft Guidance for Industry on Gingivitis: Development and Evaluation of Drugs for Treatment or Prevention; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Gingivitis: Development and Evaluation of Drugs for Treatment or Prevention.'' The draft guidance is intended to assist sponsors in developing clinical trials for drug products that treat or prevent gingivitis. It addresses specific protocol design elements as well as general concerns about drugs for this indication.

**DATES:** Submit written or electronic comments on the draft guidance by August 29, 2005. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

**FOR FURTHER INFORMATION CONTACT:** Frederick Hyman, Center for Drug Evaluation and Research (HFD–540), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2020.

**SUPPLEMENTARY INFORMATION:**

### I. Background

FDA is announcing the availability of a draft guidance for industry entitled

''Gingivitis: Development and Evaluation of Drugs for Treatment or Prevention.'' This guidance is intended to assist sponsors in developing clinical trials for drug products that treat or prevent gingivitis.

Gingivitis, an inflammation of the soft tissues that surround the teeth, is a part of the wider classification of periodontal diseases, which include gingivitis at the milder end and periodontitis at the more severe end. In 1986, FDA approved Peridex (0.12% chlorhexidine gluconate rinse), the first prescription product for gingivitis. In 1997, Colgate's Total toothpaste (0.30% triclosan, 0.24% sodium fluoride) was approved through the new drug application (NDA) process as an over-the-counter (OTC) dentifrice that also has a gingivitis indication. During the past several decades, many products have also entered the marketplace as OTC products that were purported to treat or prevent gingivitis. As a result of the proliferation and promotion of those products, the agency convened a subcommittee of the Dental Products Panel (the Subcommittee) in 1993 to evaluate OTC products that make gingivitis and related claims and that were in the marketplace without an NDA. The Subcommittee's charge was to review the submitted data and to report its findings on the safety and effectiveness of OTC ingredients for the reduction or prevention of gingivitis. On May 29, 2003, a final subcommittee report was published in the **Federal Register** (68 FR 32232) as an advance notice of proposed rulemaking, the first step in establishing an OTC monograph for these drug products.

Unlike the NDA process that consists of a review of the entire drug product, the monograph process reviews only active ingredients in the class of drug products for safety and efficacy. Until the monograph is finalized, only gingivitis products containing active ingredients that were marketed in the United States before 1975 can continue to be marketed. Any manufacturer attempting to enter the marketplace with a gingivitis product containing an active ingredient that has no prior marketing history in the United States should either petition the developing monograph to consider its inclusion or submit a new NDA for approval before marketing. Sponsors of OTC antigingivitis drugs with active ingredients that the Subcommittee classified as needing further information to make a decision are encouraged to submit further data for review. As a result of these actions, FDA is publishing this guidance document on the development of antigingivitis drugs. The guidance is intended to aid drug sponsors in developing clinical trials either for submitting additional information to the antigingivitis rulemaking, or for gaining approval for a new antigingivitis drug through the NDA process.

This guidance document provides assistance in several ways. It addresses specific design elements such as choosing inclusionary and exclusionary criteria, selecting relevant endpoints, assessing gingivitis, determining the clinical significance of the effect, and collecting meaningful safety data. It also provides comments on general concerns (e.g., prevention versus treatment claims, OTC versus prescription status, special population enrollment, and nonclinical development issues related to products that are intended for administration within the oral cavity for the treatment or prevention of gingivitis).

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the development and evaluation of drugs for treatment or prevention of gingivitis. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

## II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

## III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: June 22, 2005.

**Jeffrey Shuren,**

*Assistant Commissioner for Policy.*

[FR Doc. 05–12764 Filed 6–27–05; 8:45 am]

BILLING CODE 4160–01–S

# DEPARTMENT OF HOMELAND SECURITY

## Office of the Under Secretary for Management; Notice of Availability of Alternative Fuel Vehicle Report for Fiscal Year 2004

**AGENCY:** Office of the Under Secretary for Management, Department of Homeland Security.

**ACTION:** Notice.

**SUMMARY:** The Department of Homeland Security, Office of the Under Secretary for Management, is issuing this notice in order to comply with the Energy Policy Act of 1992 and 42 U.S.C. 13218(b). The purpose of this notice is to announce the public availability of the Department of Homeland Security's Alternative Fuel Vehicle (AFV) Report for Fiscal Year 2004 at the following Web site: *http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0620.xml.*

**FOR FURTHER INFORMATION CONTACT:** Questions regarding AFV reports on the Department of Homeland Security Web site should be addressed to the Department of Homeland Security, Fleet and Transportation Program Manager (Attn: Steven Sosson), Washington, DC 20528, telephone 202–692–4226.

**Janet Hale,**

*Under Secretary for Management, Department of Homeland Security.*

[FR Doc. 05–12748 Filed 6–27–05; 8:45 am]

BILLING CODE 4110–10–P

# DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

**[CGD17–05–009]**

## Application for Recertification of Cook Inlet Regional Citizens' Advisory Council

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Coast Guard announces the availability of and seeks comments on the application for recertification submitted by the Cook Inlet Regional Citizen's Advisory Council (CIRCAC) for September 1, 2005, through August 31, 2006. Under the Oil Terminal and Tanker Environmental Oversight Act of 1990, the Coast Guard may certify on an annual basis, an alternative voluntary advisory group in lieu of a Regional Citizens' Advisory Council for Cook Inlet, Alaska. The current certification for CIRCAC will expire August 31, 2005.

**DATES:** Public comments on CIRCAC's recertification application must reach the Seventeenth Coast Guard District on or before August 12, 2005.

**ADDRESSES:** Comments should be mailed to the Seventeenth Coast Guard District (mor), P.O. Box 25517, Juneau, AK 99802–5517. Or, hand carried documents may be delivered to the Juneau Federal Building, 709 West 9th Street, Room 753, Juneau, AK between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

The Seventeenth Coast Guard District maintains the public docket for this recertification process. The application and comments regarding recertification will become part of this docket and will be available for inspection or copying at the Juneau Federal Building, 709 West 9th Street, Room 753, Juneau, AK.

A copy of the application will also be available for inspection at the CIRCAC offices at 910 Highland Avenue, Kenai, AK between the hours of 8 a.m. and 5 p.m., Monday through Friday, except federal holidays. CIRCAC's telephone number is (907) 283–7222.

**FOR FURTHER INFORMATION CONTACT:** For questions on viewing or submitting material to the docket, contact CDR Chris Myskowski, Seventeenth Coast Guard District (mor), (907) 463–2804.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments. We solicit comments from interested groups including oil terminal facility owners and operators, owners and operators of crude oil tankers calling at terminal facilities, and fishing, aqua cultural, recreational and environmental citizens groups, concerning the recertification application of CIRCAC. Persons submitting comments should include their names and addresses, identify this notice (CGD17–05–009), the specific section of the document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander (m), Seventeenth Coast Guard District, P.O. 25517, Juneau, AK 99802–5517. The request should include reasons why a hearing would be beneficial. If there is sufficient evidence to determine that oral presentations will aid this recertification process, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

The Coast Guard published guidelines on December 31, 1992 (57 FR 62600) to assist groups seeking recertification under the Oil Terminal and Oil Tanker Environmental Oversight and Monitoring Act of 1990 (33 U.S.C. 2732) (the Act). The Coast Guard issued a policy statement on July 7, 1993 (58 FR 36504) to clarify the factors that the Coast Guard would be considering in making its determination as to whether advisory groups should be certified in accordance with the Act; and the procedures which the Coast Guard would follow in meeting its certification responsibilities under the Act. Most recently, on September 16, 2002 (67 FR 58440) the Coast Guard changed its policy on recertification procedures for regional citizen's advisory council by requiring applicants to provide comprehensive information every 3 years. For the 2 years in between, applicants only submit information describing substantive changes to the information provided at the last triennial recertification. This is the year in this triennial cycle that CIRCAC must provide comprehensive information.

At the conclusion of the comment period, August 12, 2005, the Coast Guard will review all application materials and comments received and will take one of the following actions:

(a) Recertify the advisory group under 33 U.S.C. 2732(o).

(b) Issue a conditional recertification for a period of 90 days, with a statement of any discrepancies, which must be corrected to qualify for recertification for the remainder of the year.

(c) Deny recertification of the advisory group if the Coast Guard finds that the group is not broadly representative of the interests and communities in the area or is not adequately fostering the goals and purposes of 33 U.S.C. 2732.

The Coast Guard will notify CIRCAC by letter of the action taken on their respective applications. A notice will be published in the **Federal Register** to advise the public of the Coast Guard's determination.

Dated: June 14, 2005.

**James C. Olson,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventeenth Coast Guard District.*

[FR Doc. 05–12729 Filed 6–27–05; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

**[COTP Los Angeles-Long Beach 05–005]**

## Letter of Recommendation, Liquefied Natural Gas Facility, Long Beach, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice; public meeting and request for comments.

**SUMMARY:** The Coast Guard announces that the Captain of the Port (COTP) Los Angeles-Long Beach will hold a public meeting regarding the maritime safety and security aspects of the proposed San Pedro Bay, California liquefied natural gas (LNG) facility. The Coast Guard also requests public comments regarding the maritime safety and security aspects of the aforementioned proposed LNG facility.

**DATES:** The public meeting will be held on July 11, 2005 at 6 p.m. at the Long Beach Marriott Hotel.

Comments and related material must reach the Commanding Officer, U.S. Coast Guard Sector Los Angeles-Long Beach on or before July 27, 2005.

**ADDRESSES:** The public meeting will be held at the Long Beach Marriott Hotel, 4700 Airport Plaza Drive, Long Beach, CA 90815.

You may submit written comments identified by Coast Guard docket number (COTP LA–LB 05–005) to Commanding Officer, U.S. Coast Guard Sector Los Angeles-Long Beach, 1001 S. Seaside Ave, San Pedro, CA 90731. To avoid duplication, please use only one of the following methods:

(1) Mail: To the location described in **ADDRESSES**.

(2) E-mail: To *pgooding@d11.uscg.mil.*

(3) Fax: 310–732–2029.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this notice, contact Lieutenant Peter Gooding, Chief of the Waterways Management Division at Coast Guard Sector Los Angeles-Long Beach, CA at 310–732–2020, or E-mail your questions to *pgooding@d11.uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to submit written comments and related material pertaining specifically to marine safety and security aspects associated with the proposed LNG facility. If you do so, please include your name and address, identify the docket number for this notice (COTP LA–LB 05–005), and give the reason for each comment. To avoid

confusion and duplication, please submit your comments and material by only one means.

*Submitting Comments:* If you submit a comment, please include your name and address, identify the docket number for this noticed (COTP LA–LB 05–005) and give the reason for each comment. You may submit your comments by electronic means, mail to the address under **ADDRESSES**, or fax; but please submit your comments by only one means. If you submit comments by mail, please 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 U.S. Coast Guard Sector Los Angeles-Long Beach, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period.

*Viewing comments and documents:* To view comments, you may visit U.S. Coast Guard Sector Los Angeles-Long Beach at the address under **ADDRESSES**, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

## Public Meeting

Due to the scope and complexity of this project, we have also decided to hold a public meeting to allow the public the opportunity to comment on the proposed LNG facility. During this public meeting, the Coast Guard will not make a decision concerning the letter of recommendation or about this LNG project. With advance notice, organizations and members of the public may provide oral statements regarding the suitability of the San Pedro Bay for LNG vessel traffic. Time permitting, the Coast Guard will take comments from the public without advance notice. But to ensure an opportunity to speak, you should provide your name in advance. In the interest of time and use of the public meeting facility, oral statements should be limited to five minutes. Persons wishing to make oral statements should notify Lieutenant Peter Gooding using one of the methods listed under **FOR FURTHER INFORMATION CONTACT** by July 8, 2005. The Coast Guard will accept written statements at the public meeting submitted in conjunction with or in lieu of an oral statement from those persons who have provided advance notice of their desire to make an oral statement at the meeting.

## Background and Purpose

In accordance with the requirements contained in 33 CFR Part 127.009, the U.S. Coast Guard Captain of the Port (COTP) Los Angeles-Long Beach is preparing a letter of recommendation as to the suitability of the San Pedro Bay for liquefied natural gas (LNG) marine traffic. In accordance with the requirements of 33 CFR 127.007, Sound Energy Solutions (SES) submitted a letter of intent on April 13, 2005 to build an LNG facility at Pier T126 in Long Beach, CA. SES is a joint venture of Mitsubishi Corporation and ConocoPhillips. SES proposes to build an LNG import, storage, and re-gasification facility. LNG carriers (ships) would berth at pier T126 and LNG would be transferred by pipeline from the carriers to one of two storage tanks, each with a net capacity of 160,000 cubic meters (m3) and a gross capacity of 320,000 m3. The LNG would then be regasified and metered into natural gas pipelines. LNG would be delivered to the terminal in double-hulled LNG carriers ranging in capacity from 125,000 m3 to 160,000 m3. The larger carriers would measure up to approximately 1000 feet long with up to approximately a 158 foot wide beam, and draw 40 feet of water. The terminal would handle approximately 120 vessels per year, depending upon natural gas demand, and carrier size, with shipments arriving approximately every 3 days.

Upon receipt of a letter of intent from an owner or operator intending to build a new LNG facility, the Coast Guard COTP conducts an analysis that results in a letter of recommendation issued to the owner or operator and to the state and local governments having jurisdiction, addressing the suitability of the waterway to accommodate LNG vessels. Specifically, the letter of recommendation addresses the suitability of the waterway based on:

- The physical location and layout of the facility and its berthing and mooring arrangements;
- The LNG vessels' characteristics and the frequency of LNG shipments to the facility;
- Commercial, industrial, environmentally sensitive, and residential areas in and adjacent to the waterway used by the LNG vessels en route to the facility;
- Density and character of marine traffic on the waterway;
- Bridges, or other manmade obstructions in the waterway;
- Depth of water;
- Tidal range;
- Natural hazards, including rocks and sandbars;
- Underwater pipelines and cables;
- Distance of berthed LNG vessels from the channel, and the width of the channel.

In addition, the Coast Guard will review and approve the facility's operations manual and emergency response plan (33 CFR 127.019), as well as the facility's security plan (33 CFR 105.410). The Coast Guard will also provide input to other Federal, State, and local government agencies reviewing the project. Under an interagency agreement the Coast Guard will provide input to, and coordinate with, the Federal Energy Regulatory Commission (FERC), the lead Federal agency for authorizing the siting and construction of onshore LNG facilities, on safety and security aspects of the Sound Energy Solutions project, including both the marine and land-based aspects of the project.

In order to complete a thorough analysis and fulfill the regulatory mandates cited above, the COTP Sector Los Angeles-Long Beach will be conducting a Waterway Suitability Assessment, evaluating various safety and security aspects associated with Sound Energy Solution's proposed project. This risk assessment will be accomplished through a series of workshops focusing on the areas of waterways safety, port security, and consequence management, with involvement from a broad cross-section of government and port stakeholders with expertise in each of the respective areas. The workshops will be by invitation only. However, comments received during the public comment period will be considered as input into the risk assessment process and to FERC's Environmental Impact Statement.

## Additional Information

Additional information about the Sound Energy Solutions LNG project is available from FERC's Office of External Affairs at 1–866–208–FERC or on the FERC Internet Web site *(http://www.ferc.gov)* using their eLibrary link. For assistance, please contact FERC online support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY contact 1–202–502–8659.

## Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request assistance at the meeting, contact Lieutenant Peter Gooding listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: June 20, 2005.

**Commander David Crowley,**

*Commander, U.S. Coast Guard, Acting Captain of the Port Los Angeles-Long Beach.*

[FR Doc. 05–12732 Filed 6–27–05; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency (FEMA) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

*Title:* Community Rating System (CRS) Program Application Worksheets and Commentary.

*OMB Number:* 1660–0022.

*Abstract:* The Community Ratings System (CRS), designed by the Federal Emergency Management Agency as part of the National Flood Insurance Program (NFIP), provides flood insurance premium discounts to communities that undertake activities that will mitigate flooding and flood damage beyond the minimum standards required by the NFIP. Communities select approved activities they want to get credit for either as a first time or continuing participant.

*Affected Public:* State, local or tribal governments.

*Number of Respondents:* 1,200 respondents/communities.

*Estimated Time per Respondent:* 31 hours for the Application and 4 hours for the Annual Recertification for a total of 35 hours.

*Estimated Total Annual Burden Hours:* 11,280 hours.

*Frequency of Response:* Annually.

*Comments:* Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs at OMB, Attention: Desk Officer for the Department of Homeland Security/FEMA, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or facsimile number (202) 395–7285. Comments must be submitted on or before July 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to: Section Chief, Records Management, FEMA at 500 C Street, SW., Room 316, Washington, DC 20472, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

Dated: June 20, 2005.

**George S. Trotter,**

*Acting Branch Chief, Information Resources Management Branch, Information Technology Services Division.*

[FR Doc. 05–12678 Filed 6–27–05; 8:45 am]

BILLING CODE 9110–11–P

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1532–DR]**

### Northern Mariana Islands; Amendment No. 3 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster for the Commonwealth of the Northern Mariana Islands (FEMA–1532–DR), dated July 29, 2004, and related determinations.

**DATES:** *Effective Date:* June 16, 2005.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that special conditions are warranted regarding the cost sharing arrangements concerning Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). Therefore, consistent with 48 U.S.C. 1469a(d), pertaining to insular areas, and the President's declaration letter dated July 29, 2004, Federal funds for the Hazard Mitigation Grant Program are authorized at 100 percent of total eligible costs for the Commonwealth of the Northern Mariana Islands. This cost share is effective as of the date of the President's major disaster declaration.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 05–12677 Filed 6–27–05; 8:45 am]

BILLING CODE 9110–10–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4971–N–33]**

### Notice of Submission of Proposed Information Collection to OMB; Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Upon a denial by the Office of Inspector General of a request for documents or testimony, a petitioner may submit a written Notice of Intention to Petition for Review (Notice) and Petition for Review (Petition) detailing the issues and reasons why a review of the Counsel's decision is appropriate. Upon request or demand of documents or testimony, the Counsel for the Inspector General will review the demand and determine whether an OIG employee is authorized to release documents or testify. The Counsel will notify the requester of the final determination and the reasons for the grant or denial of the request.

**DATES:** *Comments Due Date:* July 28, 2005.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer or from HUD's Web site at *http://hlannwp031.hud.gov/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

*Title of Proposal:* Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities

*OMB Approval Number:* 2535–Pending.

*Form Numbers:* None.

*Description of the Need for the Information and Its Proposed Use:*

Upon a denial by the Office of Inspector General of a request for documents or testimony, a petitioner may submit a written Notice of Intention to Petition for Review (Notice) and Petition for Review (Petition) detailing the issues and reasons why a review of the Counsel's decision is appropriate. Upon request or demand of documents or testimony, the Counsel for the Inspector General will review the demand and determine whether an OIG employee is authorized to release documents or testify. The Counsel will notify the requester of the final determination and the reasons for the grant or denial of the request.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| Reporting Burden: | 8 | 2 | | 5 | | 80 |

*Total Estimated Burden Hours:* 80.

*Status:* Proposed new collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: June 20, 2005.

**Wayne Eddins,**

*Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.*

[FR Doc. E5–3337 Filed 6–27–05; 8:45 am]

**BILLING CODE 4210–27–P**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### American Indian Probate Reform Act of 2004

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Certification.

**SUMMARY:** The American Indian Probate Reform Act of 2004 requires the Secretary of the Interior to certify that we developed an informational notice about the Act and its provisions. The Act also requires the Secretary of the Interior to certify that we sent the notice to individual Indian holders of interest in trust or restricted land by direct mail, and published the notice in the **Federal Register** and newspapers. This certification fulfills this requirement.

**FOR FURTHER INFORMATION CONTACT:** Eufrona Snyder, Special Assistant—Trust Management, Office of Trust Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW., Washington, DC 20240, telephone number (202) 208–3614.

**SUPPLEMENTARY INFORMATION:** As required by the American Indian Probate Reform Act of 2004, the Secretary of the Interior has signed this certification and we are publishing it today to inform interested members of the public.

I, Gale A. Norton, in my capacity as Secretary of the Department of the Interior, herewith certify as follows: That consistent with the requirements of Public Law 108–374, the American Indian Probate Reform Act of 2004 (''AIPRA''), I have determined that the Department of the Interior has by April 25, 2005, provided notice designed to inform Indian owners of trust or restricted land of:

1. The changes to prior law made by this Act, with emphasis on changes made to testate disposition and interstate descent of their interests in trust or restricted land;

2. Estate planning options available to the owners, including any opportunities for receiving estate planning assistance or advice;

3. The use of other devices for consolidating land ownership, such as negotiated sales, gift deeds, and land exchanges; and

4. The toll-free call center telephone number for obtaining information regarding the provisions of the Act and any trust assets of such owners.

Further, such notice has been provided to individual Indian holders of interests in trust or restricted land and Individual Indian Money (IIM) account holders by direct mail in instances where the Bureau of Indian Affairs has a current mailing address; through the **Federal Register**, and through local newspapers in areas with significant Indian populations, reservation newspapers, and newspapers that are directed to an Indian audience. Notice was also given through the field offices delivering copies of notices to those Indian landowners and IIM account holders in their respective areas.

Dated: June 20, 2005.

**Gale A. Norton,**

*Secretary of the Interior.*

[FR Doc. 05–12731 Filed 6–27–05; 8:45 am]

**BILLING CODE 4310–W7–M**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Denali National Park and Preserve, Alaska; Revised Draft Backcountry Management Plan, General Management Plan Amendment and Environmental Impact Statement

**AGENCY:** National Park Service, Interior.

**ACTION:** Extension of the public comment period.

**SUMMARY:** The National Park Service (NPS) announces that the public comment period for the Revised Draft Backcountry Management Plan, General Management Plan Amendment, and Environmental Impact Statement for Denali National Park and Preserve, published in the **Federal Register** on Tuesday, April 26, 2005 (70 FR 103), has been extended to July 15, 2005. The original comment period was through June 30, 2005.

**DATES:** Comments on the revised draft plan and EIS will be accepted through July 15, 2005.

**ADDRESSES:** Written comments on the revised draft plan and EIS should be submitted to the Superintendent, Denali National Park and Preserve, Post Office Box 9, Denali Park, Alaska 99755.

**FOR FURTHER INFORMATION CONTACT:** Mike Tranel, Chief of Planning, Denali National Park and Preserve, 240 West 5th Avenue, Anchorage, Alaska 99501. Telephone (907) 644–3611, Fax (907) 644–3803.

#### Electronic Access and Filing Addresses

Submit electronic comments to *dena_bc_plan_comment@nps.gov.* The revised draft EIS may be viewed online by following the Revised Draft Backcountry Management Plan link on the Denali homepage at *http://www.nps.gov/dena.* Hard copies or CDs of the Revised Draft Backcountry Management Plan and General Management Plan Amendment and EIS are available by request from the aforementioned address.

Dated: June 22, 2005.

**Anne D. Castellina,**

*Acting Regional Director, Alaska Region.*

[FR Doc. 05–12750 Filed 6–27–05; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of Intent to Establish a Negotiated Rulemaking Advisory Committee.

**SUMMARY:** The Secretary of the Interior is giving notice of her intent to establish the Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area (GGNR) to negotiate and develop a special regulation (proposed rule) for dog management at Golden Gate National Recreation Area.

**FOR FURTHER INFORMATION CONTACT:** Brian O'Neill, Superintendent, Golden Gate National Recreation Area, Fort Mason, Building 201, San Francisco, California, 94123; 415–561–4720.

**DATES:** Interested persons are invited to comment on the proposal to create this Committee. In addition, any persons who believe that they will be affected significantly by the special regulation and who believe their interests will not be represented adequately by the persons identified in this Notice are invited to apply for or nominate another person for membership on the Committee. Each application must contain the information described in he ''Application for Membership'' section below. Applications or nominations for membership on the Committee must be received by close of business on July 28, 2005.

**ADDRESSES:** Comments and applications for membership must be submitted to Brian O'Neill, Superintendent, Golden Gate National Recreation Area, Fort Mason, Building 201, San Francisco, California 94123 (Attn: Negotiated Rulemaking Committee). As an alternative, comments and applications may be submitted by electronic mail to *GOGA__Reg__Neg@nps.gov.* Please Put ''Negotiated Rulemaking Committee'' in the subject line. Comments and applications received will be available for inspection at the address listed above from 8:30 a.m., to 4:30 p.m., p.s.t., Monday through Friday.

**SUPPLEMENTARY INFORMATION:** The establishment of this committee is in the public interest and supports the National Park Service (NPS) in performing its duties and responsibilities under the NPS Organic Act, 16 U.S.C. 1 *et. seq.,* the Endangered species Act, 16 U.S.C. 1531 *et seq.;* and the Golden Gate National Recreation Area Act, 16 U.S.C. 460bb *et seq.*

The Committee will negotiate to reach consensus on concepts and language to use as the basis for a special regulation for dog management at GGNRA. The NPS's existing regulation, codified at 36 CFR 2.15, has not been effective in resolving longstanding, controversial resource management and public use conflicts and safety issues at Golden Gate National Recreation Area. With the participation of knowledgeable and affected parties, NPS expects to develop practical approach to resolve conflicts and issues which include: the protection of cultural and natural resources; competing visitor uses; the safety of visitors and staff; and the public desire to walk their dogs off-leash in certain areas of GGNRA.

*Scope of the Proposed Rule.* Within the constraints of NPS authorities, policies, planning guidelines, and information on park setting, natural and cultural resources, public safety, and context of the unique urban environment within which GGNRA fits, the Committee will address key issues during the negotiations, including, but not limited to: areas of the park that could be designated for off-leash dog walking areas; periods of use and times of day and year during which off-leash areas may be used; use limits and other conditions that would govern off-leash use within GGNRA, including the use and limits of professional dog walking. The following areas of the park, in which pets have never been allowed (i.e., there is not history of dog walking use and/or it has not been an issue) or have been restricted due to sensitivity of resources, are precluded from consideration by the Committee for off leash uses: Alcatraz; China Beach; Crissy Beach tidal marsh and wildlife protection area as designated by the 1996 Crissy Field Plan Environment Assessment; East Fort Baker Pier; areas closed to visitor and pet access at Fort Funston; Kirby Cove; Muir Woods; Phleger Estate; Fort Point historic structure; the beach at Stinson Beach; Tennessee Valley; Muir Beach Lagoon; Rodeo Lagoon; Rodeo Lake; Redwood Creek; all trails in undeveloped areas; all areas closed to off-trail travel; and all freshwater bodies in the park.

On-leash dog walking could be considered in areas with threatened and endangered species only if it is demonstrated that adverse effects or impacts are minimal and could be mitigated. New NPS lands that come under the management of GGNRA in the future will be evaluated for appropriate recreational uses, including dog walking, and any approved dog walking use will be consistent with the new special regulation for dogwalking in GGNRA.

The legal sideboards within which recommendations on dog management in GGNRA must be formed include, but may not be limited to the following:

- GGNRA enabling legislation (Public Law 92–589)

- The NPS Organic Act
- The Administrative Procedure Act
- The Endangered Species Act
- The National Environmental Policy Act (NEPA)
- The National Historic Preservation Act
- Relevant case law
- Applicable Federal regulations
- NPS Management Policies 2001
- Existing park management plans

*List of Interests Significantly Affected.* The NPS has identified a number of interests who are likely to be affected by the rule. Those parties are residents of San Francisco, Marin, and San Meteo Counties; conservation and environmental organizations; off-leash dog walking organizations; equestrian organizations; organizations advocating for parents and children; visitor user groups; and Federal, State, and regional land use management and wildlife management agencies. Other parties who believe they are likely to be affected significantly by the rule may apply for membership on the Committee pursuant to the ''Application for Membership'' section below.

*Proposed Agenda and Schedule for Publication of Proposed Rule.* Members of the Committee, with the assistance of a neutral facilitator, will determine the agenda for the Committee's work, which will include interactions with the concurrent NEPA process for dog management in GGNRA. Although the negotiated rulemaking and NEPA processes are complex, barring unforeseen circumstances, we anticipate publishing a proposed rule in the **Federal Register** before June 2007.

*Administrative Support.* To the extent authorized by law, the NPS will fund the costs of the Committee, keep a record of all Committee meetings, and provide administrative support and technical assistance for the expertise in resource management and operations to facilitate the Committee's work.

*Committee Membership.* In accordance with the Negotiated Rulemaking Act, membership is limited to 25, with each member having an alternate. The following membership is proposed for the Negotiated Rulemaking Advisory Committee for Dog Management Regulation at Golden Gate National Recreation Area:

1. The interests of the Department of the Interior will be represented by:

National Park Service—Christine Powell
Alternate—Howard Levitt

2. The interests of organizations and visitors advocating off-leash use will be represented by:

a. Crissy Field Dog Group—Martha Walters
Alternate—Chris Griffith
b. Fort Funston Dog Walkers—Linda McKay
Alternate—Karin Hu
c. Ocean Beach Dog Owners—John Keating
Alternate—Suzanne Valente
d. Pacifica Dog Walkers—Jeri Flinn
Alternate—Anne Farrow
e. Presidio Dog Walkers—Gary Fergus
Alternate—Carol Copsey
f. San Francisco Dog Owners Group—Keith McAllister
Alternate—Carol Arnold

3. The interests of commercial dog walking businesses will be represented by:

ProDog—Joe Hague
Alternate—Donna Sproull

4. The interests of environmental organizations will be represented by:

a. California Native Plant Society—Mark Heath
Alternate—Jake Sigg
b. Center for Biological Diversity—Brent Plater
Alternate—Jeff Miller
c. Golden Gate Audubon Society—Arthur Feinstein
Alternate—Elizabeth Murdock
d. Marine Mammal Center—Erin Brodie
Alternate—Joanne Mohr (Farallones Marine Sanctuary Association)
e. Sierra Club (Local Chapter)—Norman LaForce
Alternate—Gordon Bennett
f. San Francisco League of Conservation Voters—Stephen Krefting
Alternate—Michelle Jesperson

5. The interests of visitors user groups will be represented by:

a. Coleman Advocates for Youth—David Robinson
Alternate—Marybeth Wallace
b. Equestrian Groups—Judy Teichman (Marinwatch)
Alternate—Alice Caldwell-Steele (Miwok Valley Association)
c. Senior Action Network—Bruce Livingston
Alternate—Bob Planthold
d. Marin Humane Society—Cindy Machado
Alternate—Steve Hill
e. San Francisco SPCA—Daniel Crain
Alternate—Christine Rosenblatt

6. The interests of local governments will be represented by:

a. City of San Francisco—Dan McKenna
Alternate—Lemar Morrison
b. Former member of GGNRA Citizens Advisory Commission—Paul Jones
Alternate—Betsey Cutler
c. Presidio Trust—Joanne Marchetta
Alternate—Al Rosen

*Application for Membership.* Persons who believe that they will be affected significantly by proposals to revise dog management at Golden Gate National Recreation Area and who believe that such interests will not be represented adequately by any person identified in the ''Committee Membership'' section above may apply for or nominate another person for membership on the Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area. In order to be considered, each application or nomination must include:

1. The name of the applicant or nominee and a description of the interest(s) such person is to represent;
2. Evidence that the applicant or nominee is authorized to represent parties related to the interest(s) the person is proposed to represent;
3. A written statement that the applicant or nominee will actively participate in good faith in the development of the proposed rule; and
4. The reasons that the proposed members of the committee identified above do not represent the interests of the person submitting the application or nomination.

To be considered, the application must be complete and received by the close of business on July 28, 2005 at the location indicated in the ''Address'' section above. Full consideration will be given to all applications and nominations timely submitted. The decision whether or not to add a person to the Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area will be based on a determination by the NPS whether an interest of that person will be affected significantly by the proposed rule; whether an interest of that person will be affected significantly by the proposed rule; whether that interest is already represented adequately on the Committee, and if not represented adequately, whether the applicant or nominee would represent it adequately.

*Certification:* I hereby certify that the administrative establishment of the Negotiated Rulemaking Advisory Committee for Dog Management at Golden Gate National Recreation Area is necessary and in the public interest in connection with the performance of duties imposed on the Department of the Interior by the Act of August 25, 1916, 16 U.S.C. 1 *et seq.,* and other statues relating to the administration of the National Park System.

Dated: June 17, 2005.

**Gale A. Norton,**

*Secretary of the Interior.*

[FR Doc. 05–12751 Filed 6–27–05; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

**[FES 05–16]**

### Central Valley Project Long-Term Water Service Contract Renewals—American River Division

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of availability of the final environmental impact statement (FEIS).

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969 (as amended) the Bureau of Reclamation (Reclamation), as lead Federal agency, has prepared a FEIS for the Central Valley Project Long-Term Water Service Contract Renewals—American River Division. The FEIS describes and presents the environmental effects of four alternatives, including no action, for renewal of water service contracts to American River Division contractors that include; the City of Roseville, East Bay Municipal District, El Dorado Irrigation District, Placer County Water Agency, Sacramento County Water Agency, Sacramento Municipal Utilities District, and San Juan Water District.

A Notice of Availability of the Draft Environmental Impact Statement (DEIS) was published in the **Federal Register** on January 19, 2005 (70 FR 3066). The written comment period on the DEIS ended on March 21, 2005. The FEIS contains responses to all comments received and reflects comments and any additional information received during the review period.

**DATES:** Reclamation will not make a decision on the proposed action until at least 30 days after release of the FEIS. At the end of the 30-day period, Reclamation will complete a Record of Decision (ROD). The ROD will state the action that will be implemented and will discuss all factors leading to the decision.

**ADDRESSES:** Copies of the FEIS may be requested from Ms. Sammie Cervantes, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825 or by calling 916–978–5104, TDD 916–978–5608. See **SUPPLEMENTARY INFORMATION** section for locations where copies of the FEIS are available for public review.

**FOR FURTHER INFORMATION CONTACT:** David Robinson, Environmental Specialist, Bureau of Reclamation, at 916–989–7179, TDD 916–989–7285.

**SUPPLEMENTARY INFORMATION:** The FEIS addresses impacts related to renewal of long-term water service contracts delivering Central Valley Project water for irrigation and municipal and industrial uses to eight districts in the American River Division. The FEIS describes and analyzes the effects of contract renewals on fish resources, vegetation and wildlife, hydrology and water quality, recreation, visual and cultural resources, land use, geology and soils, traffic and circulation, air quality, noise, and hazards and hazardous materials.

Copies of the FEIS are available for public review at the following locations:

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225, 303–445–2072;
- Bureau of Reclamation, Office of Public Affairs, 2800 Cottage Way, Sacramento, CA 95825–1898, 916–978–5100;
- Bureau of Reclamation, Central California Area Office, 7794 Folsom Dam Road, Folsom, CA 95630, 916–988–1707;
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW., Main Interior Building, Washington, DC 20240–0001.

Reclamation's practice is to make comments including names and home addresses of respondents available for public review. Individual respondents may request that we withhold their home address from public disclosure, which will be honored to the extent allowable by law. There may be circumstances in which a respondent's identity may also be withheld from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Dated: May 3, 2005.

**John F. Davis,**

*Deputy Regional Director, Mid-Pacific Region.*

[FR Doc. 05–12765 Filed 6–27–05; 8:45 am]

**BILLING CODE 4310–MN–P**

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–511]**

### Certain Pet Food Treats; Issuance of a Limited Exclusion Order Against a Respondent Found in Default; Termination of Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order against a respondent found in default in the above-captioned investigation and has terminated the investigation.

**FOR FURTHER INFORMATION CONTACT:** Michelle Walters, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** This patent-based section 337 investigation was instituted by the Commission based on a complaint filed by complainants, Thomas J. Baumgartner and Hillbilly Smokehouse, Inc., both of Rogers, Arkansas. 69 FR 32044 (June 8, 2004). The complainants alleged violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pet food treats by reason of infringement of United States Design Patent No. 383,886 (the ''886 patent''). The amended complaint named six respondents, including TsingTao ShengRong Seafood, Inc. of China (''TsingTao China''). The Commission has terminated the investigation as to the five other respondents based on findings of non-infringement, failure to prosecute, or settlement agreements. No petitions for review of the ALJ's Initial Determinations (''IDs'') were filed.

On August 19, 2004, complainants filed a motion for an order directed to several respondents, including TsingTao China, to show cause why they should not be found in default for failing to respond to the complaint and notice of investigation. TsingTao China did not file a response to complainants' motion. On October 4, 2004, the ALJ issued an

order (Order No. 6) requiring TsingTao China to show cause why it should not be found in default. TsingTao China did not respond to the show cause order. On November 10, 2004, the ALJ issued an ID (Order No. 8), which was not reviewed by the Commission, finding respondent TsingTao China in default. On November 22, 2004, the complainants filed a motion for immediate relief against TsingTao China based on the '886 patent.

On April 13, 2005, the Commission issued a notice indicating (1) that it had determined not to review the ALJ's ID granting the Commission investigative attorney's (''IA'') motion for summary determination of no violation because of noninfringement of the '886 patent by Pet Center, Inc., and (2) that it was terminating the investigation as to the last respondent, Pet Center. 70 FR 20596 (April 20, 2005). The Commission also requested briefing on the issues of remedy, the public interest, and bonding relating to the default finding of unlawful importation and sale of infringing products by TsingTao China. Id. The IA submitted his brief on remedy, the public interest, and bonding and his proposed order on April 25, 2005. The complainants did not submit a brief or a proposed order and the respondent did not file a reply submission.

The Commission found that each of the statutory requirements of section 337(g)(1)(A)–(E), 19 U.S.C. 1337(g)(1)(A)–(E), has been met with respect to defaulting respondent TsingTao China. Accordingly, pursuant to section 337(g)(1), 19 U.S.C. 1337(g)(1), and Commission rule 210.16(c) 19 CFR 210.16(c), the Commission presumed the facts alleged in the amended complaint to be true. The Commission determined that the appropriate form of relief in this investigation is a limited exclusion order prohibiting the unlicensed entry of pet food treats covered by the '886 patent that are manufactured abroad by or on behalf of, or imported by or on behalf of, TsingTao China or any of its affiliated companies, parents, subsidiaries, or other related business entities, or their successors or assigns. The Commission further determined that the public interest factors enumerated in section 337(g)(1), 19 U.S.C. 1337(g)(1), do not preclude issuance of the limited exclusion order. Finally, the Commission determined that the amount of bond to permit temporary importation during the Presidential review period shall be in the amount of 100 percent of the entered value of the infringing imported pet food treats. The Commission's order was delivered to the President on the day of its issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.16(c) of the Commission's Rules of Practice and Procedure (19 CFR 210.16(c)).

Issued: June 22, 2005.

By order of the Commission.

**Marilyn R. Abbott,**

*Secretary to the Commission.*

[FR Doc. 05–12684 Filed 6–27–05; 8:45 am]

BILLING CODE 7020–02–P

## JUDICIAL CONFERENCE OF THE UNITED STATES

### Meeting of the Judicial Conference Advisory Committee on Rules of Bankruptcy Procedure

**AGENCY:** Judicial Conference of the United States, Advisory Committee on Rules of Bankruptcy Procedure.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Advisory Committee on Rules of Bankruptcy Procedure will hold a two-day meeting. The meeting will be open to public observation but not participation.

**DATES:** August 3–4, 2005.

*Time:* 8:30 a.m. to 5 p.m.

**ADDRESSES:** Thurgood Marshall Federal Judiciary Building, Judicial Conference Center, One Columbus Circle, NE., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** John K. Rabiej, Chief, Rules Committee Support Office, Administrative Office of the United States Courts, Washington, DC 20544, telephone (202) 502–1820.

Dated: June 22, 2005.

**John K. Rabiej,**

*Chief, Rules Committee Support Office.*

[FR Doc. 05–12686 Filed 6–27–05; 8:45 am]

BILLING CODE 2210–55–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review: Comment Request

April 20, 2005.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Agency:* Employee Benefits Security Administration.

*Type of Review:* Extension of currently approved collection.

*Title:* Prohibited Transaction Exemption 86–128.

*OMB Number:* 1210–0059.

*Frequency:* On occasion; quarterly; and annually.

*Type of Response:* Third party disclosure.

*Affected Public:* Business or other for-profit; not-for-profit institutions; and individuals or households.

*Number of Respondents:* 4,724.

*Number of Annual Responses:* 528,909.

*Estimated Time Per Response:* Varies from 10 minutes to 1 and ¼ hours.

*Total Burden Hours:* 93,530.

*Total Annualized capital/startup costs:* $0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* $183,554.

*Description:* Prohibited Transaction Class Exemption 86–128 permits persons who serve as fiduciaries for

employee benefit plans to effect or execute securities transactions on behalf of employee benefit plans. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts in order to recapture brokerage commissions for benefit of employee benefit plans whose assets are maintained in pooled separate accounts managed by the insurance companies. This exemption provides relief from certain prohibitions in section 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code) by reason of Code section 4975(c)(1)(E) or (F).

In order to insure that the exemption is not abused, that the rights of participants and beneficiaries are protected, and that the exemption's conditions are being complied with, the Department has included in the exemption five information collection requirements. The first requirement is written authorization executed in advance by an independent fiduciary of the plan whose assets are involved in the transaction with the broker-fiduciary. The second requirement is, within three months of the authorization, the broker-fiduciary furnish the independent fiduciary with any reasonably available information necessary for the independent fiduciary to determine whether an authorization should be made. The information must include a copy of the exemption, a form for termination, and a description of the broker-fiduciary's brokerage placement practices. The third requirement is that the broker-fiduciary must provide a termination form to the independent fiduciary annually so that the independent fiduciary may terminate the authorization without penalty to the plan; failure to return the form constitutes continuing authorization. The fourth requirement is for the broker-fiduciary to report all transactions to the independent fiduciary, either by confirmation slips or through quarterly reports. The fifth requirement calls for the broker-fiduciary to provide an annual summary of the transactions. The annual summary must contain all security transaction-related charges incurred by the plan, the brokerage placement practices, and a portfolio turnover ratio.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 05–12695 Filed 6–27–05; 8:45 am]

**BILLING CODE 4510–29–P**

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Review: Comment Request

June 16, 2005.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Agency:* Employment Standards Administration.

*Type of Review:* Extension of currently approved collection.

*Title:* (1) Miner's Claim for Benefits under the Black Lung Benefits Act; (2) Employment History.

*OMB Number:* 1215–0052.

*Frequency:* On occasion.

*Type of Response:* Reporting.

*Affected Public:* Individuals or households and business or other for-profit.

*Number of Respondents:* 9,000.

| Form | Estimated annual responses | Average response time (hours) | Estimated annual burden hours |
|---|---|---|---|
| CM–911 | 4,000 | 0.75 | 3,000 |
| CM–911a | 5,000 | 0.67 | 3,333 |
| Total | 9,000 | | 6,333 |

*Total Annualized Capital/Startup Costs:* $0.

*Total Annual Costs (Operating/Maintaining Systems or Purchasing Services):* $1,000.

*Description:* The Black Lung Act of 1977, as amended, 30 U.S.C. 901 *et seq.*, provides for the payment of benefits to a coal miner who is totally disabled due to pneumoconiosis (black lung disease) and to certain survivors of the miner who died due to pneumoconiosis. A miner who applies for black lung benefits must complete the CM–911 (application form). The completed CM–911 gives basic identifying information about the applicant and is the beginning of the development of the black lung claim. An applicant filing for black lungs benefits must also complete a CM–911a at the same time the black lung application form is submitted. The CM–911a when completed is formatted to render a complete history of employment and helps to establish if the miner currently or formerly worked in the nation's coal mines. The Black Lung Benefits Act as amended, 30 U.S.C. *et seq.* and 20 CFR 725.304a, necessitates the collection of this information.

*Agency:*Employment Standards Administration.

*Type of Review:* Extension of currently approved collection.
*Title:* Housing Terms and Conditions.
*OMB Number:* 1215–0146.
*Frequency:* On occasion.
*Type of Response:* Third party disclosure.
*Affected Public:* Farms and business or other for-profit.
*Number of Respondents:* 1,300.
*Estimated Annual Responses:* 1,300.
*Average Response Time:* 30 minutes.
*Annual Burden Hours:* 650.
*Total Annualized Capital/Startup Costs:* $0.
*Total Annual Costs (Operating/Maintaining Systems or Purchasing Services):* $0.
*Description:* The Migrant and Seasonal Agricultural Worker Protection Act (MSPA), 29 U.S.C. 1801 *et seq.*, section 201(c) requires any farm labor contractor, agricultural employer or agricultural association providing housing to any migrant agricultural worker to post in a conspicuous place, or present to the migrant worker, a statement of any housing occupancy terms and conditions. In addition, MSPA section 201(g) requires a farm labor contractor, agricultural employer or agricultural association providing housing to any migrant agricultural worker to give such information in English, or as necessary and reasonable, in a language common to the worker and that the Department of Labor (DOL) makes forms available to provide such information. The implementing regulations for the MSPA set forth, at 29 CFR 500.75(f) and (g), the housing terms that a farm labor contractor, agricultural employer or agricultural association providing housing to any migrant agricultural worker must post or give in a written statement to the worker. Regulation 29 CFR 500.1(i)(2) provides for Form WH–521 that a farm labor contractor, agricultural employer or agricultural association may use, at its option, to satisfy MSPA requirements. Form WH–521 is an optional form that a farm labor contractor, agricultural employer or agricultural association may post or present to a migrant agricultural worker to list the housing terms and conditions. While use of the Form WH–521 is optional, the MSPA requires disclosure of the information.
*Agency:* Employment Standards Administration.
*Type of Review:* Extension of currently approved collection.
*Title:* Rehabilitation Action Report.
*OMB Number:* 1215–0182.
*Frequency:* On occasion.
*Type of Response:* Reporting.
*Affected Public:* Business or other for-profit.
*Number of Respondents:* 7,000.
*Estimated Annual Responses:* 7,000.
*Average Response Time:* 10 minutes.
*Annual Burden Hours:* 1,169.
*Total Annualized Capital/Startup Costs:* $0.
*Total Annual Costs (Operating/Maintaining Systems or Purchasing Services):* $0.
*Description:* The Office of Workers' Compensation Programs (OWCP) administers the Federal Employees' Compensation Act (FECA) and the Longshore and Harbor Workers' Compensation Act (LHWCA). These Acts provide vocational rehabilitation services to eligible workers with disabilities. Section 8104(a) of the FECA and section 939(c) of the LHWCA provides that eligible injured workers are to be furnished vocational rehabilitation services, and section 8111(b) of the FECA and section 908(g) of the LHWCA provide that persons undergoing such vocational rehabilitation receive maintenance allowances as additional compensation. Form OWCP–44 is used to collect information necessary to decide if maintenance allowances should continue to be paid.

**Ira L. Mills,**
*Departmental Clearance Officer.*
[FR Doc. 05–12696 Filed 6–27–05; 8:45 am]
BILLING CODE 4510–CK–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–57,182]**

### AMI Doduco, Chase Precision Products Division, Subsidary of Technitrol Reidsville, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 16, 2005 in response to a petition filed by a company official on behalf of workers at AMI Doduco, Chase Precision Products Division, a subsidiary of Technitrol, Reidsville, North Carolina.

A company official has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 10th day of June 2005.

**Linda G. Poole,**
*Certifying Officer, Division of Trade Adjustment Assistance.*
[FR Doc. E5–3359 Filed 6–27–05; 8:45 am]
BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment And Training Administration

**[TA–W–56,887]**

### Century Moulding Company Hood River, OR; Notice of Revised Determination on Reconsideration

By letter dated June 10, 2005 a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination signed on May 24, 2005, was based on the finding that imports of picture frames did not contribute importantly to worker separations at the subject plant and no shift of production to a foreign source occurred. The denial notice will soon be published in the **Federal Register**.

To support the request for reconsideration, the company official supplied additional information. Upon further review and contact with the subject firm's major customer, it was revealed that the customer significantly increased its import purchases of picture frames while decreasing its purchases from the subject firm during the relevant period. The imports accounted for a meaningful portion of the subject plant's lost sales and production. The investigation further revealed that production and employment at the subject firm declined during the relevant time period.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

**Conclusion**

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of

articles like or directly competitive with those produced at Century Moulding Company, Hood River, Oregon, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Century Moulding Company, Hood River, Oregon who became totally or partially separated from employment on or after March 30, 2004, through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 17th day of June, 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–3355 Filed 6–27–05; 8:45 am]

**BILLING CODE 4510–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–55,333]**

### Gateway Country Store, Whitehall Mall, Whitehall, PA; Notice of Negative Determination on Remand

The United States Court of International Trade (USCIT) granted the Department of Labor's motion for voluntary remand for further investigation in *Former Employees of Gateway Country Stores, LLC.* v. *Elaine L. Chao, United States Secretary of Labor* (Court No. 04–00588) on January 3, 2005.

On August 5, 2004, the Department of Labor (Department) issued a negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) for the workers of Gateway Country Stores, LLC, Whitehall Mall, Whitehall, Pennsylvania (hereafter ''the subject facility''). The negative determination was based on the investigation's finding that the workers at the subject facility were engaged in retail sales of computers and providing technical support to buyers, and thus, did not produce an article in accordance with Section 222 of the Trade Act of 1974. On August 20, 2004, the Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for the subject facility was published in the **Federal Register** (69 FR 51715).

In a letter dated September 9, 2004, the petitioner requested administrative reconsideration of the Department's negative determination. The Department affirmed its finding that the workers of the subject firm were not eligible to apply for TAA on the basis that they did not produce an article within the meaning of Section 222 of the Trade Act. In a letter dated September 16, 2004, the Department dismissed the petitioner's request for reconsideration. A Dismissal of Application for Reconsideration was issued on September 17, 2004. The Notice of Dismissal of Application for Reconsideration was published in the **Federal Register** on September 23, 2004, (69 FR 57091).

By letter dated November 18, 2004, the petitioner requested judicial review by the USCIT. In that letter, the petitioner asserts that the workers produce an article since retail sales should be ''recognized as an intrinsic service, bundled and inseparable from the Gateway computer'' and alleges that the workers' separations are due to a shift of production abroad.

On January 3, 2005, the USCIT remanded the matter to the Department for further investigation of the subject workers' eligibility to apply for worker adjustment assistance benefits.

During the remand investigation, the Department carefully reviewed previously submitted information, contacted Gateway officials to obtain new and additional information regarding the work done by the subject worker group and solicited information from the petitioners.

The remand investigation revealed that the Gateway Country Stores (''Stores'') operated as a showroom and retail outlet for Gateway computers and related products, such as monitors, and as a service shop. (Supp. AR 93, 105) The Stores, which opened in the United States during the late 1990s, operated on the basis of a European marketing strategy. (Supp. AR 105) By April 9, 2004, Gateway had closed all the Stores. (Supp. AR 1, 100, 105)

Customers would enter the Store and view/test-try the floor models. (Supp. AR 105) Customers could purchase prepackaged computers (''cash and carry'') or place an order with the Store's personnel. (Supp. AR 2, 93) Prepackaged computers were shipped from an off-site manufacturing plant to a Store's inventory room, then sold ''as is'' to the customer. (Supp. AR 91, 93) Aside from display models, the prepackaged computers were not removed from their boxes by Store personnel. Orders placed by the customer are assembled and packaged by off-site Gateway manufacturing plants, then shipped directly from the plant to the customer's mailing address. (Supp. AR 8, 93) Customers who sought service or repair for their units brought them to the Stores after receiving it at the pre-selected mailing addresses. (Supp. AR 91, 93, 96)

In the January 31, 2005 submission, the petitioner asserts that workers at the subject facility ''were involved in the rework, upgrade, and final assembly of the pc solution * * * Most sales were customized orders with some piece of extra software, hardware, peripherals, or additional component as part of the solution'' and infers that the extra components transform the computer into something different and improved and, therefore, the workers are producing an article—the pc solution.

In the February 22, 2005 submission, the petitioner asserts that the pc solution included ''continued customer service, and manufacture/rework/upgrade tasks that are bundled with the sale.'' The petitioner also asserts that in many occasions, ''the service and sale then concluded with assembly of hardware and external components to construct the system desired, and the installation of a customer selected software systems * * * performed by store personnel.''

According to Gateway company officials, workers at the subject facility did not install programs or devices unless it was post-sale and the customer brought the unit into a Store for service. (Supp. AR 91) Further, a careful review of the position descriptions of the workers at the subject facility show that the workers were not engaged in production work but performed sales and marketing, sales/product training, store opening/closing, human resources, budgeting, customer service, inventory control, and management functions. (Supp. AR 8–41)

The Department has consistently held that the performance of installation, repair and customer service is not production for the purposes of the Trade Act. Thus, the Department determines that petitioners do not produce an article within the meaning of the Trade Act of 1974.

The petitioner also asserts that Gateway used the Stores to distinguish itself from its competitors in the personal computer market and that the Stores' closures were caused by the shift of computer production abroad.

Contrary to the petitioner's allegations, Gateway's creation of the Stores was not to distinguish itself from its competitors as an effort to secure and/or maintain its market. Rather, the Stores were based on a revenue channel

that Gateway was already using in Europe and Gateway had hopes that its domestic Stores would also be profitable. (Supp. AR 105)

Like other companies facing strained economic conditions, Gateway undertook a large-scale business plan to change its direction. Information obtained from Gateway show that the business plan started several years before the investigatory period (July 2003 through July 2004), that the change of revenue sources was part of its dynamic business revolution, and that the Store closures were but one form of corporate cost-reduction, as was the independent decision to shift some manufacturing to foreign countries. The Stores were closed because they were unprofitable. (Supp. AR 3, 100, 101, 105, 106) Further, those functions which took place in the Stores were revised over several years and shifted to other domestic venues. For example, sales and customer service are handled via telephone (Supp. AR 1) and the Internet (Supp. AR 3); Gateway products are sold and serviced in national retail outlets. (Supp. AR 3, 101)

**Conclusion**

As the result of the findings of the investigation on remand, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance for workers and former workers of Gateway Country Stores, LLC, Whitehall Mall, Whitehall, Pennsylvania.

Signed at Washington, DC this 17th day of June 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–3352 Filed 6–27–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment And Training Administration

**[TA–W–57,080]**

### Leviton Manufacturing Company, Inc., Hillsgrove Division, Warwick, RI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 29, 2005, in response to a petition filed by a company official on behalf of workers at Leviton Manufacturing Company, Inc., Hillsgrove Division, Warwick, Rhode Island (TA–W–57,080).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 10th day of June, 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–3357 Filed 6–27–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–57,086]**

### Makita Corporation of America Buford, GA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 2, 2005 in response to a worker petition filed by company official on behalf of workers at Makita Corporation of America, Buford, Georgia.

The petitioning group of workers is covered by an active certification, (TA–W–57,071) which expires on May 17, 2007. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 9th day of June, 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–3358 Filed 6–27–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–56,869]**

### National Textiles, Textiles Division, Hodges, SC; Notice of Revised Determination on Reconsideration

By application of May 26, 2005, a company official requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on May 5, 2005, based on the finding that imports of fleece and jersey fabric did not contribute importantly to worker separations at the subject plant and that there was no shift to a foreign country. The denial notice will soon be published in the **Federal Register**.

To support the request for reconsideration, the company official supplied additional information to supplement that which was gathered during the initial investigation. Upon further review, it was revealed that the company shifted production of fleece and jersey fabric to El Salvador during the relevant period and that this shift contributed importantly to layoffs at the subject firm.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of Section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of Section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

**Conclusion**

After careful review of the facts obtained in the investigation, I determine that there was a shift in production from the workers' firm or subdivision to El Salvador of articles that are like or directly competitive with those produced by the subject firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

''All workers of National Textiles, Textiles Division, Hodges, South Carolina who became totally or partially separated from employment on or after March 21, 2004 through two years from the date of certification are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed in Washington, DC, this 17th day of June 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–3354 Filed 6–27–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of May and June 2005.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2) (A) all of the following must be satisfied:
   A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;
   B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and
   C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a) (2) (B) both of the following must be satisfied:
   A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;
   B. there has been a shift in production by such workers' firm or subdivision to a foreign county of articles like or directly competitive with articles which are produced by such firm or subdivision; and
   C. One of the following must be satisfied:
      1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;
      2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or
      3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

### Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.)(increased imports) and (a) (2) (B) (II.B) (No shift in production to a foreign country) have not been met.

*TA–W–57,016; Smurfit-Stone Container, Container Div., Statesville, NC*

*TA–W–57,088; Cenveo, d/b/a Mailwell Graphics, Cambridge, MD*

*TA–W–57,013; Fiberzone Technologies, Inc., a div. of Aqua Dynamics Systems, Inc., Adamsville, TN*

*TA–W–56,907; Energy Conversion Systems, LLC, a/k/a Morganite, Inc., Carbon Division, Dunn, NC*

*TA–W–56,786; Hardwood Products Company, LLC, Guilford, ME*

*TA–W–57,129; ADM Milling Company, Wellsburg, WV*

*TA–W–57,154; Victaulic Company of America, Easton, PA*

*TA–W–57,073; Koplin Optical, Inc., 200 John Hancock Road, a subsidiary of Koplin Corp., Taunton, MA*

*TA–W–57,066; Second Chance Body Armor, Inc., Michigan Manufacturing Div., Central Lake, MI*

*TA–W–57,060; Wolf Range Co., A Business Unit of Illinois Tool Works (ITW), Compton, CA*

*TA–W–57,047; Woodbridge Corp., a div. of Woodbridge Holdings, Inc., Brodhead, WI*

*TA–W–56,991; Graham Packaging Plastic Products, Inc., Household Business Unit, St. Louis, MO*

*TA–W–57,103; Automatic Technology, Inc., Charlotte, NC*

*TA–W–56,797; General Electric, Motors and Controls Div., Taylor Street Location, Fort Wayne, IN: All workers engaged in activities related to the production of enameled wire*

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

*TA–W–57,170; Ludlow Textiles Company, Ludlow, MA*

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

*TA–W–57,198; Neasi-Weber International, Houston, TX*

*TA–W–57,043; Haz-Waste, Inc., Working on-site at Continental Tire North America, Mayfield, KY*

*TA–W–56,795; Aventis, Inc., Commercial Operations, Bridgewater, NJ*

*TA–W–57,164; Epson Portland, Inc., a subsidiary of Seiko Epson Corporation, including on site production workers of Volt Services, Hillsboro, OR*

*TA–W–56,816; Hewlett Packard Co., Ink Supplies Business Div., Boise, ID, A; Imaging and Printing Group Business and Printing, Boise, ID, B; Imaging and Printing Group Business and Printing, Roseville, CA and C; Imaging and Printing Group Business and Printing, Vancouver, WA*

*TA–W–57,125; Teleflex Medical Research Triangle Park, NC*

*TA–W–56,887; Century Moulding Company, Hood River, OR*

*TA–W–57,192; Laser Tool Co., Saegertown, PA*

*TA–W–57,015; Honeywell, Inc., ACS: Sensing & Control Div., Flex Heaters and Flex Fab, including on-site leased workers of Manpower, Inc., and Metz Personnel, Pawtucket, RI, A; Support Staff, including on-site leased workers of Manpower, Inc., and Metz Personnel, Pawtucket, RI, B; Thermal Cut Offs (TCO), including on-site leased workers of Manpower, Inc., and Metz Personnel, Pawtucket, RI and C; Thermistor/Probe, including on-site leased workers of Manpower, Inc., and Metz Personnel, Pawtucket, RI*

*TA–W–56,797B; General Electric, Components-Specialty Transformer Div., College Street Location, Fort Wayne, IN*

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–57,176; Oneida Home Store, a subsidiary of Oneida, Ltd, Lawrenceville, GA*

*TA–W–57,139; Brooks Software, div. of Brooks Automation, Inc., Phoenix, AZ*

*TA–W–57,059; Dell Financial Services, Austin, TX*

*TA–W–57,032; Symbol Technologies, Lake Forest, CA*

*TA–W–57,191 & A; Intradeco Apparel, Distribution Center, Medley, FL and Merchandising Office, New York, NY*

*TA–W–57,023; Exxon Mobil Fuels Marketing Company Dallas, TX*

*TA–W–57,024; Bank of America, Financial Shared Services Div., San Francisco, CA*

*TA–W–57,185; Electronic Data Systems, Green Bay, WI*

*TA–W–57,063; Global Shared Services, Application Services, a div. of Bristol Myers Squibb Company, Princeton, NJ*

*TA–W–57,034; Grover Industries, Inc., Grover Plant Div., Grover, NC*

*TA–W–57,179; Voith Paper Service Northeast, Inc., a subsidiary of Voith Paper, Inc., Farmington, NH*

*TA–W–57,147; Teleplan Services Oregon, Inc., Subsidiary of Teleplan Holding USA, Hillsboro, OR*

The investigation revealed that criterion (a)(2)(A)(I.C) (Increased imports and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

*TA–W–56,898; Eastman Chemical Company, Arkansas Operations Div., Batesville, AR*

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

*TA–W–57,137; Ox-Yoke Originals, Inc., Milo, ME: May 6, 2004.*

*TA–W–57,094; Lake Eyelet Manufacturing Co., Inc., Plantsville, CT: May 3, 2004*

*TA–W–57,105; Twin City Foods, Inc., Lewiston, ID: April 28, 2004.*

*TA–W–57,106; Westchester Narrow Fabrics, Inc., Milton, PA: April 29, 2004.*

*TA–W–57,082; The Hall China Company, East Liverpool, OH: April 11, 2004.*

*TA–W–57,091; Northern Hardwoods, a div. of Hardwood Lumber Manufacturing, Dimension Plant, South Range, MI: May 2, 2004.*

*TA–56,745; Trane Industrial Sheet Metal Plant, a div. of American Standard Companies, Rockingham, NC: March 1, 2004.*

*TA–W–56,984; Robert Bosch Corp., Automotive Chassis Div., St. Joseph, MI: April 11, 2004.*

*TA–W–57,039; Davlyn Manufacturing Co., Inc., Spring City, PA: April 22, 2004.*

*TA–W–57,050; Emcore Corp., including on-site leased workers from Aerotec of California, Alhambra, CA: April 14, 2004.*

*TA–W–56,954; Bama Spinning, Inc., Henagar, AL: April 13, 2004.*

*TA–W–56,843; Ozburn-Hessey Logistics, Leased workers on-site at Murray, Inc., Lawrenceburg, TN: March 15, 2004.*

*TA–W–57,263; Whaling Mfg. Co., Inc., Fall River, MA: May 26, 2004.*

*TA–W–57,020; Getinge Sourcing, LLC, Rochester, NY: July 13, 2004.*

*TA–W–57,056; Precise Technology, Inc., Polestar Plant, State College, PA: April 26, 2004.*

*TA–W–57,132; Anderson Precision, Inc., Jamestown, NY: April 27, 2004.*

*TA–W–57,146; Shamiana, Inc., San Francisco, CA: May 5, 2004.*

*TA–W–57,148; Hohenwald Thermal Plant, Hohenwald, TN: May 3, 2004.*

*TA–W–57,160; Jabo, Inc., K–B Production Co., Division, Reno, OH: May 12, 2004.*

*TA–W–57,074; Robinson-Ransbottom Pottery Company, a subsidiary of Brittany Corp., Roseville, OH: April 22, 2004.*

*TA–W–56,996; Alcoa, Indiana Assembly and Fabricating Center, Alcoa Advanced Transportation Systems Div., Auburn, IN: April 12, 2004.*

*TA–W–56,938; Fab-Knit Ltd, Waco, TX: April 5, 2004.*

*TA–W–56,957; Kone, Inc., Elevator Div., McKinney, TX: March 31, 2004.*

*TA–W–56,918; Parker Hannifin Corp., Automotive Connection Div., Trumann, AR: April 7, 2004.*

*TA–W–56,999; Deringer-Ney, Inc., Mundelein, IL: April 12, 2004.*

*TA–W–56,964; Hartmann-Conco, Inc., Rock Hill, SC: April 7, 2004.*

*TA–W–57,097; Stockmen's, LLC, Lawton, IA: May 3, 2004.*

*TA–W–57,064; Qualipac America Corp., including leased workers from Tuttle Agency of New Jersey, Wayne, NJ: April 27, 2004.*

*TA–W–56,958; Gerdau Ameristeel, Perth Amboy, NJ: April 12, 2004.*

*TA–W–57,026; Cape Shoe Company, Cape Girardeau, MO: April 19, 2004.*

*TA–W–56,971; Lenox, Inc., Pomona, NJ: April 13, 2004.*

*TA–W–57,045; Locklear Hosiery, Inc., Fort Payne, AL: April 6, 2004.*

*TA–W–57,102; Sharon Young, Inc., Dallas, TX: May 2, 2004.*

*TA–W–57,022; Rohm and Haas Company, Bayport Plant, LaPorte, TX: April 21, 2004.*

*TA–W–56,966; U.S. Amps, Inc., Gainesville, FL: April 8, 2004.*

*TA–W–57,002 &A; Geray Fabrics, Inc., New York, NY and Morganville, NJ: April 18, 2004.*

*TA–W–56,985 &A; Oneida Ltd, Main Plant, Sherrill, NY, Sales Office, Oneida, NY: April 1, 2005.*

*TA–W–56,985B; Oneida Ltd, Distribution Facility, Sherrill, NY: April 6, 2004.*

*TA–W–56,852; Akzo Nobel, a div. of Akzo Nobel N.V., Coatings Resins Div., New Brunswick, NJ: March 11, 2004.*

*TA–W–57,095; EMI–G Knitting, Inc., Fort Payne, AL: May 2, 2004.*

*TA–W–56,968; Ames True Temper Co., North Vernon, IN: March 14, 2004.*

*TA–W–56,960; Kern Manufacturing, a subsidiary of Leading Lady, Cutting and Sewing Workers, Neoga, IL: April 12, 2004.*

*TA–W–56,947; Morad Manufacturing, Inc., Sikeston, MO: March 30, 2004.*

*TA–W–56,941; American Greetings Industries, Inc., d/b/a AGI Schutz, a subsidiary of American Greetings Corp., Merchandising Div., including leased workers of Coxe Personnel Services, Inc., Forest City, NC: April 4, 2004.*

*TA–W–56,931; Westpoint Stevens, Inc., Sparks Plant, Basic Bedding*

*Division, including on-site leased workers from Express Personnel and Personnel Services, Sparks, NV: April 11, 2004.*

*TA–W–56,797; General Electric, Motors and Controls Div., Taylor Street Location, Fort Wayne, IN: All workers engaged in activities related to the production of AC motors who became totally or partially separated from employment on or after March 16, 2004.*

*TA–W–56,797A; General Electric, Motors and Controls Division, Broadway Location, Fort Wayne, IN: March 16, 2004.*

*TA–W–57,099; Rada, Inc., San Francisco, CA: April 22, 2004.*

The following certifications have been issued. The requirements of (a) (2) (B) (shift in production) of Section 222 have been met.

*TA–W–57,115; BASF Corp., Coatings Div., Southfield, MI: April 26, 2004.*

*TA–W–57,093; Amco Convertible Fabrics, Specialty Products, Adrian, MI: April 29, 2004.*

*TA–W–57,089; Ethicon, a div. of Johnson & Johnson, San Angelo, TX: May 1, 2004.*

*TA–W–57,062; Burner Systems International, Inc., Mansfield, OH: May 3, 2004.*

*TA–W–57,062; Fisher Scientific Company LLC, Laboratory Equipment Div., a div. of Fisher Scientific International, Inc., Indiana, PA: April 26, 2004.*

*TA–W–57,210; Printronic, Inc., MF FRET 2, Including on-site leased workers from Aerotek, Irvine, CA: May 18, 2004.*

*TA–W–57,104; Matsushita Electronic Materials, Inc., a subsidiary of Matsushita Electric Works, including on-site workers from Aromat Corp., and leased on site workers from Flexforce Temporary Staffing, Forest Grove, OR: May 3, 2004.*

*TA–W–57,135; Elite Textiles Ltd, Abermarle, NC: April 29, 2004.*

*TA–W–57,076; Plasco, Div. of Microtek Medical, Inc., Gurnee, IL: April 29, 2004.*

*TA–W–57,220; Geiger of Austria, Inc., Middlebury, VT: May 12, 2004.*

*TA–W–57,152; All-Luminum Products, Inc., d/b/a Rio Brands, including on-site leased workers of Goldstar Services, Philadelphia, PA: May 9, 2004.*

*TA–W–57,107 &A; Seaboard Atlantic Garment, Inc., including on-site leased workers of First Choice Staffing, East Syracuse, NY, Bethlehem Dye House Div., including on-site leased workers of First Choice Staffing, Bethlehem, PA: May 2, 2004.*

*TA–W–57,070; Royal Home Fashions, a subsidiary of Croscill, Inc., Plant 8, Oxford, NC: April 28, 2004.*

*TA–W–57,054; Transpro, Inc., Buffalo, NY: April 26, 2004.*

*TA–W–57,036; CRI Advantage, Inc., leased on-site workers at Hewlett-Packard Company, imaging & Printing Group-Technology Platforms Div., Corvallis, OR: April 19, 2004.*

*TA–W–57,029; Hamilton Sunstrand, including leased workers of Manpower, a div. of United Technologies, Grand Junction, CO: April 18, 2004.*

*TA–W–56,893; Dayton Superior Corp., Tremont, PA: March 16, 2004.*

*TA–W–57,004; Monte Glove Company, Maben, MS: April 6, 2004.*

*TA–W–56,980; Tecumseh Power Co., New Holstein Operations, a subsidiary of The Tecumseh Products Co., New Holstein, WI: February 28, 2005.*

*TA–W–56,973; J.J.'s Mae, d/b/a Rainbeau, San Francisco, CA: April 1, 2004.*

*TA–W–57,184; Creative Nail Design, including leased workers of Select Temporary Agency, Vista, CA: May 16, 2004.*

*TA–W–57,075; Accuride International, Inc., Santa Fe Springs, CA: March 13, 2005.*

*TA–W–57,031; Pilling/Weck, a subsidiary of Teleflex, including on-site leased workers of Aerotek, Horsham, PA: April 20, 2004.*

*TA–W–56,927; Black's Frames, Inc., Lincolnton, NC: April 6, 2004.*

*TA–W–57,042; KMedic, including on–site leased workers of Aerotek, Northvale, NJ: April 20, 2004.*

*TA–W–57,015D; Honeywell, Inc., ACS: Sensing & Control Div., Commercial & Precision Thermostats, including on–site leased workers of Manpower, Inc., and Metz Personnel, Pawtucket, RI: May 17, 2005.*

*TA–W–57,120; MMG North America Corp., a div. of TT Electronics PLC, Paterson, NJ: December 17, 2004.*

The following certifications have been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

*TA–W–57,161; Labinal–Corinth, Inc., a subsidiary of Safran, Corinth, TX: May 12, 2004.*

**Negative Determinations for Alternative Trade Adjustment Assistance**

In order for the Division of Trade Adjustment Assistance to be issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)3)ii) have not been met for the reasons specified.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

*TA–W–56,931; Westpoint Stevens, Inc., Sparks Plant, Basic Bedding Div., including on–site leased workers from Express Personnel and Personnel Services, Sparks, NV*

*TA–W–56,968; Ames True Temper Co., North Vernon, IN*

*TA–W–56,852; Akzo Nobel, a div. of Akzo Nobel N.V., Coatings and Resins Div., New Brunswick, NJ*

*TA–W–57,002 & A; Geray Fabrics, Inc., New York, NY and Morganville, NJ*

*TA–W–56,966; U.S. Amps, Inc., Gainesville, FL*

*TA–W–57,022; Rohm and Haas Co., Bayport Plant, LaPorte, TX*

*TA–W–57,031; Pilling/Weck, a subsidiary of Teleflex, including on–site leased workers of Aerotek, Horsham, PA*

*TA–W–57,075; Accuride International, Inc., Santa Fe Springs, CA*

The Department has determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

*TA–W–57,095; EMI–G Knitting, Inc., Fort Payne, AL*

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

*TA–W–57,015; Honeywell, Inc., ACS: Sensing & Control Div., Flex Heaters and Flex Fab, including on–site leased workers of Manpower, Inc., and Metz Personnel Pawtucket, RI, A; Support Staff, including on–site leased workers of Manpower, Inc., and Metz Personnel, Pawtucket, RI, B; Thermal Cut Offs (TCO), including on–site leased workers of Manpower, Inc., and Metz Personnel, Pawtucket, RI and C; Thermistor/Probe, including on-site leased workers of Manpower, Inc., and Metz Personnel, Pawtucket, RI*

*TA–W–57,016; Smurfit–Stone Container, Container Div., Statesville, NC*

*TA–W–57,088; Cenveo, d/b/a Mailwell Graphics, Cambridge, MD*

*TA–W–57,013; Fiberzone Technologies, Inc., a div. of Aqua Dynamics Systems, Inc., Adamsville, TN*

*TA–W–56,907; Energy Conversion Systems LLC, a/k/a Morganite, Inc., Carbon Div., Dunn, NC*
*TA–W–56,986; Hardwood Products Company, LLC, Guilford, ME*
*TA–W–57,129; ADM Milling Company, Wellsburg, WV*
*TA–W–57,170; Ludlow Textiles Company, Ludlow, MA*
*TA–W–57,154; Victaulic Company of America, Easton, PA*
*TA–W–57,073; Koplin Optical, Inc, 200 John Hancock Road, a subsidiary of Koplin Corporation, Taunton, MA*
*TA–W–57,066; Second Chance Body Armor, Inc., Michigan Manufacturing Div., Central Lake, MI*
*TA–W–57,060; Wolf Range Company, A Business Unit of Illinois Tool Works (ITW), Compton, CA*
*TA–W–57,047; Woodbridge Corporation a div. of Woodbridge Holdings, Inc., Brodhead, WI*
*TA–W–56,991; Graham Packaging Plastic Products, Inc., Household Business Unit, St. Louis, MO*
*TA–W–57,103; Automatic Technology, Inc., Charlotte, NC*
*TA–W–57,198; Neasi–Weber International, Houston, TX*
*TA–W–57,043; Haz–Waste, Inc., Working on–site at Continental Tire North America, Mayfield, KY*
*TA–W–56,795; Aventis, Inc., Commercial Operations, Bridgewater, NJ*
*TA–W–57,164; Epson Portland, Inc., a subsidiary of Seiko Epson Corp., including on site production workers of Volt Services, Hillsboro, OR*
*TA–W–56,816; Hewlett Packard Company, Ink Supplies Business Div., Boise, ID, A; Imaging and Printing Group–Business and Printing, Boise, ID, B; Roseville, CA and C; Imaging and Printing Group–Business and Printing, Vancouver, WA*
*TA–W–57,176; Oneida Home Store, a subsidiary of Oneida, Ltd, Lawrenceville, GA*
*TA–W–57,139; Brooks Software, div. of Brooks Automation, Inc., Phoenix, AZ*
*TA–W–57,059; Dell Financial Services, Austin, TX*
*TA–W–57,191 & A; Intradeco Apparel, Distribution Center, Medley, FL and Merchandising Office, New York, NY*
*TA–W–57,032; Symbol Technologies, Lake Forest, CA*
*TA–W–57,023; Exxon Mobil Fuels Marketing Company, Dallas, TX*
*TA–W–57,024; Bank of America, Financial Shared Services Div., San Francisco, CA*
*TA–W–57,185; Electronic Data Systems, Green Bay, WI*
*TA–W–57,063; Global Shared Services, Application Services, a div. of Bristol Myers Squibb Company, Princeton, NJ*
*TA–W–57,034; Grover Industries, Inc., Grover Plant Div., Grover, NC*
*TA–W–57,179; Voith Paper Service Northeast, Inc., a subsidiary of Voith Paper, Inc., Farmington, NH*
*TA–W–56,898; Eastman Chemical Company, Arkansas Operations Div., Batesville, AR*
*TA–W–56,797; General Electric, Motors and Controls Div., Taylor Street Location, Fort Wayne, IN: All workers engaged in activities related to the production of enameled wire.*
*TA–W–56,797B; General Electric, Components-Specialty Transformer Div., College Street Location, Fort Wayne, IN*

**Affirmative Determinations for Alternative Trade Adjustment Assistance**

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.,* conditions within the industry are adverse).

*TA–W–53,509; Armstrong Floor Products, A Business Unit of Armstrong World Industries, Warren, AR: November 10, 2002 through December 31, 2005.*
*TA–W–53,276; H. Freeman & Son, Inc., Philadelphia, PA: October 3, 2002 through October 28, 2005.*
*TA–W–53,029; American Electric Lighting, a div. of Acuity Lighting Group, a subsidiary of Acuity Brands, Inc., Bainbridge, GA: September 15, 2002 through October 10, 2005.*
*TA–W–52,242; Louisiana Pacific Corp., Belgrade, MT: July 7, 2002 through August 22, 2005.*
*TA–W–52,316; Louisiana Pacific Corp., Formerly Crown Pacific, Bonners Ferry, ID: June 26, 2002.*
*TA–W–54,879; Vesuvius USA Corp., Foundry Div., Buffalo, NY: May 3, 2003 June 24, 2006.*
*TA–W–56,588; Velcorex, Inc., a div. of Dollus Mieg Co., Inc. (DMC), Orangeburg, SC: March 18, 2003.*
*TA–W–54,637; Rice Mills, Inc., Belton, SC: March 31, 2003 through May 4, 2006.*
*TA–W–55,346; Hamilton Beach/Proctor Silex, Inc., Southern Pines, NC: July 19, 2003 through August 12, 2006.*
*TA–W–57,161; Labinal–Corinth, Inc., a subsidiary of Safran, Corinth, TX: May 12, 2004.*
*TA–W–57,015D; Honeywell, Inc., ACS: Sensing & Control Div., Commercial & Precision Thermostats, including on–site leased workers of Manpower, Inc., and Metz Personnel, Pawtucket, RI: May 17, 2005.*
*TA–W–57,184; Creative Nail Design, including leased workers of Select Temporary Agency, Vista, CA: May 16, 2004.*
*TA–W–56,973; J.J.'s Mae, d/b/a Rainbeau, San Francisco, CA: April 1, 2004.*
*TA–W–56,980; Tecumseh Power Co., New Holstein Operations, a subsidiary of The Tecumseh Products Company, New Holstein, WI: February 28, 2005.*
*TA–W–57,004; Monte Glove Company, Maben, MS: April 6, 2004.*
*TA–W–56,893; Dayton Superior Corp., Tremont, PA: March 16, 2004.*
*TA–W–57,029; Hamilton Sunstrand, including leased workers of Manpower, a div. of United Technologies, Grand Junction, CO: April 18, 2004.*
*TA–W–57,054; Transpro, Inc., Buffalo, NY: April 26, 2004.*
*TA–W–57,036; CRI Advantage, Inc., leased on-site workers at Hewlett-Packard Co., Imaging and Printing Group-Technology Platforms Div., Corvallis, OR: April 19, 2004.*
*TA–W–57,070; Royal Home Fashions, a subsidiary of Croscill, Inc., Plant 8, Oxford, NC: April 28, 2004.*
*TA–W–57,107 & A; Seaboard Atlantic Garment, Inc., including on-site leased workers of First Choice Staffing, East Syracuse, NY and Bethlehem Dye House Div., including on-site leased workers of First Choice Staffing, Bethlehem, PA: May 2, 2004.*

*TA–W–57,152; All-Luminum Products, Inc., d/b/a Rio Brands, including on-site leased workers of Goldstar Services, Philadelphia, PA: May 9, 2004.*
*TA–W–57,220; Geiger of Austria, Inc., Middlebury, VT: May 12, 2004.*
*TA–W–57,076; Plasco, Div. of Microtek Medical, Inc., Gurnee, IL: April 29, 2004.*
*TA–W–57,135; Elite Textiles Ltd, Abermarle, NC: April 29, 2004.*
*TA–W–57,210; Printronix, Inc., MF FRET 2, including on-site leased workers from Aerotek, Irvine, CA: May 18, 2004.*
*TA–W–57,137; Ox-Yoke Originals, Inc., Milo, ME: May 6, 2004.*
*TA–W–57,104; Matsushita Electronic Materials, Inc., a subsidiary of Matsushita Electric Works, including on-site workers from Aromat Corp., and leased on-site workers from Flexforce Temporary Staffing, Forest Grove, OR: May 3, 2004.*
*TA–W–57,062; Fisher Scientific Company LLC, Laboratory Equipment Div., a div. of Fisher Scientific International, Inc., Indiana, PA: April 26, 2004.*
*TA–W–57,166; Burner Systems International, Inc., Mansfield, OH: May 3, 2004.*
*TA–W–57,089; Ethicon a div. of Johnson & Johnson, San Angelo, TX: May 1, 2004.*
*TA–W–57,093; Amco Convertible Fabrics, Specialty Products, Adrian, MI: April 29, 2004.*
*TA–W–56,797; General Electric, Motors and Controls Div., Taylor Street Location, Fort Wayne, IN: All engaged in activities related to the production of AC motors who became totally or partially separated from employment on or after March 16, 2004.*
*TA–W–56,797A; General Electric, Motors and Controls Div., Broadway Location, Fort Wayne, IN: March 16, 2004.*
*TA–W–56,985 & A, B; Oneida Ltd, Main Plant, Sherrill, NY, Sales Office, Oneida, NY and Distribution Facility, Sherrill, NY: April 6, 2004.*
*TA–W–57,102; Sharon Young, Inc., Dallas, TX: May 2, 2004.*
*TA–W–57,045; Locklear Hosiery, Inc., Fort Payne, AL: April 6, 2004.*
*TA–W–56,971; Lenox, Inc., Inc., Pomona, NJ: April 13, 2004.*
*TA–W–57,026; Cape Shoe Company, Cape Girardeau, MO: April 19, 2004.*
*TA–W–56,958; Gerdau Ameristeel, Perth Amboy, NJ: April 12, 2004.*
*TA–W–57,064; Qualipac America Corp., including leased workers from Tuttle Agency of New Jersey, Wayne, NJ: April 27, 2004.*
*TA–W–57,097; Stockmen's LLC, Lawton, IA: May 3, 2004.*
*TA–W–56,964; Hartmann-Conco, Inc., Rock Hill, SC: April 7, 2004.*
*TA–W–56,999; Deringer-Ney, Inc., Mundelein, IL: April 12, 2004.*
*TA–W–56,918; Parker Hannifin Corp., Automotive Connection Div., Trumann, AR: April 7, 2004.*
*TA–W–56,938; Fab-Knit Ltd, Waco, TX: April 5, 2004.*
*TA–W–56,957; Kone, Inc., Elevator Div., McKinney, TX: March 31, 2004.*
*TA–W–56,996; Alcoa, Indiana Assembly and Fabricating Center, Alcoa Advanced Transportation Systems Div., Auburn, IN: April 12, 2004.*
*TA–W–57,074; Robinson-Ransbottom Pottery Company, a subsidiary of Brittany Corp., Roseville, OH: April 22, 2004.*
*TA–W–57,160; Jabo, Inc., K–B Production Company, Division, Reno, OH: May 12, 2004.*
*TA–W–57,148; Hohenwald Thermal Plant, Hohenwald, TN: May 3, 2004.*
*TA–W–57,146; Shamiana, Inc., San Francisco, CA: May 5, 2004.*
*TA–W–57,132; Anderson Precision, Inc., Jamestown, NY: April 27, 2004.*
*TA–W–57,056; Precise Technology, Inc., Polestar Plant State College, PA: April 26, 2004.*
*TA–W–57,020; Getinge Sourcing, LLC, Rochester, NY: July 13, 2004.*
*TA–W–57,263; Whaling Mfg. Co., Inc., Fall River, MA: May 26, 2004.*
*TA–W–56,843; Ozburn-Hessey Logistics, leased workers on-site at Murray, Inc., Lawrenceburg, TN: March 15, 2004.*
*TA–W–56,954; Bama Spinning, Inc., Henagar, AL: April 13, 2004.*
*TA–W–57,039; Davlyn Manufacturing Co., Inc., Spring City, PA: April 22, 2004.*
*TA–W–57,050; Emcore Corp., including leased workers from on-site Aerotec of California, Alhambra, CA: April 14, 2004.*
*TA–W–56,984; Robert Bosch Corp., Automotive Chassis Div., St. Joseph, MI: April 11, 2004.*
*TA–W–56,745; Trane Industrial Sheet Metal Plant, a div. of American Standard Companies, Rockingham, NC: March 1, 2004.*
*TA–W–57,091; Northern Hardwoods, a div. of Hardwood Lumber Manufacturing, Dimension Plant, South Range, MI: May 2, 2004.*
*TA–W–57,082; The Hall China Co., East Liverpool, OH: April 11, 2004.*
*TA–W–57,106; Westchester Narrow Fabrics, Inc., Milton, PA: April 29, 2004.*
*TA–W–57,105; Twin City Foods, Inc., Lewiston, ID: April 28, 2004.*
*TA–W–57,094; Lake Eyelet Manufacturing Co., Inc., Plantsville, CT: May 3, 2004.*

I hereby certify that the aforementioned determinations were issued during the months of May and June 2005. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: June 17, 2005.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E5–3361 Filed 6–27–05; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–57,207]**

### Storage Technology Corporation Brooklyn Park, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 18, 2005 in response to a petition filed by a State Workforce Representative on behalf of workers at Storage Technology Corporation, Brooklyn Park, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 14th day of June, 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–3360 Filed 6–27–05; 8:45 am]

BILLING CODE 4510–30–P

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## DEPARTMENT OF LABOR

### Employment And Training Administration

**[TA–W–56,966]**

### U.S. Amps, Inc., Including On-Site Leased Workers of Gevity HR, Gainesville, FL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Negative Determination Regarding Eligibility To Apply for Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and

under section 246 of the Trade Act of 1974, as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and a Negative Determination Regarding Eligibility to Apply For Alternative Trade Adjustment Assistance on June 3, 2005, applicable to workers of U.S. Amps Inc., Gainesville, Florida. The notice will soon be published in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of car stereo amplifiers.

The review of the certification confirms that the Department inadvertently failed to include the on-site leased workers in the certification. U.S. Amps Inc., Gainesville, Florida leased employees from Gevity HR, Gainesville, Florida, to work on-site at plant.

Therefore, the Department is amended the certification to include the leased workers from Gevity HR working on-site at U.S. Amps Inc., Gainesville, Florida.

The amended notice applicable to TA–W–55,966 is hereby issued as follows:

All workers of U.S. Amps, Inc. including on-site leased workers from Gevity HR, Gainesville, Florida, including on-site leased workers from Gevity HR, who became totally or partially separated from employment on or after April 8, 2004, through June 3, 2007, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974;

and

I further determine that all workers of U.S. Amps, Inc., including on-site leased workers from Gevity HR, Gainesville, Florida, are denied eligibility to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 17th day of June, 2005.

**Linda G. Poole,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–3356 Filed 6–27–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–57,223]**

### Ward Products, LLC Amsterdam, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 19, 2005 in response to a petition filed by a District Representative of the International Brotherhood of Electrical Workers on behalf of workers at Ward Products, LLC, Amsterdam, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 13th day of June, 2005.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E5–3362 Filed 6–27–05; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR–1218–0110 (2005)]**

### Onsite Consultation Agreements; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits public comment concerning its request for an extension of the information collection requirements contained in its onsite consultation agreements (29 CFR 1908).

**DATES:** Comments must be submitted by the following dates:

*Hard copy:* Your comments must be submitted (postmarked or received) by August 29, 2995.

*Facsimile and electronic transmission:* Your comments must be received by August 29, 2005.

**ADDRESSES:** You may submit comments, identified by OSHA Docket No. ICR–1218–0110(2005), by any of the following methods:

*Regular mail, express delivery, hand delivery, and messenger service:* Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., ET.

*Facsimile:* If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Electronic:* You may submit comments through the Internet at *http://ecomments.osha.gov.* Follow the instructions on the OSHA Webpage for submitting comments.

*Docket:* For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov.* In addition, the ICR, comments and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You also may contact Todd Owen at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and the Occupational Safety and Health Administration's (OSHA) estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 et seq.) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

Section 7(c)(1) of the Act authorizes the Secretary of Labor to, ''with the consent of any State or political subdivision thereof, accept and use the services, facilities, and personnel of any agency of such State or subdivision with reimbursement.'' Section 21(C) of the Act authorizes the Secretary of Labor (Secretary) to, ''consult with and advise employers and employees * * * as to effective means of preventing occupational illnesses and injuries.''

Additionally, Section 21(d) of the Act instructs the Secretary to ''establish and support cooperative agreements with the States under which employers subject to the Act may consult with State personnel with respect to the application of occupational safety and health requirements under the Act or under State plans approved under section 18 of the Act.'' This gives the Secretary authority to enter into agreements with the States to provide onsite consultation services, and established rules under which employers may qualify for an inspection exemption. To satisfy the intent of these and other sections of the Act, OSHA codified the terms that govern cooperative agreements between OSHA and State governments whereby State agencies provide onsite consultation services to private employers to assist them in complying with the requirements of the OSH Act. The terms were codified as the Consultation Program regulations (29 CFR Part 1908).

The Consultation Program regulations specify services to be provided, and practices and procedures to be followed by the State Onsite Consultation Programs. Information collection requirements set forth in the Onsite Consultation Program regulations are in two categories: *State Responsibilities* and *Employer Responsibilities.* Eight regulatory provisions require information collection activities by the State. The Federal government provides 90 percent of funds for onsite consultation services delivered by the States, which result in the information collection. Four requirements apply to employers and specify conditions for receiving the free consultation services.

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of the collection of information (paperwork) requirements necessitated by Onsite Consultation Agreements (29 CFR 1908). In its extension request, OSHA also is proposing to increase the total burden hours for these requirements from 17,530 hours to 21,771 hours. The Agency will include this summary in its request to OMB to extend the approval of the collection of information requirements.

*Type of Review:* Extension of currently approved information collection requirements.

*Title:* Onsite Consultation Agreements (29 CFR Part 1908).

*OMB Number:* 1218–0110.

*Affected Public:* Business or other for-profits; not-for-profit organizations; Federal Government; State, Local, or Tribal Government.

*Number of Respondents:* 31,048.

*Frequency of Response:* Monthly.

*Average time Per Response:* Varies from 3 minutes (.02 hour) for an employer or plant manager to sign a Safety and health achievement Recognition Program application to 32 hours for an Onsite Consultation Program Manager to submit an agreement once per year.

*Estimated Total Burden Hours:* 21,771.

*Estimated cost (Operation and Maintenance):* $0.

## IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hardy copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Webpage. Because of security-related problems, a significant delay may occur in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery, hand delivery, and courier service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Webpage and for assistance using the Webpage to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Webpage. Since all submissions become public, private information such as social security numbers should not be submitted.

## V. Authority and Signature

Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*). and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Dated: Signed at Washington, DC, on June 22, 2005.

**Jonathan L. Snare,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 05–12767 Filed 6–27–05; 8:45 am]

BILLING CODE 4510–26–M

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR–1218–0061(2005)]**

### Cotton Dust Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Request for public comment.

**SUMMARY:** OSHA solicits public comment concerning its request for an extension of the information collection requirements contained in the Cotton Dust Standard (29 CFR 1910.1043).

**DATES:** Comments must be submitted by the following dates:

*Hard copy:* Your comments must be submitted (postmarked or received) by August 29, 2005.

*Facsimile and electronic transmission:* Your comments must be received by August 29, 2005.

**ADDRESSES:** You may submit comments, identified by OSHA Docket No. ICR–1218–0061 (2005), by any of the following methods:

*Regular mail, express delivery, hand delivery, and messenger service:* Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 a.m. to 4:45 p.m., e.t.

*Facsimile:* If your comments are 10 pages or fewer in length, including

attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

*Electronic:* You may submit comments through the Internet at *http://ecomments.osha.gov.* Follow instructions on the OSHA Web page for submitting comments.

*Docket:* For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov.* In addition, the ICR, comments and submissions are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Todd Owen at the address below to obtain a copy of the ICR. For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–2222.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

On January 5, 2005, OSHA published the Standards Improvement Project—Phase II, Final rule (70 FR 1112). The final rule removed and revised provisions of standards that were outdated, duplicative, unnecessary, or inconsistent and clarified or simplified regulatory language. The final rule contained a revision to allow employers the option to either post employee exposure-monitoring results or notify individually, instead of allowing only individual notification. The changes reduced paperwork burden hours while maintaining worker protection and improving consistency among standards. The burden hour reduction was taken in the previous ICR.

The information collection requirements specified in the Cotton Dust Standard (29 CFR 1910.1043) protect employees from the adverse health effects that may result from their exposure to Cotton Dust. The major information collection requirements of the Cotton Dust Standard include: Performing exposure monitoring, including initial, periodic, and additional monitoring; notifying each employee of their exposure monitoring results either individually in writing or by posting; implementing a written compliance program; and establishing a respiratory protection program in accordance with OSHA's Respiratory Protection Standard (29 CFR 1910.134).

## II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

## III. Proposed Actions

OSHA proposes to extend the Office of Management and Budget's (OMB) approval of these collection of information (paperwork) requirements necessitated by the Cotton Dust Standard (29 CFR 1910.1043). The Agency will include this summary in its request to OMB to extend the approval of these collection of information requirements.

*Type of Review:* Extension of currently approved information collection requirements.

*Title:* Cotton Dust Standard.

*OMB Number:* 1218–0061.

*Affected Public:* Business or other for-profits; Federal Government; State, Local or Tribal Government.

*Frequency:* On occasion.

*Average Time Per Response:* Varies from 5 minutes (.08 hour) to maintain a required record to two hours to conduct exposure monitoring.

*Estimated Total Burden Hours:* 70,340.

*Estimated cost (Operation and Maintenance):* 6,526,315.

## IV. Public Participation—Submission of comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Webpage. Because of security-related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of submissions by express delivery, hand delivery and courier service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Webpage are available at *http://www.OSHA.gov.* Contact the OSHA docket Office for information about materials not available through the OSHA Webpage and for assistance using the Webpage to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Webpage. Since all submissions become public, private information such as social security numbers should not be submitted.

## V. Authority and Signature

Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3406 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Dated: Signed at Washington, DC, on June 22, 2005.

**Jonathan L. Snare,**

*Acting Assistant Secretary of Labor.*

[FR Doc. 05–12769 Filed 6–27–05; 8:45 am]

BILLING CODE 4510–26–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No 72–13]**

### Entergy Operations, Incorporated; Notice of Withdrawal of Request for Exemption for Arkansas Nuclear One, Unit 1 and Unit 2

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of withdrawal of the request for exemption from the requirements of 10 CFR 72.212(a)(2) and 10 CFR 72.214.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Regan, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1179; fax number: (301) 415–1179; e-mail: *cmr1@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Discussion**

In a letter dated June 9, 2005, to the U.S. Nuclear Regulatory Commission (NRC or Commission) Entergy Operations, Inc. (applicant or Entergy Operations) withdrew a request dated May 23, 2005, for exemption from the requirements of 10 CFR 72.212(a)(2) and 10 CFR 72.214 pursuant to 10 CFR 72.7, for the Arkansas Nuclear One, Unit 1 (ANO–1) and Unit 2 (ANO–2), facility located 6 miles west-northwest of Russellville, Arkansas. The staff has terminated its review of the request. The request was docketed under 10 CFR part 72; the Independent Spent Fuel Storage Installation Docket No. is 72–13.

**II. Further Information**

In accordance with 10 CFR 2.390 of NRC's ''Rules of Practice,'' final NRC records and documents regarding this proposed action, including the exemption request dated May 23, 2005, and withdrawal dated June 9, 2005, are publically available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be inspected at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. 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 in Rockville, Maryland, this 20th day of June 2005.

For the Nuclear Regulatory Commission.

**Christopher M. Regan,**

*Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E5–3341 Filed 6–27–05; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–42]**

### Southern Nuclear Operating Company, Incorporated; Notice of Withdrawal of Request for Exemption; for the Joseph M. Farley Nuclear Plant, Unit 1 and Unit 2

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of withdrawal of the request for exemption from the requirements of 10 CFR 72.212(a)(2) and 10 CFR 72.214.

**FOR FURTHER INFORMATION CONTACT:** Christopher M. Regan, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1179; fax number: (301) 415–1179; e-mail: *cmr1@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

**I. Discussion**

In a letter dated June 9, 2005, to the U.S. Nuclear Regulatory Commission (NRC or Commission) Southern Nuclear Operating Company, Inc. (applicant or SNC) withdrew a request dated May 20, 2005, for exemption from the requirements of 10 CFR 72.212(a)(2) and 10 CFR 72.214 pursuant to 10 CFR 72.7, for the Joseph M. Farley Nuclear Plant (FNP), Unit 1 and Unit 2, facility located in Houston County, Alabama. The staff has terminated its review of the request. The request was docketed under 10 CFR Part 72; the Independent Spent Fuel Storage Installation Docket No. is 72–42.

**II. Further information**

In accordance with 10 CFR 2.390 of NRC's ''Rules of Practice,'' final NRC records and documents regarding this proposed action, including the exemption request dated May 20, 2005, and withdrawal dated June 9, 2005, are publically available in the records component of NRC's Agencywide Documents Access and Management System (ADAMS). These documents may be inspected at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. 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 20th day of June 2005.

For the Nuclear Regulatory Commission.

**Christopher M. Regan,**

*Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E5–3343 Filed 6–27–05; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 72–20]**

### Department of Energy; Three Mile Island 2 Independent Spent Fuel Storage Installation; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding an Amendment

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Environmental assessment.

**FOR FURTHER INFORMATION CONTACT:** Joseph M. Sebrosky, Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 415–1132; fax number: (301) 425–8555; e-mail: *jms3@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Special Nuclear Materials License No. 2508 that would revise the technical specification corrective actions if the 5 year leak test of the dry shielded canisters fails. The Department of Energy (DOE) is currently storing spent nuclear fuel at the Three Mile Island 2 (TMI–2) independent spent fuel storage installation (ISFSI) located in Butte County, Idaho.

**Environmental Assessment (EA)**

*Identification of Proposed Action:* By letter dated January 31, 2005, as supplemented, DOE submitted a request to the NRC to amend the license (SNM–2508) to revise the technical specification corrective actions if the 5 year leak test on the dry shielded canisters (DSC) fails.

The core debris from the TMI–2 reactor is stored in the ISFSI. The DSCs are vented through high efficiency particulate air (HEPA) filters to provide a diffusion path for hydrogen from the TMI–2 core debris. The interface between each vent housing and its DSC has dual metallic seals applied between polished surfaces of the DSC and the vent housings. The vent housing seals are subject to a limiting condition for operation (LCO), which specifies a maximum allowable leak rate. Verification of the LCO is performed by a surveillance performed on a 5 year period. If the leak test fails, the current technical specifications require reseating or replacing the seals and performing another leak check. If the seal integrity cannot be restored, then by current technical specifications the affected DSC must be removed from its horizontal storage module (HSM). The proposed technical specifications would allow replacement of the metallic seals with elastomeric seals that are less sensitive to surface imperfections without movement of the DSC. In addition, if the leak check fails after replacement of the seals, the proposed technical specification would no longer require removal of the DSC from its HSM. Instead, the proposed technical specifications would require a monthly contamination survey at the affected DSC-vent housing interface and the submission of a report to the NRC describing the condition, analysis, and corrective actions being taken.

The proposed action before the NRC is whether to approve the amendment.

*Need for the Proposed Action:* The proposed action would allow DOE to take corrective actions in-situ without movement of the DSC. There would be less cost involved and mitigation in place would eliminate unnecessary worker radiation exposure and reduce operational risk associated with moving the DSC.

*Environmental Impacts of the Proposed Action:* The staff has determined that the proposed action would not endanger life or property. The DSC vent housing seals are intended to ensure that air flowing out of the DSC is routed through HEPA grade filters for confinement of radioactive particulate material. In this configuration (vented, without a source of pressure to force material through a restriction), a compressed vent housing seal does not represent a viable pathway for the uncontrolled release of radioactive materials. The proposed license amendment request includes an additional required action to perform surveys for radiological contamination at any adversely affected DSC vent housing. Therefore, there is no significant change in the type or significant increase in the amounts of any effluents that may be released offsite.

There would be a reduction with regard to individual or cumulative occupational radiation exposures because of the proposed action. The current technical specification requires removal of the DSC to an alternate facility and maintenance of the DSC. The proposed action involves attempting to make repairs to the DSC vent housing seals in-situ. The DSC is stored in a well-shielded system (the reinforced concrete HSM). Attempting repairs while the DSC is inside the HSM in accordance with the proposed technical specifications would result in a decreased radiation exposure to workers. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

The amendment does not affect non-radiological plant effluents or any other aspects of the environment. Therefore, there are no significant non-radiological impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

*Alternative to the Proposed Action:* As an alternative to the proposed action, the staff considered denial of the amendment request (*i.e.*, the ''no-action'' alternative). Approval or denial of the amendment request would result in minimal change in the environmental impacts. Therefore, the environmental impacts of the proposed action and the alternative action are similar.

*Agencies and Persons Consulted:* On June 8, 2005, Douglas Walker of the Idaho Department of Environmental Quality was contacted regarding the proposed action and had no concerns. The NRC staff has determined that consultation under section 7 of the Endangered Species Act is not required for this specific amendment and will not affect listed species or critical habitat. The NRC staff has also determined that the proposed action is not a type of activity having the potential to cause effects on historic properties. Therefore, no consultation is required under section 106 of the National Historic Preservation Act.

*Conclusions:* The staff has reviewed the amendment request submitted by DOE and has determined that revising the technical specification corrective actions if the 5 year leak test of the DSCs fails would have no significant impact on the environment.

**Finding of No Significant Impact**

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the NRC finds that the proposed action of approving the amendment to the license will not significantly impact the quality of the human environment. Accordingly, the NRC has determined that an environmental impact statement for the proposed license amendment is not warranted.

The request for amendment was docketed under 10 CFR part 72, Docket 72–20. For further details with respect to this action, see the proposed license amendment dated January 31, 2005, as supplemented, by a letter dated June 9, 2005. The NRC maintains an Agencywide Documents Access Management System (ADAMS), which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at: *http://www.nrc.gov/reading-rm/adams.html.* Copies of the referenced documents will also be available for review at the NRC Public Document Room (PDR), located at 11555 Rockville Pike, Rockville, MD, 20852. PDR reference staff can be contacted at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.* The PDR reproduction contractor will copy documents for a fee.

Dated in Rockville, Maryland, this 22nd of June, 2005.

For the Nuclear Regulatory Commission.

**Joseph M. Sebrosky,**

*Senior Project Manager, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. E5–3340 Filed 6–27–05; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–313]**

### Entergy Operations, Inc.; Arkansas Nuclear One, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from title 10 of the Code of Federal Regulations (10 CFR) 50.46 and 10 CFR part 50, Appendix K for Renewed Facility Operating License No. DPR–51, issued to Entergy Operations, Inc. (licensee), for operation of the Arkansas Nuclear One, Unit 1 (ANO–1), located in Pope County, Arkansas. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and a finding of no significant impact.

**Environmental Assessment**

*Identification of the Proposed Action:* The proposed action would provide an exemption from the requirements of: (1) 10 CFR 50.46, ''Acceptance criteria for emergency core cooling systems for light-water nuclear power reactors,'' which requires that the calculated emergency core cooling system (ECCS) performance for reactors with zircaloy or ZIRLO fuel cladding meet certain criteria, and (2) 10 CFR part 50, Appendix K, ''ECCS Evaluation Models,'' which presumes the use of zircaloy or ZIRLO fuel cladding when doing calculations for energy release, cladding oxidation, and hydrogen generation after a postulated loss-of-coolant accident.

The proposed action would allow the licensee to use the M5 advanced alloy in lieu of zircaloy or ZIRLO, the materials assumed to be used in the cited regulations, for fuel rod cladding in fuel assemblies at ANO–1.

The proposed action is in accordance with the licensee's application dated September 30, 2004. *The Need for the Proposed Action:* The Commission's regulations in 10 CFR 50.46 and 10 CFR part 50, Appendix K require the demonstration of adequate ECCS performance for light-water reactors that contain fuel consisting of uranium oxide pellets enclosed in zircaloy or ZIRLO tubes. Each of these regulations, either implicitly or explicitly, assumes that either zircaloy or ZIRLO is used as the fuel rod cladding material.

In order to accommodate the high fuel rod burnups that are required for modern fuel management and core designs, Framatome developed the M5 advanced fuel rod cladding material. M5 is an alloy comprised primarily of zirconium (~99 percent) and niobium (~1 percent) that has demonstrated superior corrosion resistance and reduced irradiation-induced growth relative to both standard and low-tin zircaloy. However, since the chemical composition of the M5 advanced alloy differs from the specifications of either zircaloy or ZIRLO, use of the M5 advanced alloy falls outside of the strict interpretation of these regulations. Therefore, approval of this exemption request is needed to permit the use of the M5 advanced alloy as a fuel rod cladding material at ANO–1.

*Environmental Impacts of the Proposed Action:* The NRC staff has completed its safety evaluation of the proposed action and concludes that use of M5 clad fuel will not result in changes in the operations or configuration of the facility. There will be no change in the level of controls or methodology used for processing radioactive effluents or handling solid radioactive waste. The NRC staff has also determined that the M5 fuel cladding will perform similarly to the current resident fuel.

The details of the staff's safety evaluation will be provided in the exemption that will be issued as part of the letter to the licensee approving the exemption to the regulations.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Environmental Impacts of the Alternatives to the Proposed Action:* As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. 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 other than those previously considered in the Final Environmental Statement related to the operation of ANO–1, dated February 1973, and the Final Supplemental Environmental Impact Statement regarding ANO–1 (NUREG–1437, Supplement 3), dated April 2001.

*Agencies and Persons Consulted:* In accordance with its stated policy, on May 26, 2005, the staff consulted with the Arkansas State official, Dave Baldwin of the Arkansas Department of Health, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 30, 2004. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 22nd day of June 2005.

For the Nuclear Regulatory Commission.

**Thomas W. Alexion,**

*Project Manager, Section 1, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. E5–3339 Filed 6–27–05; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Application for a License To Export High-Enriched Uranium

Pursuant to 10 CFR 110.70(b)(2) ''Public notice of receipt of an

application,'' please take notice that the Nuclear Regulatory Commission has received the following request for an export license. Copies of the request can be accessed through the Public Electronic Reading Room (PERR) link http://www.nrc.gov/reading-rm/adams.html at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the application for a license to export special nuclear material as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning the application follows.

**NRC Export License Application for High-Enriched Uranium**

Name of Applicant
Date of Application—Date Received
Application Number
Docket Number
Material Type
End Use
Country of Destination
DOE/NNSA—Y12, June 1, 2005

High-Enriched Uranium

The material would be transferred initially to CERCA, in France, where it would be fabricated into fuel. This fuel would then be transferred to Studiecentrum voor Kernergie (SCK) for ultimate use at BR–2 research reactor located in Mol, Belgium from 2008–2011.
Belgium
June 2, 2005
XSNM03404
11005562

Dated this 21st day of June 2005 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

**Margaret M. Doane,**

*Deputy Director, Office of International Programs.*

[FR Doc. E5–3342 Filed 6–27–05; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Application of CSX Transportation, Inc. To Withdraw Its Monon Railroad 6 Percent Income Debentures (Due January 1, 2007), From Listing and Registration on the New York Stock Exchange, Inc. File No. 1–03359

June 21, 2005.

On June 6, 2005, CSX Transportation, Inc., a Virginia corporation (''Issuer''), filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Monon Railroad 6% income debentures (due January 1, 2007) (''Security''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'').

The Board of Directors (''Board'') of the Issuer approved resolutions on May 17, 2005, to withdraw the Security from listing and registration on the NYSE. The Board stated the following reasons factored into its decision to withdraw the Security from the NYSE. First, there are only a limited number of security holders of the Security. As of April 7, 2005, at least $2,900,000 of the approximately $3,100,000 principal amount outstanding was held by 70 registered holders. The Issuer believes there are fewer than 300 holders of record of the Security. Second, the Security trades infrequently on NYSE and the Issuer does not anticipate that such trading might increase appreciably. Based on information provided by NYSE, the Security traded in only 5 of the last 12 months (for the period ending May 31, 2005), representing a total of 288 trades. Third, the Issuer will realize cost and expense savings by withdrawing listing of the Security from NYSE and suspend its reporting requirements with the Commission. The Company is required to file Annual Reports on Form 10–K, Quarterly Reports on Form 10–Q, and Current Reports on Form 8–K with the Commission. In light of the relatively small number of holders and the infrequent trading of the Security, the Issuer wishes to eliminate the costs associated with continued listing and the reporting obligations with respect to the Security, including administrative and personnel costs, auditor fees and legal fees. Under Rule 12h–3(b)(1)(i) of the Act, the Company is permitted to suspend its reporting obligations with respect to the Security by filing a Form 15 with the Commission. In addition, the Issuer has no other securities outstanding that require it to maintain a listing for its Security on the NYSE or to continue to files reports with the Commission. Fourth, the Issuer is not obligated to list the Security, pursuant to the terms of the indenture under which the Security was issued, or to maintain a listing for the Security on NYSE or on any other exchange. Fifth, delisting of the Security will not have a material impact on the holders of the Security. The Issuer believes that, in light of the limited number of holders and low trading volume, a withdrawal of the Security from listing on NYSE will not have a material impact on the holders of the Security.

The Issuer stated in its application that it has complied with NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration by providing NYSE with the required documents governing the removal of securities from listing and registration on NYSE.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the NYSE and from registration under Section 12(b) of the Act,[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before July 15, 2005, comment on the facts bearing upon whether the application has been made in accordance with the rules of NYSE, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/delist.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include the File Number 1–03359 or

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number 1–03359. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).

Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5–3338 Filed 6–27–05; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51893; International Series Release No. 1291]**

## List of Foreign Issuers That Have Submitted Information Under the Exemption Relating to Certain Foreign Securities

June 21, 2005.

Foreign private issuers with total assets in excess of $10,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more reside in the United States, are subject to registration under Section 12(g) of the Securities Exchange Act of 1934 [1] (the ''Act'').[2]

Rule 12g3–2(b) [3] provides an exemption from registration under Section 12(g) of the Act with respect to a foreign private issuer that submits to the Commission, on a current basis, the material required by the rule. The informational requirements are designed to give investors access to certain information so they have the opportunity to inform themselves about the issuer. The rule requires the issuer to provide the Commission with information that it: (1) Has made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized; (2) has filed or is required to file with a stock exchange on which its securities are traded and that was made public by such exchange; and/or (3) has distributed or is required to distribute to its security holders.

When the Commission adopted Rule 12g3–2(b) and other rules [4] relating to foreign securities, it indicated that from time to time it would publish lists of foreign issuers that have claimed exemptions from the registration provisions of Section 12(g) of the Act.[5] The purpose of this release is to assist in making brokers, dealers, and investors aware that some form of relatively current information concerning the issuers included in this list is available in our public files.[6] We also wish to bring to the attention of brokers, dealers, and investors the fact that current information concerning foreign issuers may not necessarily be available in the United States.[7] We continue to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending those securities to their customers.[8]

You may direct any questions regarding Rule 12g3–2 or the list of issuers in this release to Susan Min, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Room 3628, Washington, DC 20549, (202) 551–3450. This release is available on the Commission's Web site at *http://www.sec.gov/rules/other.shtml.* Requests for copies may also be directed to the Public Reference Desk, Securities and Exchange Commission, Washington, DC 20549, (202) 551–8090.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

**Jill M. Peterson,**

*Assistant Secretary.*

| Company name | Country | File No. |
|---|---|---|
| 4 Imprint Group plc | United Kingdom | 82–5104 |
| AB Lietuvos Telekomas | Lithuania | 82–5086 |
| ABSA Group Ltd | South Africa | 82–4569 |
| Acclaim Energy Trust | Canada | 82–34789 |
| Accor S.A | France | 82–4672 |
| ACOM Co. Ltd | Japan | 82–4121 |
| Adidas Salomon AG | Germany | 82–4278 |
| Advantage Energy Income Fund | Canada | 82–34742 |
| AEM S.p.A | Italy | 82–4911 |
| AEON Co. Ltd | Japan | 82–34806 |
| Aeroflot Russian International Airlines | Russia | 82–4592 |
| Africa Israel Investments Ltd | Israel | 82–34865 |
| African Bank Investments | South Africa | 82–34828 |
| African Marine Minerals Corp | Canada | 82–3329 |
| Afrikander Lease Lt+A391d | South Africa | 82–34632 |
| Agenix Ltd | Australia | 82–34639 |
| Agricore United | Canada | 82–34725 |

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78a *et seq.*

[2] Foreign issuers may also be subject to the registration requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States, and may be subject to the reporting requirements of the Act by reason of having registered securities under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*

[3] 17 CFR 240.12g3–2(b).

[4] Exchange Act Release No. 8066 (April 28, 1967).

[5] Exchange Act Release No. 49846; International Series Release No. 1277 (June 10, 2004) was the last such list.

[6] Inclusion of an issuer on the list in this release is not an affirmation by the Commission that the issuer has complied or is complying with all the conditions of Rule12g3–2(b). The list does identify the issuers that have both claimed the exemption and have submitted relatively current information to the Commission as of June 15, 2005.

[7] Paragraph (a)(4) of Rule 15c2–11 [17 CFR 240.15c2–11] requires a broker-dealer initiating a quotation for securities of a foreign private issuer to review, maintain in its files, and make reasonably available upon request the information furnished to the Commission pursuant to Rule 12g3–2(b) since the beginning of the issuer's last fiscal year.

[8] *See, e.g., Hanley* v. *SEC*, 415 F.2d 589 (2d Cir. 1969) (broker-dealer cannot recommend a security unless an adequate and reasonable basis exists for such recommendation).

| Company name | Country | File No. |
|---|---|---|
| AIFUL Corp | Japan | 82–4802 |
| Airspray N.V | Netherlands | 82–34700 |
| Akbank T.A.S | Turkey | 82–34825 |
| Alchemia Ltd | Australia | 82–34820 |
| Aldeasa S.A | Spain | 82–4774 |
| Alea Group Holdings (Bermuda) Ltd | Bermuda | 82–34885 |
| All Nippon Airways Co. Ltd | Japan | 82–1569 |
| Altai Resources, Inc | Canada | 82–2950 |
| Altran Technologies S.A | France | 82–5164 |
| Amadeus Global Travel Distribution S.A | Spain | 82–5173 |
| AMEC plc | United Kingdom | 82–34881 |
| American Manor Corp | Canada | 82–4158 |
| AMP Ltd | Australia | 82–34713 |
| AMRAD Corp. Ltd | Australia | 82–4867 |
| AmSteel Corp Berhad | Malaysia | 82–3318 |
| Angang New Steel Co. Ltd | China | 82–34663 |
| Anglo American Corp. of South Africa | South Africa | 82–97 |
| Anglo Irish Bank Corp. plc | Ireland | 82–3791 |
| Antisense Therapeutics Limited | Australia | 82–34841 |
| Antofagasta plc | United Kingdom | 82–4987 |
| AO Mosenergo | Russia | 82–4475 |
| AO Samaraenergo | Russia | 82–4708 |
| AO Surgutneftegas | Russia | 82–4302 |
| AO TD Gum | Russia | 82–4132 |
| APF Energy Trust | Canada | 82–5166 |
| Applied Gaming Solutions of Canada Inc | Canada | 82–4832 |
| Aquarius Platinum Ltd | Bermuda | 82–5097 |
| Arcelor SA | Luxembourg | 82–34727 |
| Arcon International Resources plc | Ireland | 82–4803 |
| Argent Resources Ltd | Canada | 82–5091 |
| Arisawa Manufacturing Co. Ltd | Japan | 82–4620 |
| Aristocrat Leisure Ltd | Australia | 82–34870 |
| Ark Therapeutics PLC | United Kingdom | 82–34804 |
| Artel Solutions Group Holdings Limited | Cayman Islands | 82–34697 |
| Asia Fiber Public Co. Ltd | Thailand | 82–2842 |
| Assa Abloy AB | Sweden | 82–34735 |
| Astro All Asian Networks plc | United Kingdom | 82–34815 |
| Atco Ltd | Canada | 82–34745 |
| Atlas Copco | Sweden | 82–812 |
| Aur Resources Inc | Canada | 82–4624 |
| Aurora Platinum Inc | Canada | 82–34760 |
| Austal Limited | Australia | 82–34830 |
| Australian Cancer Technology | Australia | 82–34787 |
| Australian Gas Light Company | Australia | 82–4797 |
| Austriamicrosystems AG | Austria | 82–34824 |
| Austrian Airlines | Austria | 82–4970 |
| Auterra Ventures Inc | Canada | 82–4653 |
| Avgold Ltd | South Africa | 82–4482 |
| BAA plc | United Kingdom | 82–3372 |
| Bacardi Ltd | Bermuda | 82–4992 |
| BAE Systems PLC | United Kingdom | 82–3138 |
| Bahia Sul Celulose | Brazil | 82–3138 |
| Banca Popolare di Lodi | Italy | 82–4855 |
| Banco Venezolano de Credito SA Banco Universal | Venezuela | 82–4422 |
| Bandai Co. Ltd | Japan | 82–3919 |
| Bangkok Bank Public Co. Ltd | Thailand | 82–4835 |
| Bank Austria Creditanstalt AG | Austria | 82–34765 |
| Bank of East Asia Ltd | Hong Kong | 82–3443 |
| Bank of Fukuoka Ltd | Japan | 82–1117 |
| Bank of Yokohama Ltd | Japan | 82–34814 |
| Bank Vozrozhdeniye | Russia | 82–4257 |
| BankInter S.A | Spain | 82–2972 |
| Bayerische Hypotheken Und Wechsel Bank AG | Germany | 82–3777 |
| BCE Emergis Inc | Canada | 82–5206 |
| Bear Creek Energy Ltd | Canada | 82–34851 |
| Beijing Enterprises Holdings Ltd | Hong Kong | 82–34642 |
| Belgacom | Belgium | 82–34871 |
| Belluna Co. Ltd | Japan | 82–5233 |
| Benfield Group Ltd | Bermuda | 82–34726 |
| Beru AG | Germany | 82–34750 |
| Bespak plc | United Kingdom | 82–3349 |
| BHP Steel Ltd | Australia | 82–34676 |
| BioMS Medical Corp | Canada | 82–34689 |
| Bionomics Limited | Australia | 82–34682 |

| Company name | Country | File No. |
|---|---|---|
| Blackrock Ventures Inc | Canada | 82–4555 |
| BNP Paribas | France | 82–3757 |
| BOC Hong Kong Holdings Ltd | Hong Kong | 82–34675 |
| Bohler Uddeholm AG | Austria | 82–4089 |
| Bombardier Inc | Canada | 82–3123 |
| Boots Group plc | United Kingdom | 82–34701 |
| Boss Gold Corp | Canada | 82–4571 |
| Bradford & Bingley plc | United Kingdom | 82–5154 |
| Brambles Industries plc | United Kingdom | 82–5205 |
| Bresagen Ltd | Australia | 82–5135 |
| Bridgestone Corp | Japan | 82–1264 |
| BRISA Auto Estradas de Portugal S.A | Portugal | 82–34855 |
| Bulgari S.p.A | Italy | 82–34836 |
| Bull | France | 82–4847 |
| Burberry Group plc | United Kingdom | 82–34691 |
| BWT Aktiengesellschaft | Austria | 82–5221 |
| C&C Group plc | Ireland | 82–34854 |
| C.I. Fund Management Inc | Canada | 82–4994 |
| Cal-Star Inc | Canada | 82–2406 |
| Canadian Oil Sands Trust | Canada | 82–5189 |
| Canadian Utilities Ltd | Canada | 82–34744 |
| Canadian Western Bank | Canada | 82–4478 |
| Cap Gemini S.A | France | 82–5065 |
| Capitaland Ltd | Singapore | 82–4507 |
| Carl Zeiss Meditec AG | Germany | 82–34817 |
| Cassa di Risparmio di Firenze S.p.A | Italy | 82–5126 |
| Cathay Pacific Airlines Ltd | Hong Kong | 82–1390 |
| Catlin Group Ltd | Bermuda | 82–34808 |
| Cementos Lima S.A | Peru | 82–3911 |
| Central Termica Guemas S.A | Argentina | 82–5145 |
| Cerveceria Nacional S.A | Panama | 82–4704 |
| CESP Companhia Energetica de Sao Paulo | Brazil | 82–3691 |
| Challenger Development Corp | Canada | 82–3666 |
| Champion Natural Health Com Inc | Canada | 82–4485 |
| Cheung Kong Holdings Ltd | Hong Kong | 82–4138 |
| Chevalier International Holdings | Bermuda | 82–4203 |
| Chevalier iTech Holdings Ltd | Bermuda | 82–4201 |
| China Oilfield Services Ltd | China | 82–34696 |
| China Pharmaceutical Group Ltd | Hong Kong | 82–4135 |
| China Resources Enterprise Ltd | Hong Kong | 82–4177 |
| China Shipping Container Lines | China | 82–34857 |
| China Steel Corp | Taiwan | 82–3296 |
| China Strategic Holdings Ltd | Hong Kong | 82–3596 |
| Chinacast Communications Holdings Ltd | Bermuda | 82–34811 |
| Chitaly Holdings Ltd | Cayman Islands | 82–34829 |
| Chr. Hansen Holding A/S | Denmark | 82–34732 |
| Chugai Pharmaceutical Co. Ltd | Japan | 82–34668 |
| CITIC Pacific Ltd | Hong Kong | 82–5232 |
| Citigold Corp Ltd | Australia | 82–4493 |
| CML Microsystems plc | United Kingdom | 82–3176 |
| Coca Cola Amatil Ltd | Australia | 82–2994 |
| COL Capital Ltd | Bermuda | 82–3654 |
| Coloplast A/S | Denmark | 82–34793 |
| Columbia Yukon Exploration | Canada | 82–34776 |
| Commercial International Bank | Egypt | 82–34764 |
| Companhia Acos Especiais Itabira-Acesita | Brazil | 82–3769 |
| Companhia de Transmissao de Energeria Electrica Paulista | Brazil | 82–4980 |
| Companhia Force E Luz Cataguazes Leopoldina | Brazil | 82–5147 |
| Companhia Siderurgica Belgo Mineira | Brazil | 82–3771 |
| Companhia Suzano De Papel E Celulose | Brazil | 82–3550 |
| Compass Group plc | United Kingdom | 82–5161 |
| Continental Aktiengesellschaft | Germany | 82–1357 |
| Corporacion Geo S.A. de C.V | Mexico | 82–3870 |
| Corporacion Mapfre Co. Internacional de Reaseguros SA | Spain | 82–1987 |
| Credit Agricole S.A | France | 82–34771 |
| Credit Suisse First Boston | Switzerland | 82–4705 |
| CSK Corporation | Japan | 82–781 |
| CSM nv | Netherlands | 82–34886 |
| Cue Energy Resources Limited | New Zealand | 82–34692 |
| Cybird Co. Ltd | Japan | 82–5139 |
| Cycle & Carriage Ltd | Singapore | 82–3163 |
| Daido Life Insurance Co | Japan | 82–34658 |
| Dairy Farm International Holdings Ltd | Hong Kong | 82–2962 |
| Danisco SA | Denmark | 82–3158 |

| Company name | Country | File No. |
|---|---|---|
| Datang International Power Generation Co. Ltd | China | 82–5186 |
| David Jones Limited | Australia | 82–4230 |
| Davide Campari Milano S.p.A | Italy | 82–5203 |
| Day Software Holding AG | Switzerland | 82–34849 |
| DBS Group Holdings Ltd | Singapore | 82–3172 |
| De Longhi S.p.A | Italy | 82–34652 |
| Deer Creek Energy Ltd | Canada | 82–34856 |
| Del Monte Pacific Ltd | British Virgin Islands | 82–5068 |
| Den Danske Bank Aktieselskab | Denmark | 82–1263 |
| Dentsu Inc | Japan | 82–5241 |
| DEPFA Bank | Ireland | 82–34794 |
| DEPFA Deutsche Pfandbriefbank AG | Germany | 82–4822 |
| Deutsche Beteiligungs Holding AG | Germany | 82–4977 |
| Deutsche Lufthansa AG | Germany | 82–4691 |
| Deutsche Postbank AG | Germany | 82–34848 |
| Dexia Belgium | Belgium | 82–4606 |
| Digiwave Technologies Inc | Korea | 82–34844 |
| Dixons Group plc | United Kingdom | 82–3331 |
| Dofasco Inc | Canada | 82–3226 |
| DSM N.V | Netherlands | 82–3120 |
| Dynasty Gold Corp | Canada | 82–1756 |
| E New Media Co. Ltd | Hong Kong | 82–5101 |
| East Japan Railway Co | Japan | 82–4990 |
| Eastmain Resources Inc | Canada | 82–4421 |
| Edcon Consolidated Stores Ltd | South Africa | 82–34767 |
| Editora Saraiva S.A | Brazil | 82–5046 |
| Eiffel Technologies Ltd | Australia | 82–34747 |
| Eisai Co. Ltd | Japan | 82–4015 |
| E-Kong Group Ltd | Bermuda | 82–34653 |
| Electric Power Development Co Ltd | Japan | 82–34827 |
| Electrocomponents plc | United Kingdom | 82–34672 |
| Elementis plc | United Kingdom | 82–34751 |
| Elpida Memory Inc | Japan | 82–34850 |
| Emgold Mining Corp | Canada | 82–3003 |
| EMI Group plc | United Kingdom | 82–373 |
| EnviroMission Limited | Australia | 82–34693 |
| EpiTan Limited | Australia | 82–34790 |
| Erciyas Biracilik ve Malt Sanayi AS | Turkey | 82–4144 |
| Erste Bank | Austria | 82–5066 |
| Essilor International | France | 82–4944 |
| European Aeronautic Defence & Space Co | Netherlands | 82–34662 |
| Eurotunnel plc | United Kingdom | 82–3000 |
| Eurotunnel S.A | France | 82–2999 |
| Evergreen Forests Ltd | New Zealand | 82–4114 |
| Exel plc | United Kingdom | 82–34655 |
| Fairborne Energy Ltd | Australia | 82–34863 |
| FANCL Corporation | Japan | 82–5032 |
| Far East Pharmaceutical Technology Co Ltd | Cayman Islands | 82–34768 |
| Ferreyros SA | Peru | 82–34695 |
| Filtrona plc | United Kingdom | 82–34882 |
| First Australian Resources N.L | Australia | 82–3494 |
| First Majestic Resource | Canada | 82–34833 |
| First Pacific Co. Ltd | Hong Kong | 82–836 |
| First Quantum Minerals Ltd | Canada | 82–4461 |
| First Silver Reserve Inc | Canada | 82–3449 |
| Fisher & Paykel Appliance | New Zealand | 82–34868 |
| FJA AG | Germany | 82–5077 |
| Focus Energy Trust | Canada | 82–34761 |
| Fomento de Construcciones y Contratas SA | Spain | 82–3743 |
| Forenings Sparbanken AB | Sweden | 82–4092 |
| Fortis Amev | Belgium | 82–3118 |
| Fortis S.A./N.V | Belgium | 82–5234 |
| Foschini Ltd | South Africa | 82–4044 |
| Fosters Brewing Group Ltd | Australia | 82–1711 |
| Fraser Papers Inc | Canada | 82–34837 |
| Friends Provident plc | United Kingdom | 82–34640 |
| Frutarom Industries Ltd | Israel | 82–4357 |
| Fuji Photo Film Co. Ltd | Japan | 82–78 |
| Fuji Television Network | Japan | 82–5176 |
| Fujitsu Support & Service | Japan | 82–4885 |
| Fullcast Co. Ltd | Japan | 82–34859 |
| Funai Electric Ltd | Japan | 82–5078 |
| G. Accion S.A. de C.V | Mexico | 82–4590 |
| Gambro AB | Sweden | 82–34731 |

| Company name | Country | File No. |
|---|---|---|
| Gamesa S.A | Spain | 82–5201 |
| Gene Medix Plc | United Kingdom | 82–34784 |
| General Minerals Corp | Canada | 82–34810 |
| Genetic Technologies Ltd | Australia | 82–34627 |
| Genting Berhad | Malaysia | 82–4962 |
| GGL Diamond Corp | Canada | 82–1209 |
| Giordano International Ltd | Bermuda | 82–3780 |
| Gitennes Exploration Inc | Canada | 82–4170 |
| Givaudan SA | Switzerland | 82–5087 |
| GKN PLC | United Kingdom | 82–5204 |
| Glanbia Public Ltd | Ireland | 82–4734 |
| Global Alumina Corp | Canada | 82–34874 |
| Global Cogenix Industrial | Canada | 82–2990 |
| Globel Direct Inc | Canada | 82–5084 |
| Glorious Sun Enterprises Ltd | Bermuda | 82–4581 |
| Golconda Resources Ltd | Canada | 82–3167 |
| Gold Peak Industries (Holdings) Ltd | Hong Kong | 82–3604 |
| Goldas Kuyumculuk Sanayi Ithalat Ihracat AS | Turkey | 82–5223 |
| Goldcliff Resource Corp | Canada | 82–2748 |
| Golden Arch Resources Ltd | Canada | 82–659 |
| Golden Hope Mines Ltd | Canada | 82–3023 |
| GPT Management Ltd | Australia | 82–34819 |
| Gradipore Limited | Australia | 82–34799 |
| Grande Cache Coal Corp | Canada | 82–34802 |
| Great-West Lifeco Inc | Canada | 82–34728 |
| Greencore Group plc | Ireland | 82–4908 |
| Grupo Carso S.A. de C.V | Mexico | 82–3175 |
| Grupo Ferrovial S.A | Spain | 82–4939 |
| Grupo Financiero BBVA Bancomer S.A. de C.V | Mexico | 82–3273 |
| Grupo Financiero Inbursa S.A. de C.V | Mexico | 82–4243 |
| Grupo Gigante, S.A. de C.V | Mexico | 82–3142 |
| Grupo Herdez S.A. de C.V | Mexico | 82–3818 |
| Grupo Industrial Saltillo | Mexico | 82–5019 |
| Grupo Media Capital SA | Portugal | 82–34873 |
| Grupo Melo S.A | Panama | 82–4893 |
| Grupo Minsa SA DE CV | Mexico | 82–4453 |
| Grupo Modelo S.A. de C.V | Mexico | 82–34766 |
| Grupo Posadas S.A. de C.V | Mexico | 82–3274 |
| GTECH International Resources Ltd | Canada | 82–3779 |
| Guangzhou Investment Co. Ltd | Hong Kong | 82–4247 |
| GUS plc | United Kingdom | 82–5017 |
| H. Lundbeck A.S | Denmark | 82–4973 |
| Hagemeyer N.V | Netherlands | 82–4865 |
| Hang Lung Properties Ltd | Hong Kong | 82–3410 |
| Hang Seng Bank Ltd | Hong Kong | 82–1747 |
| Hannover Ruckversicherungs Aktiengesells | Germany | 82–4627 |
| Hansom Eastern Holdings Ltd | Cayman Islands | 82–4152 |
| HBOS plc | United Kingdom | 82–5222 |
| Heineken Holding N.V | Netherlands | 82–5149 |
| Heineken N.V | Netherlands | 82–4953 |
| Henderson Group PLC | United Kingdom | 82–34758 |
| Henderson Investment Ltd | Hong Kong | 82–3964 |
| Henderson Land Development Co. Ltd | Hong Kong | 82–1561 |
| Henkel KGAA | Germany | 82–4437 |
| Herald Resources Ltd | Australia | 82–4295 |
| Highpine Oil & Gas Ltd | Canada | 82–34869 |
| Highveld Steel & Vanadium Corp Ltd | South Africa | 82–596 |
| Hikari Tsushin Inc | Japan | 82–4998 |
| Hilasal Mexicana S.A. de C.V | Mexico | 82–4743 |
| Hilton Group plc | United Kingdom | 82–1571 |
| Hindalco Industries Ltd | India | 82–3428 |
| Hip Interactive Corp | Canada | 82–34720 |
| Holcim Ltd | Switzerland | 82–4093 |
| Hong Kong & China Gas Company Ltd | Hong Kong | 82–1543 |
| Hong Kong Electric Holdings | Hong Kong | 82–4086 |
| Hopewell Highway Infrastructure Ltd | Hong Kong | 82–34781 |
| Hopewell Holdings Ltd | Hong Kong | 82–1547 |
| Horizon Technology Group | Ireland | 82–34782 |
| Hornbach-Baumarkt AG | Germany | 82–3729 |
| Hoya Corp | Japan | 82–34801 |
| Huadian Power International Corp Ltd | China | 82–4932 |
| Hylsamex S.A. de C.V | Mexico | 82–4252 |
| Hypo Real Estate Holding AG | Germany | 82–34748 |
| Hypothekenbank in Essen AG | Germany | 82–4883 |

| Company name | Country | File No. |
|---|---|---|
| Hysan Development Company Ltd | Hong Kong | 82–1617 |
| Hyundai Motor Company | Korea | 82–3423 |
| I.T.C. Limited | India | 82–3470 |
| IEM S.A. de C.V | Mexico | 82–2337 |
| Impala Platinum Holdings Ltd | South Africa | 82–359 |
| Imperial Metals Corp | Canada | 82–34714 |
| Imperial One International Ltd | Australia | 82–1257 |
| InBev SA | Belgium | 82–5159 |
| Inca Pacific Resources Inc | Canada | 82–1665 |
| Industria de Diseno Textil S.A | Spain | 82–5185 |
| Inpex Corp | Japan | 82–34839 |
| Insurance Australia Group Ltd | Australia | 82–34821 |
| Interconexion Electrica | Colombia | 82–34786 |
| International Health Partners Inc | Canada | 82–4868 |
| International PBX Ventures Ltd | Canada | 82–2635 |
| International Road Dynamics Inc | Canada | 82–3899 |
| Interpump Group S.p.A | Italy | 82–4511 |
| Invensys plc | United Kingdom | 82–2142 |
| Investor AB | Sweden | 82–34698 |
| IochpeMaxion S.A | Brazil | 82–3722 |
| IT Holding SpA | Italy | 82–4728 |
| Italian Thai Development Public Co. Ltd | Thailand | 82–4299 |
| Jamaica Broilers Group Ltd | Jamaica | 82–3720 |
| Jannock Properties Ltd | Canada | 82–5062 |
| Japan Airlines Company Ltd | Japan | 82–122 |
| Japan Future Information Technology & Systems | Japan | 82–34657 |
| Japan Retail Fund Investment Corp | Japan | 82–34716 |
| Japan Tobacco Inc | Japan | 82–4362 |
| Jardine Matheson Holdings Ltd | Bermuda | 82–2963 |
| Jardine Strategic Holdings Ltd | Bermuda | 82–3085 |
| Jasmine International Public Co. Ltd | Thailand | 82–4876 |
| JCDecaux S.A | France | 82–34631 |
| JD Group Limited | South Africa | 82–4401 |
| JG Summit Holdings Inc | Philippines | 82–3572 |
| Johnnic Communications Ltd | South Africa | 82–5184 |
| Johnnic Holdings Ltd | South Africa | 82–5128 |
| Johnson Electric Holdings Ltd | Hong Kong | 82–2416 |
| JSAT Corp | Japan | 82–5111 |
| JSC Irkutskenergo | Russia | 82–4458 |
| Jupiter Telecommunications | Japan | 82–34800 |
| K Wah Construction Materials Ltd | Hong Kong | 82–3850 |
| Kao Corp | Japan | 82–34759 |
| Kasikornbank Public Co | Thailand | 82–4922 |
| Kawasaki Heavy Industries Ltd | Japan | 82–4389 |
| KCT Konecranes plc | Finland | 82–4297 |
| Keells John Holdings Ltd | Sri Lanka | 82–3854 |
| Keika Express Co. Ltd | Japan | 82–34718 |
| Kelda Group plc | United Kingdom | 82–2782 |
| Kelso Technologies Inc | Canada | 82–2441 |
| Kerry Group PLC | Ireland | 82–34842 |
| KGHM Polska Miedz S.A | Poland | 82–4639 |
| Khmelnitskoblenergo | Russia | 82–4996 |
| Kidde plc | United Kingdom | 82–5153 |
| Kimberly Clark de Mexico S.A. de C.V | Mexico | 82–3308 |
| Kingfisher plc | United Kingdom | 82–968 |
| Kirin Brewery Co | Japan | 82–188 |
| Klabin S.A | Brazil | 82–34628 |
| Kobe Steel Ltd | Japan | 82–3371 |
| Komercni Banka A.S | Czech Republic | 82–4154 |
| Kontron AG | Germany | 82–34840 |
| Krones AG | Germany | 82–3871 |
| Kuala Lumpur Kepong Berhad | Malaysia | 82–5022 |
| Kumba Resources Ltd | South Africa | 82–5217 |
| Kvaerner AS | Norway | 82–3745 |
| Lagardere Groupe SCA | France | 82–3916 |
| Lake Shore Gold Corporation | Canada | 82–34769 |
| Landesbank Rheinland-Phalz | Germany | 82–4930 |
| Lanxess AG | Germany | 82–34846 |
| Legacy Hotels Real Estate Investment Trust | Canada | 82–34729 |
| Legal & General Group plc | United Kingdom | 82–3664 |
| Lenzing AG | Austria | 82–3207 |
| LG Electronics Inc | Korea | 82–3857 |
| Liberty Group Ltd | South Africa | 82–3924 |
| Liberty International plc | United Kingdom | 82–34722 |

| Company name | Country | File No. |
|---|---|---|
| Lindsey Morden Group | Canada | 82–5143 |
| Loblaw Companies Ltd | Canada | 82–4918 |
| Lonmin plc | United Kingdom | 82–191 |
| Lopro Corp | Japan | 82–4664 |
| L'Oreal | France | 82–735 |
| Lukoil Oil Co | Russia | 82–4006 |
| M Cell Limited | South Africa | 82–5192 |
| Macquarie Bank Ltd | Australia | 82–34740 |
| Magician Industries Holdings Inc | Bermuda | 82–4358 |
| Malayan Banking Berhad | Malaysia | 82–34861 |
| Man Group plc | United Kingdom | 82–4214 |
| Mandarin Oriental International Ltd | Hong Kong | 82–2955 |
| Manila Electric Co | Philippines | 82–3237 |
| Marks & Spencer Group plc | United Kingdom | 82–1961 |
| Marubeni Corp | Japan | 82–616 |
| Matsui Securities Co. Ltd | Japan | 82–5215 |
| Maximum Ventures Inc | Canada | 82–3923 |
| Mayr Melnhof Karton AG | Austria | 82–4052 |
| MCK Mining Corp | Canada | 82–3938 |
| Mediaset S.p.A | Italy | 82–4515 |
| Mercantil Servicios Financieros C.A | Venezuela | 82–4648 |
| Metabolic Pharmaceuticals Ltd | Australia | 82–34880 |
| Metcash Holdings Limited | Australia | 82–34788 |
| Metoz Holding Ltd | South Africa | 82–4279 |
| Metropolitan Holdings Ltd | South Africa | 82–34755 |
| Mexgold Resources Inc | Canada | 82–34749 |
| Michael Page International plc | United Kingdom | 82–5162 |
| Michelin Compagnie Generale des Etablissements | France | 82–3354 |
| Millipede International Ltd | Australia | 82–34887 |
| MIM Holdings Ltd | Australia | 82–173 |
| Minebea Co. Ltd | Japan | 82–4551 |
| Misr International Bank S.A.E | Egypt | 82–4629 |
| Mitsubishi Corp | Japan | 82–3784 |
| MJ Maillis S.A | Greece | 82–4975 |
| Mobistar N.V./S.A | Belgium | 82–4965 |
| Mol Rt | Hungry | 82–4224 |
| Morgan Crucible Co. plc | United Kingdom | 82–3387 |
| Mount Burgess Gold Mining Co | Australia | 82–1235 |
| M-real Corp | Finland | 82–3696 |
| Multiemedia Ltd | Australia | 82–34803 |
| Mystique Energy Inc | Canada | 82–34712 |
| Mytravel Group | United Kingdom | 82–5049 |
| Nampak Limited | South Africa | 82–3714 |
| National Bank of Canada | Canada | 82–3764 |
| NEC Electronics Corp | Japan | 82–34733 |
| Nedcor Ltd | South Africa | 82–3893 |
| Nestle S.A | Switzerland | 82–1252 |
| New World Development Co. Ltd | Hong Kong | 82–2971 |
| Newalta Income Fund | Canada | 82–34834 |
| Nintendo Co. Ltd | Japan | 82–2544 |
| Nippon Mining Holdings | Japan | 82–34805 |
| Nippon Steel Corp | Japan | 82–5175 |
| Nissan Motor Co | Japan | 82–207 |
| Nomura Research Institute Ltd | Japan | 82–34673 |
| Northern Abitibi Mining Corp | Canada | 82–4749 |
| Northwest Co. Fund | Canada | 82–34737 |
| Norwood Abbey Ltd | Australia | 82–34754 |
| NQL Drilling Tools Inc | Canada | 82–7052 |
| NTT Urban Development Corp | Japan | 82–34835 |
| Nutreco Holding N.V | Netherlands | 82–4927 |
| NV Umicore S.A | Belgium | 82–3876 |
| Nyzhniodniprovsky Pipe Rolling Plant | Ukraine | 82–4814 |
| OAO OMZ | Russia | 82–5063 |
| Occupational & Medical Innovations Ltd | Australia | 82–5174 |
| OJSC Concern Kalina | Russia | 82–34847 |
| OJSC Marganetsky Ore Mining & Processing | Ukraine | 82–34710 |
| OJSC Ordzhonikidzevsky Ore Mining & Processing | Russia | 82–34664 |
| OJSC Petersburg Telephone Network | Russia | 82–5197 |
| OJSC RBC Information Systems | Russia | 82–34864 |
| OJSC Scientific Production Corporation Irkut | Russia | 82–34818 |
| OJSC Volga Telecom | Russia | 82–4642 |
| Old Mutual plc | United Kingdom | 82–4974 |
| Olympus Optical Co. Ltd | Japan | 82–3326 |
| Omega Project Co. Ltd | Japan | 82–5030 |

| Company name | Country | File No. |
|---|---|---|
| Omron Corp | Japan | 82–1170 |
| OMV AG | Austria | 82–3209 |
| Onfem Holdings Ltd | Bermuda | 82–3735 |
| Ontzinc corporation | Canada | 82–34778 |
| Open Joint Stock Company Dniproenergo | Ukraine | 82–4844 |
| Open Joint Stock Company Ukrnafta | Ukraine | 82–4859 |
| Option N.V | Belgium | 82–34875 |
| Orange S.A | France | 82–5168 |
| Orbis S.A | Poland | 82–5025 |
| Orkla AS | Norway | 82–3998 |
| Osterreichische Elektrizitatswirtschafts | Austria | 82–4381 |
| Pacific Topaz Resources Ltd | Canada | 82–1285 |
| PagesJaunes | France | 82–34860 |
| Palfinger AG | Austria | 82–34843 |
| Paperlinx Ltd | Australia | 82–5061 |
| Paul Y ITC Construction Holdings Ltd | Bermuda | 82–4217 |
| Perfect Fry Corp | Canada | 82–1609 |
| Peter Hambro Mining plc | United Kingdom | 82–34734 |
| Petrobank Energy Resources Ltd | Canada | 82–34812 |
| Peyto Energy Trust | Canada | 82–34773 |
| Pharmaxis Ltd | Australia | 82–34813 |
| Phoenix Canada Oil Co. Ltd | Canada | 82–3936 |
| Pinault Printemps Redoute | France | 82–5179 |
| Ping An Insurance Co of China Ltd | China | 82–34809 |
| Points International Ltd | Canada | 82–34823 |
| Polski Koncern Naftowy | Poland | 82–5036 |
| Power Corp. of Canada | Canada | 82–137 |
| Power Financial Corp | Canada | 82–1716 |
| Prokom Software S.A | Poland | 82–4700 |
| Promise Co. Ltd | Japan | 82–4837 |
| PSP Swiss Property AG | Switzerland | 82–5052 |
| PT Bank Buana Indonesia TBK | Indonesia | 82–34694 |
| PTT Exploration & Production plc | Thailand | 82–3827 |
| Public Power Corp. S.A | Greece | 82–34707 |
| Qantas Airways | Australia | 82–4130 |
| Q P Corporation | Japan | 82–4750 |
| QRSciences Holdings Ltd | Australia | 82–34852 |
| Quantum Energy Ltd | Australia | 82–34877 |
| Rabobank Nederland | Netherlands | 82–5010 |
| Raffles Medical Group | Singapore | 82–4926 |
| Randstad Holding NV | Netherlands | 82–4956 |
| RAO Gazprom | Russia | 82–4670 |
| Raytec Development Corp | Canada | 82–3553 |
| RE Power Systems AG | Germany | 82–34654 |
| Redflex Holdings Ltd | Australia | 82–34862 |
| ReGen Therapeutics PLC | United Kingdom | 82–34822 |
| Regenera Ltd | Australia | 82–34831 |
| Reliance Industries Ltd | India | 82–3300 |
| Remgro Ltd | South Africa | 82–5106 |
| Renault SA | France | 82–4001 |
| Rentokil Initial 2005 plc | United Kingdom | 82–34878 |
| Rentokil Initial plc | United Kingdom | 82–3806 |
| Resorts World Berhad | Malaysia | 82–3229 |
| Rexam plc | United Kingdom | 82–3 |
| Rich Minerals Corp | Canada | 82–2832 |
| Roche Holding Ltd | Switzerland | 82–3315 |
| Rock Energy Inc | Canada | 82–34785 |
| Rolls Royce Group plc | United Kingdom | 82–34721 |
| Royal P&O Nedlloyd NV | Netherlands | 82–1056 |
| Royal Wessanen NV | Netherlands | 82–1306 |
| S.A. Fabrica de Productos Alimenticios | Brazil | 82–4870 |
| SABMiller plc | United Kingdom | 82–4938 |
| Sage Group Ltd | South Africa | 82–4241 |
| Sage Group plc | United Kingdom | 82–34736 |
| Sahaviriya Steel Industries plc | Thailand | 82–5008 |
| SAIA-Burgess Electronics Holding AG | Switzerland | 82–4810 |
| Sainsbury J plc | United Kingdom | 82–913 |
| Saipem S.p.A | Italy | 82–4776 |
| Sam's Seafood Holdings Ltd | Australia | 82–34648 |
| Samsung Electronics Co. Ltd | Korea | 82–3109 |
| Sancor Cooperativas Unidas Ltd | Argentina | 82–4476 |
| Sandvik AB | Sweden | 82–1463 |
| Santos Ltd | Australia | 82–34 |
| Sanyo Electric Co | Japan | 82–264 |

| Company name | Country | File No. |
|---|---|---|
| Sao Paulo Alpargatas SA | Brazil | 82–3692 |
| Saputo Inc | Canada | 82–34670 |
| Sare Holdings SA de CV | Mexico | 82–34791 |
| Saskatchewan Wheat Pool | Canada | 82–5037 |
| Schneider Electric SA | France | 82–3706 |
| Schwarz Pharma AG | Germany | 82–4406 |
| SCMP Group Ltd | Bermuda | 82–3327 |
| Securitas AB | Sweden | 82–34719 |
| Sega Sammy Holdings Ltd | Japan | 82–34816 |
| Seiko Epson Corp | Japan | 82–34746 |
| Sekisui House Ltd | Japan | 82–5129 |
| Sembcorp Industries Ltd | Singapore | 82–5109 |
| Severn Trent plc | United Kingdom | 82–2819 |
| Shanghai Industrial Holdings Ltd | China | 82–5160 |
| Shangri La Asia Ltd | Bermuda | 82–5006 |
| Sharp Corp | Japan | 82–1116 |
| Shin Corp. Public Co. Ltd | Thailand | 82–3140 |
| Shin Satellite Public Co. Ltd | Thailand | 82–4527 |
| Shinsei Bank Limited | Japan | 82–34775 |
| Shiseido Company Ltd | Japan | 82–3311 |
| Shun Tak Holdings Ltd | Hong Kong | 82–3357 |
| Siam Commercial Bank Public Co. Ltd | Thailand | 82–4345 |
| Silverstone Corp Berhad | Malaysia | 82–3319 |
| Singapore Airport Terminal Services Ltd | Singapore | 82–5117 |
| Singapore Telecommunications Ltd | Singapore | 82–3622 |
| Singer N.V | Netherlands | 82–34635 |
| Sirit Inc | Canada | 82–3200 |
| Skandinaviska Enskilda Banken | Sweden | 82–3637 |
| Sky Perfect Communications | Japan | 82–5113 |
| Slovnaft A.S | Slovak Republic | 82–3721 |
| Smiths Group plc | United Kingdom | 82–34872 |
| Snackie Jacks Ltd | Canada | 82–34724 |
| SNECMA | France | 82–34845 |
| Societe Generale | France | 82–3501 |
| Sogecable S.A | Spain | 82–4981 |
| Solbec Pharmaceuticals Ltd | Australia | 82–34866 |
| Southcorp Holdings Ltd | Australia | 82–2692 |
| Southern Telecommunications Co | Russia | 82–4721 |
| St. George Bank Ltd | Australia | 82–3809 |
| St. Jude Resources Ltd | Canada | 82–4014 |
| Standard Chartered plc | United Kingdom | 82–5188 |
| Starlight International Holdings Ltd | Bermuda | 82–3594 |
| Starpharma Holdings | Australia | 82–34832 |
| Starrex Mining Corp. Ltd | Canada | 82–3755 |
| State Bank of India | India | 82–4524 |
| Steinhoff International Holdings Ltd | South Africa | 82–34722 |
| Stina Resources Ltd | Canada | 82–2062 |
| Strategic Technologies Inc | Canada | 82–1548 |
| Studsvik AB | Sweden | 82–5172 |
| Sultan Minerals Inc | Canada | 82–4741 |
| Sumitomo Corp | Japan | 82–34680 |
| Sumitomo Metal Industries Ltd | Japan | 82–3507 |
| Sumitomo Mitsui Financial Group Inc | Japan | 82–4395 |
| Sumitomo Trust & Banking Co. Ltd | Japan | 82–4617 |
| Sun Hung Kai Properties Ltd | Hong Kong | 82–1755 |
| Superior Diamonds Inc | Canada | 82–34752 |
| Superior Plus Income Fund | Canada | 82–34838 |
| Suzano Petroquimica SA | Brazil | 82–34667 |
| Svenska Cellulosa Aktiebolagot | Sweden | 82–763 |
| Swire Pacific Ltd | Hong Kong | 82–2184 |
| Swiss Reinsurance Co | Switzerland | 82–4248 |
| T & D Holdings Inc | United Kingdom | 82–34783 |
| Tabcorp Holdings Ltd | Australia | 82–3841 |
| Tai Cheung Holdings Ltd | Bermuda | 82–3528 |
| Tate & Lyle plc | United Kingdom | 82–905 |
| Taylor Nelson Sofres plc | United Kingdom | 82–4668 |
| Techtronic Industries Co. Ltd | Hong Kong | 82–3648 |
| Telefonica Empresas Peru SAA | Peru | 82–34646 |
| Telefonica Moviles Peru Holding S.A.A | Peru | 82–34645 |
| Telepizza | Spain | 82–5001 |
| Tencent Holdings Limited | Cayman Islands | 82–34792 |
| TFS | Switzerland | 82–5095 |
| Theralase Technologies Inc | Canada | 82–3759 |
| TNR Gold Corp | Canada | 82–4434 |

| Company name | Country | File No. |
|---|---|---|
| Tofas Turk Otomobil Fabrikasi AS | Turkey | 82–3699 |
| Tomorrow International Holdings Ltd | Bermuda | 82–4256 |
| TomTom N.V | Netherlands | 82–34879 |
| T-Online International AG | Germany | 82–5125 |
| Toyota Industries Corporation | Japan | 82–5112 |
| Tractebel Energia | Brazil | 82–4760 |
| Tradehold Ltd | South Africa | 82–5238 |
| TravelSky Technology Ltd | China | 82–34687 |
| Tridelta plc | Ireland | 82–34853 |
| Trilogy Energy Trust | Canada | 82–34876 |
| Trinidad Energy Services Income Trust | Canada | 82–34867 |
| Truly International Holdings | Cayman Islands | 82–3700 |
| Tsingtao Brewery Company Ltd | China | 82–4021 |
| U.S. Commercial Corp. S.A. de C.V | Mexico | 82–34669 |
| Unefon Holdings S.A | Mexico | 82–34826 |
| Uni Charm Corp | Japan | 82–4985 |
| UNI President Enterprises Co | Taiwan | 82–3424 |
| Unicharm Corporation | Japan | 82–4985 |
| Unicredito Italiano | Italy | 82–3185 |
| United Bank for Africa plc | Nigeria | 82–4804 |
| United Overseas Bank Ltd | Singapore | 82–2947 |
| Univar N.V | Netherlands | 82–34796 |
| Urbi Desarollos Urbanos S.A. de C.V | Mexico | 82–34797 |
| Usinas Siderurgicas de Minas Gerais S.A | Brazil | 82–3902 |
| Utair Aviation | Russia | 82–4789 |
| VA Technologie AG | Austria | 82–3910 |
| Valeo S.A | France | 82–3668 |
| Valerie Resources Ltd | Canada | 82–3339 |
| Vangold Resources Ltd | Canada | 82–2891 |
| Velcro Industries. N.V | Netherlands Antilles | 82–145 |
| Venfin Ltd | South Africa | 82–3760 |
| Ventracor Ltd | Australia | 82–4630 |
| Vestas Wind Systems | Denmark | 82–34884 |
| Victoria Resources Corporation | Canada | 82–2888 |
| Village Roadshow Ltd | Australia | 82–4513 |
| VNU N.V. | Netherlands | 82–2876 |
| Vodatel Networks Holdings Ltd | Bermuda | 82–5146 |
| Vossloh AG | Germany | 82–34795 |
| VRB Power Systems Inc | Canada | 82–34688 |
| VSMPO–AVISMA Corp | Russia | 82–4963 |
| Vtech Holdings Ltd | Bermuda | 82–3565 |
| Wal Mart de Mexico S.A. de C.V | Mexico | 82–4609 |
| Wanadoo | France | 82–5150 |
| Washtec AG | Germany | 82–4888 |
| West Japan Railway Co | Japan | 82–34777 |
| Western Areas Ltd | South Africa | 82–268 |
| Westone Ventures Inc | Canada | 82–4890 |
| Wolford AG | Austria | 82–4403 |
| Wolfson Microelectronics plc | United Kingdom | 82–34753 |
| Wolters Kluwer N.V | Netherlands | 82–2683 |
| Woodside Petroleum Ltd | Australia | 82–2280 |
| WorleyParsons Ltd | Australia | 82–34858 |
| WPN Resources Ltd | Canada | 82–2418 |
| Wrightson Ltd | New Zealand | 82–3646 |
| X-Cal Resources Ltd | Canada | 82–1655 |
| Xinhua Finance Ltd | Cayman Islands | 82–34883 |
| Xstrata plc | United Kingdom | 82–34660 |
| Yamaha Corp | Japan | 82–34717 |
| Yara International ASA | Norway | 82–34770 |
| Yeebo International Holdings Ltd | Bermuda | 82–3869 |
| Yell Group plc | United Kingdom | 82–34674 |
| Zhejiang Expressway Co. Ltd | China | 82–34629 |
| Zurich Financial Services | Switzerland | 82–5089 |

[FR Doc. 05–12663 Filed 6–27–05; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

## Busybox.com, Inc.; Order of Suspension of Trading

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Busybox.com, Inc. because the company has failed to file periodic reports with the Commission since the period ending September 30, 2000 as required by Section 13(a) of the Securities Exchange Act of 1934 (''Exchange Act'') and Rules 13a–1 and 13a–13 thereunder.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Busybox.com, Inc.

Therefore, it is ordered, pursuant to Section 12(k) of the Exchange Act, that trading in the securities of Busybox.com, Inc. is suspended for the period from 9:30 a.m. EDT on June 24, 2005, through 11:59 p.m. EDT on July 8, 2005.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 05–12835 Filed 6–24–05; 12:03 pm]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51898; File No. SR–Amex–2005–28]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto To Amend Sections 1101, 134, and 1003 of the Amex Company Guide To Make Clarifying and Simplifying Changes Relating To Filing and Notice Requirements With the Exchange Applicable to Amex Listed Issuers

June 21, 2005.

### I. Introduction

On February 28, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Section 1101 of the Amex Company Guide relating to filing and notice requirements to the Exchange applicable to Amex listed issuers, as well as corresponding changes to Sections 134 and 1003 of the Company Guide. On March 18, 2005, the Amex filed Amendment No. 1 to the proposed rule change.[3] On April 20, 2005, the Amex filed Amendment No. 2 to the proposed rule change.[4] On May 6, 2005, the Amex filed Amendment No. 3 to the proposed rule change.[5] The proposed rule change, as amended, was published for comment in the **Federal Register** on May 17, 2005.[6] The Commission received no comments on the proposal, as amended. This order approves the proposed rule change, as amended.

### II. Description of the Proposal

The Amex proposes to amend Section 1101 of the Company Guide to eliminate the summary guide that details when certain notices, reports, and filings required by the Commission must be submitted by listed issuers to the Amex. Instead of the detailed summary guide, the Amex proposes to post a comparable guide itemizing these requirements on its Web site (*http://www.amex.com*) as a service to Amex listed issuers and proposes to update it as necessary. The Amex also proposes to revise certain filing requirements with respect to the number of copies of reports or documents that Amex listed issuers are required to file with the Exchange. Under the changes, an issuer who submits reports through the Commission's Electronic Data Gathering Analysis and Retrieval (''EDGAR'') system, whether required or permitted, would not have to file hard copies separately with the Exchange.[7] In addition, the Amex proposes to revise operative language in Section 1003 (Application of Policies) of the Company Guide to provide that listed issuers are required to comply with all applicable Commission requirements, as well as all Amex requirements, with respect to timely notice and submissions. The Amex is also proposing conforming changes to Section 134 (Filing Requirements) of the Company Guide.

### III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[8] and, in particular, the requirements of Section 6 of the Act[9] and the rules and regulations thereunder. Specifically, the Commission finds the proposal, as described above, to be consistent with Section 6(b)(5) of the Act,[10] in that they are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between issuers.

The Commission notes that the changes should help to make filing material with the Exchange more efficient and avoid providing documents to the Exchange that are already publicly available on EDGAR. The changes being approved also clarify that listed companies must meet all SEC requirements, as well as Exchange requirements, and can be removed from listing for failure to comply with such requirements.

With regard to Amex's proposal to replace the summary guide with a comparable guide on its Web site, the Commission notes that any changes to Amex rules must continue to be filed with the Commission prior to implementing any change.[11] The Amex has stated, and the Commission expects, that, subsequent to such approval, the Web site would be updated to reflect those changes.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–Amex–2005–28), as amended, be, and it hereby is, approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4, dated March 18, 2005, which replaced and superseded the original filing in its entirety (''Amendment No. 1'').

[4] *See* Form 19b–4, dated April 20, 2005, which replaced and superseded Amendment No. 1 in its entirety (''Amendment No. 2'').

[5] *See* Form 19b–4, dated May 6, 2005, which replaced and superseded Amendment No. 2 in its entirety (''Amendment No. 3'').

[6] *See* Securities Exchange Act Release No. 51681 (May 11, 2005), 70 FR 28925 (May 17, 2005) (SR–Amex–2005–28).

[7] For example, under these changes, the electronic submission of annual reports, proposed amendments to and certified copies of the Certificate of Incorporation, By-laws, or other similar organization documents through the EDGAR system satisfies the filing requirement to the Exchange.

[8] In approving this proposed rule change, as amended, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] The Commission notes that such changes to Amex rules would have to be submitted in accordance with Section 19(b) of the Act.

[12] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5–3347 Filed 6–27–05; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51900; File No. SR–Amex–2005–003]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, To Expand the Types of Trusts Permitted to Directly Own Amex Memberships

June 22, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 7, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Amex. On June 7, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 356 to expand the types of trusts permitted to directly own Amex memberships.

Below is the amended text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

**D. Office Rules**

**Section 4. Employees and Admission of Members and Member Organizations**

**Rule 356. Member Organizations**

**Requirements**

For information regarding admission of an organization as a member organization, refer to Article IV, Section 2 of the Exchange Constitution and Exchange Rules 300–312 and contact Membership Services where a checklist of applicable requirements is available.

**Partnership**

A firm applying to become a member organization must submit executed copies of the partnership agreement and all amendments thereto; if applicable, an executed copy of the certificate of limited partnership, as certified by the County Clerk or a copy of the certificate of authority for limited partnerships organized outside New York State; and all documents and information otherwise required by the Exchange. See Exchange Rules 300 and 302 for provisions to be included in the partnership agreement.

All general partners of such firm must become members or allied members of the Exchange. Any limited partners of such firm who control the firm must become approved persons of the Exchange.

**Corporation**

A corporation seeking to become a member organization must submit an executed copy of the charter or certificate of incorporation and all amendments thereto, certified by the Secretary of State; an executed copy of the by-laws and all amendments thereto certified by the Secretary of the corporation or other executive officer; forms of stock certificates; certified list of officers, directors and stockholders pursuant to Exchange Rule 310; and all documents and information otherwise required by the Exchange. See Exchange Rule 312 for provisions to be included in the certificate of incorporation and legend on the stock certificates.

In addition, the Board of Directors of such corporation must designate its ''principal executive officers'' who shall be members or allied members and shall exercise senior principal executive responsibility over the various areas of the business of such corporation in such areas as the rules of the Exchange may prescribe, including: operations, compliance with rules and regulations of regulatory bodies, finance and credit sales, underwriting, research and administration. Any shareholder of such corporation who controls the corporation must become an approved person of the Exchange.

**Trusts**

*Custodial Accounts*

A pension plan seeking to become a member organization must establish that its sponsor is either an active member, or where the sponsor is a member organization, that at least fifty percent of the pension plan's participants are active members or the Floor employees of the sponsor. The pension plan must designate its trustee to represent it with respect to its membership, must ensure that its trustee is an allied member or approved person, as the case may be, and must ensure that every party required by the Exchange to be an approved person of the pension plan has qualified as such.

A pension plan seeking to become a member organization must agree that:

(i) the pension plan and related trust take the membership subject to the Constitution and Rules of the Exchange; (ii) the interests in the membership that inure to the participants of the pension plan and their beneficiaries shall be subject to the Constitution and Rules of the Exchange, and subject to any agreements made by the trustee in connection with the membership, including, without limitation, any agreements made in connection with qualification of a member organization with respect to the membership or any special transfer agreement made in connection with a lease of the membership; (iii) the membership cannot be encumbered and the trustee cannot pledge the membership, nor create or permit to be created thereon any lien, charge or other encumbrance; (iv) all controversies arising in connection with the membership, including controversies with the lessee or nominee thereof, shall be subject to arbitration pursuant to the Constitution and Rules of the Exchange; (v) the trustee shall have all necessary powers to act in connection with the membership; (vi) the Exchange shall have no liability to the participants in the pension plan and their beneficiaries in the event the purchase, operation or disposition of the Exchange membership results in loss to the pension plan and related trust (The plan sponsor and trustee each shall indemnify and hold the Exchange harmless from all claims, losses, expenses (including all attorney's fees) and taxes arising out of the purchase, operation and disposition of the Exchange membership); (vii) the plan sponsor and trustee have been advised by their legal counsel as to the

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange revised the proposed rule text to clarify that an Exchange member owner who does not conduct broker-dealer activities on the floor of the Exchange is not required to be registered with the Commission as a broker-dealer. Member owners can be individuals, partnerships, corporations, custodial accounts or grantor trusts. Amendment No. 1 replaced and superseded the original filing in its entirety.

requirements of the Employee Retirement Income Security Act of 1974, as amended (''ERISA'') and the Internal Revenue Code of 1986, as amended (the ''Code'') with respect to the trust's purchase, operation and disposition of an Exchange membership and any income earned by the trust from the membership; (viii) the plan sponsor is either: (a) an active member of the Exchange, or (b) if the plan sponsor is a member organization, at least fifty percent of the pension plan's participants are active members of the Exchange or Floor employees of the plan sponsor; (ix) the plan sponsor has designated the plan trustee to represent the trust in all dealings with the Exchange with respect to the membership; (x) the trustee and every party required by the Exchange to become an allied member or approved person of the Exchange will qualify as such; (xi) the decision to invest assets of the trust in an Exchange membership was made by fiduciaries of the pension plan independent of the Exchange and its officers and employees and such fiduciaries have not relied on any advice or recommendation of the Exchange or any of its officers and employees, and with regard to ERISA, tax and other legal considerations related to the membership, the plan sponsor and the trustee have relied exclusively on the advice of their own professional advisors; (xii) the trust has the financial ability to bear the economic risk of an investment in an Exchange membership, has adequate means for providing for current benefit needs and has no need for liquidity with respect to the sale or other transfer of the membership; (xiii) the plan sponsor and the trustee are aware that an investment in an Exchange membership involves substantial risks and they have determined that a membership is a suitable investment for the trust and that the trust could bear a loss that would exceed its investment in the membership; and (xiv) the trust associated with the pension plan is exempt from federal income taxes under either Section 501(a) or 408(e) of the Internal Revenue Code of 1986, as amended.

In addition, the trustee must submit to the Exchange a legal opinion in form and substance and from counsel satisfactory to the Exchange as to the following: (a) That the pension plan and related trust were validly created and have not been terminated; and that any amendments have been validly adopted; (b) that the trust is authorized to own an Exchange membership; (c) that the trustee has authority on behalf of the trust to enter into the agreement described in clauses (i) through (xiv) in the preceding paragraph, and that the representations and agreements by the trustee referred to in such agreement have been duly adopted and are binding on and enforceable against the sponsoring employer, the trust and the participants in the pension plan; (d) that the trustee is authorized to either (i) appoint a nominee to engage in business on the Exchange in the name of the trust and be responsible for all transactions and obligations of the nominee, or (ii) lease the membership to the party to whom the membership will be leased; and (e) that the pension plan is described in either Section 401(a) or 408 of the Internal Revenue Code and the trust is tax exempt under either Section 501(a) or Section 408(e).

*Grantor Trusts*

*(a) A trust may acquire one or more memberships, either by a transfer from an owner of a membership or a direct purchase.*

*(b) Prior to a trust becoming a member organization, the grantor (as defined below) and/or the trustee or trustees (hereinafter the ''trustee'') on behalf of the trust, as the case may be, must agree that:*

*(i) The membership owner transferring a membership in trust or the grantor of the trust purchasing a membership (in either case, the ''grantor''), must during the grantor's lifetime or existence be a beneficiary of the trust.*

*(ii) The trustee, grantor and every party required by the Exchange to become an allied member or approved person of the Exchange will qualify as such.*

*(iii) The trust takes the membership subject to the Constitution and Rules of the Exchange, and the grantor and trustee shall remain subject to the Constitution and Rules of the Exchange.*

*(iv) The interests in the membership that inure to the grantor and the beneficiaries of the trust shall be subject to the Constitution and Rules of the Exchange, and subject to any agreements made by the trustee in connection with the membership, including, without limitation, any agreements made in connection with qualification of a member organization with respect to the membership or an special transfer agreement made in connection with a lease of the membership.*

*(v) The Exchange shall have no liability to the trustees of the trust or the beneficiaries of the trust in the event the purchase, operation or disposition of the Exchange membership results in loss to the trust. The grantor, individually, and the trustees, on behalf of the trust, shall indemnify and hold harmless the Exchange for all claims, losses, expenses (including all attorney's fees) and taxes arising out of the purchase, operation and disposition of the membership.*

*(vi) The grantor and trustee have been advised by legal counsel with respect to the trust's purchase, operation and disposition of an Exchange membership and any income earned or loss incurred by the trust from the membership.*

*(vii) The decision to invest assets of the trust in an Exchange membership and/or to continue to hold an Exchange membership was made by the trustees of the trust independent of the Exchange and its officers and employees and such trustees have not relied on any advice or recommendation of the Exchange or any of its officers and employees. With respect to tax and other legal considerations related to the investment in the membership, the grantor and the trustees have relied exclusively on the advice of their own professional advisors.*

*(viii) A membership held in trust may be transferred during the lifetime or existence of the grantor or at the grantor's death or ceasing to exist in accordance with the provisions of Article IV, Section 4 of the Constitution and the Rules of the Exchange. Additionally, an Authorization to Sell may be granted with respect to a membership held in trust, in which case the provisions of Article IV, Section 4 of the Constitution and the Rules of the Exchange shall be applicable.*

*(ix) A membership held in trust may be transferred to the grantor, subject to the Constitution and Rules of the Exchange.*

*(x) Distributions in accordance with paragraphs (viii) and (ix) of this Rule shall be subject to the Constitution and Rules of the Exchange, and subject to any agreements made by the trustees in connection with the membership, including, without limitation, any agreements made in connection with qualification of a member organization with respect to the membership or any special transfer agreement made in connection with a lease of the membership.*

*(xi) The membership shall not be encumbered and the trustees shall not pledge the membership, nor create or permit to be created thereon any lien, charge or other encumbrance.*

*(xii) All controversies arising in connection with the membership, including controversies with the lessee or nominee thereof, shall be subject to*

*arbitration pursuant to the Constitution and Rules of the Exchange.*

*(xiii) The trustees shall have all necessary powers to act in connection with the membership.*

*(xiv) The trust shall have (a) the financial ability to bear the economic risk of an investment in a membership, and (b) no need for liquidity with respect to the sale or other transfer of the membership.*

*(xv) The grantor and the trustees are aware that an investment in a membership involves substantial risks, and they have determined that a membership is a suitable investment for the trust and that the trust could bear a loss that would exceed its investment in the membership.*

*(c) The grantor must submit to the Exchange, in a form and manner prescribed by the Exchange, (i) an application to transfer the membership into trust or to authorize the trust to purchase the membership; (ii) a copy of the trust agreement; (iii) the agreement specified in paragraph (b) of this Rule; (iv) a legal opinion that meets the requirements of paragraph (d) of this Rule; and (v) such other documents or information as the Exchange may require.*

*(d) The trustee must submit to the Exchange a legal opinion in form and substance and from counsel satisfactory to the Exchange as to the following: (a) that the trust was validly created and has not been terminated; (b) that the trust is authorized to own an Exchange membership; (c) that the trustees have authority on behalf of the trust to enter into the agreement described in paragraph (b) of this Rule; (d) that the representations and agreements made by the grantor and the trustees, referred to in such agreement and as required by this Rule, have been duly adopted and are binding and enforceable against the trust, trustees, grantor and beneficiaries of the trust; and (e) that the trustees are authorized either (1) to appoint a nominee to engage in business on the Exchange in the name of the trust and be responsible for all transactions and obligations of the nominee, or (2) to lease the membership to the party to whom the membership will be leased.*

*(e) After the transfer of a membership in trust or the purchase of a membership by a trust, as the case may be, has been approved by the Exchange, the grantor and trustees must promptly submit to the Exchange any amendments to the trust agreement and must promptly notify the Exchange in writing of any changes in the information set forth in the application to transfer the membership in trust or to authorize the trust to purchase the membership, any changes in successor trustee, any release of the membership out of the trust, and any termination of the trust. In the event that the membership is released from the trust, the trust terminates, or the trust agreement is amended so that it no longer complies with the requirements of this Rule, the Exchange shall deem the membership to have reverted to the grantor to be held directly and not in trust.*

All prospective member organizations must also submit a financial statement required by the Exchange Examinations Divisions; an executed copy of the Uniform Application for Broker Dealer Registration and any amendments thereto as filed with the SEC, together with a copy of the order of approval, if applicable; an opinion of counsel that the organization is duly organized in the state of its incorporation and either (1) authorized to engage in the business of buying and selling securities as a broker and dealer in the state of New York, if applicable, or (2) authorized to buy and sell seats on the American Stock Exchange LLC and to lease them out; an opinion of counsel to the effect that every person required to become an approved person pursuant to Article IV, Section 2(j) and Rule 310(a) has applied for approval by the Exchange as such; and a copy of offering circulars or private placement memoranda prepared by the organization for the purpose of raising capital and an opinion of counsel as required by Rule 312(b), if applicable.

The Exchange shall not approve an organization as a member organization unless every party required to be an allied member or approved person of the organization has qualified as such. See Article I, Section 3(c) and (g) for definitions of ''allied member'' and ''approved persons.''

*Except for Custodial Accounts, Grantor Trusts and other member organizations which own Exchange seats but do not conduct broker-dealer activities on the floor of the Exchange, [T]*he Exchange shall not approve an organization as a member organization unless such organization is registered with the SEC as a broker-dealer, and submits an executed agreement signed by an individual associated with the organization and authorized to act in this regard, that the organization is bound by and agrees to abide by the provisions of the Constitution of the Exchange as amended from time to time and by all rules and regulations, orders, directives and decisions adopted or made in accordance therewith.

An organization shall cease to be a member organization and shall dispose of its membership if it becomes subject to any ''statutory disqualification'' as defined in Section 3(a)(39) of the Securities Exchange Act of 1934.

**Admissions Procedure**

The steps followed in connection with an organization's application for regular or options principal membership are enumerated in the beginning of this chapter. There is a minimum posting period of 7 days for member organizations or approved person applicants. Notice of proposed admission shall be posted on the Bulletin Board in the Exchange upon the submission, in proper form, of all required documents.

* * * * *

## 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, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently, the Exchange permits certain pension trusts (generally comprised of trusts or custodial accounts, *i.e.* Keoghs and IRAs) to directly own Exchange memberships for investment purposes and either lease the seat or designate a nominee to operate the seat. The pension trust sponsor must be an active member of the Exchange or, in the case of a member organization, at least fifty percent (50%) of the pension trust beneficiaries must be active members or their Floor employees.

The Exchange is proposing to expand the types of trusts that are permitted to own Amex memberships to include grantor trusts. The Exchange believes that these trusts can be useful for estate planning purposes and can also provide certain tax benefits to the grantor. Such trusts would be able to acquire one or more memberships either by a transfer from an existing owner of a membership or by a direct purchase. The grantor of the trust (*i.e.*, either the member

transferring a membership to a trust or the grantor of the trust purchasing a membership) would be required during the grantor's lifetime or existence (in the case of a non-natural person) to be a beneficiary of the trust. In the event that the trust terminates or is amended such that it no longer qualifies to own an Exchange membership, any memberships held by the trust will revert to the grantor.

As is the case with pension trusts, the trustee and grantor will be required on behalf of the trust to execute an agreement with the Exchange acknowledging that the trust will own the membership subject to the Exchange Constitution and Rules, as well as certain other limitations and indemnifications, and will also be required to provide a legal opinion confirming that the trust was validly created, is authorized to own a membership and that the trustee is vested with all necessary authority to either appoint a nominee to operate the seat on behalf of the trust and/or lease the seat, as well as to enter into the requisite agreement. Additionally, the trustee and grantor will be required to become allied members or approved persons of the Exchange, as applicable.

The Exchange believes that permitting broader trust ownership of memberships will enable seat owners to take advantage of certain estate planning and tax benefits, and will also potentially provide increased access to capital. The Chicago Board Options Exchange permits trust seat ownership.[4]

2. Statutory Basis

Amex believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5) of the Act,[6] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Amex does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

Amex neither solicited nor received written comments with respect to the proposed rule change, as amended.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(a) By order approve such proposed rule change, as amended; or

(b) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an E-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2005–003 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. All submissions should refer to File Number SR-Amex-2005–003. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of 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-2005–003 and should be submitted on or before July 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5–3349 Filed 6–27–05; 8:45 am]

BILLING CODE 8010–01–P

[4] A reference in the proposed rule change that the Philadelphia Stock Exchange, Inc. permits trust seat ownership has not been included in this notice pursuant to a telephone conversation between Ivonne Natal, Associate General Counsel, Amex and Geraldine Idrizi, Attorney, Division of Market Regulation, Commission, on June 20, 2005.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51892; File No. SR-MSRB–2005–08]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Regarding Amendments to Rule G–40, on Electronic Mail Contacts, and Form G–40

June 21, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on May 26, 2005, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB is filing with the Commission a proposed rule change consisting of amendments to Rule G–40, on electronic mail contacts, and Form G–40 that would: (i) Eliminate the need

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

for paper submission of original forms; (ii) require each broker, dealer and municipal securities dealer (collectively ''dealers'') to maintain an Internet electronic mail account to permit communication with the MSRB; and (iii) require each dealer to review and, if necessary, update its Primary Contact information each calendar quarter. The text of the proposed rule change, as well as proposed amended Form G–40, are available on the MSRB's Web site *(http://www.msrb.org)*, at the MSRB's principal office, and at the Commission's Public Reference Room.

## 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 MSRB 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 MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The events of September 11, 2001 and the weeks that followed, emphasized the importance of, and need for an efficient and reliable means of official communication between regulators and the industry. Establishing a reliable method for electronic communication was necessary to allow the MSRB to efficiently alert dealers to official communications, including time-sensitive developments, rule changes, notices, etc., as well as to facilitate dealers' internal distribution of such information. In addition, the MSRB discontinued publication of *MSRB Reports* in 2002; MSRB notices have since been available exclusively on the MSRB's Web site at *http://www.msrb.org.* Thus, in 2002 the MSRB adopted Rule G–40, on e-mail contacts, to ensure that such notices and other MSRB communications continued to reach each dealer.[3]

Rule G–40 requires dealers to use Form G–40 to appoint a ''Primary Contact'' for purposes of electronic communication between the dealer and the MSRB. The Primary Contact must be either a Series 53-registered municipal securities principal or a Series 51-registered municipal fund securities limited principal.[4] Currently, dealers must submit their original Forms G–40 by mail. Thereafter, any changes to the forms may be made by mail or electronically through the dealer's electronic G–40 account using the appropriate user ID and password.

As the process of electronic communication between dealers and the MSRB has evolved over the past few years, it has become apparent that certain changes and enhancements are now required to ensure that this process remains both efficient and practical. In addition, the MSRB has observed that certain differences exist between Rule G–40 and similar NASD requirements. Whenever possible, the MSRB attempts to adopt similar provisions and comparable language to NASD rules in order to facilitate dealer understanding of and compliance with such provisions, as well as inspection and enforcement. NASD requires that each member appoint an ''executive representative'' to, among other things, serve as the official contact person between the member and the NASD.[5] NASD also requires that the executive representative maintain an Internet e-mail account for communication with NASD. And in May 2004, NASD Rule 1150 became effective which requires NASD members to review and, if necessary, update their executive representative designation and contact information within 17 business days after the end of each calendar quarter.[6]

The MSRB believes that Rule G–40 should contain an update provision similar to NASD's, and that, like NASD, its entire process should be electronic. Thus, the proposed amendments to Rule G–40 would require dealers to maintain an Internet e-mail account to permit communication with the MSRB, and would require that all Form G–40 submissions—initial forms and subsequent updates and amendments—be completed electronically using the appropriate user ID and password. In addition, the amendments would require dealers to review and, if necessary, update information on their Primary Contact within 17 business days after the end of each calendar quarter. The proposed amendments to Rule G–40 necessitate certain changes to Form G–40, including an indication that electronic submission is required.

2. Statutory Basis

The MSRB believes that the proposed rule change is consistent with Section 15B(b)(2)(I) of the Act,[7] which authorizes the MSRB to adopt rules that provide for the operation and administration of the MSRB. The MSRB believes that the proposed rule change is consistent with this provision in that it will facilitate effective electronic communication between dealers and the MSRB, and that by ensuring MSRB requirements for electronic communication are substantially similar to NASD requirements, it will facilitate dealer understanding of, and compliance with, these requirements.

### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The MSRB does not believe that the proposed rule change will result in any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received on the proposal.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[3] Rule G–40 was approved in SEC Release No. 34–46043 (June 6, 2002), 67 FR 40762.

[4] Dealers may also appoint an ''Optional Contact'' and this person does *not* have to be a registered principal.

[5] Article IV, Section 3 of the NASD By-Laws requires members to appoint and certify to NASD one ''executive representative'' to represent, vote and act for the member in all NASD affairs. The executive representative must be a member of the firm's senior management and a registered principal of the member.

[6] SEC Release No. 34–49497 (March 29, 2004), 69 FR 17723.

[7] 15 U.S.C. 78o–4(b)(2)(I).

*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-MSRB–2005–08 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR-MSRB–2005–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the MSRB's offices. 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-MSRB–2005–08 and should be submitted on or before July 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5–3346 Filed 6–27–05; 8:45 am]

**BILLING CODE 8010–01–P**

[8] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–51869: File No. SR–NASD–2005–051]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Create an Enterprise License Fee for the TotalView Entitlement

June 17, 2005

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2005, 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 June 3, 2005, Nasdaq amended the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify NASD Rule 7010(q)(1)(A) to establish an enterprise license option for the TotalView entitlement. The text of the proposed rule change is set forth below. Proposed additions are in italics; proposed deletions are in [brackets].[3]

* * * * *

**7010. System Services**

(a)–(p) No change

**(q) Nasdaq TotalView**

(1) No Change.

(A) (i) Except as provided in (q)(1)(A)(ii) *and (iii)*, for the TotalView entitlement there shall be a $70 monthly charge for each controlled device.

(ii) *Except as provided in (q)(1)(A)(iii),* a non-professional subscriber, as defined in Rule 7010(e), shall pay $14 per month for each controlled device.

*(iii) As an alternative to (q)(1)(A)(i) and (ii), a broker-dealer distributor may purchase an enterprise license at a rate of $25,000 for non-professional subscribers or $100,000 per month for both professional and non-professional subscribers. The enterprise license entitles a distributor to provide TotalView to an unlimited number of internal users, whether such users receive the data directly or through third-party vendors, and external users with whom the firm has a brokerage relationship. The enterprise license shall not apply to relevant Level 1 and NQDS fees.*

(B)–(C) No Change.

(2)–(4) No change

(r)–(v) No Change.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, 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

Nasdaq continues to seek broader distribution of its TotalView data entitlement to facilitate broader exposure of orders in the Nasdaq Market Center and improve customer execution quality. To facilitate this objective, Nasdaq is seeking ways to reduce the cost of providing TotalView data to large numbers of a broker-dealer's customer base. In addition, as many brokers augment their traditional institutional customer relationship tools with one or more electronic software applications, the need to provide cost-efficient market data on those applications has become increasingly important.

Accordingly, Nasdaq proposes to establish a program whereby a broker-dealer distributor could obtain an enterprise license for the distribution of the TotalView market data entitlement for a fixed cost of either $25,000 per month for non-professional subscribers or of $100,000 per month for broker-dealer distributors that serve both non-professional and professional subscribers. This enterprise license pricing structure would mirror the pricing structure already established for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposed changes are marked from NASD Rule 7010 as it appears in the NASD Manual available at *www.nasd.com.*

individual professional and non-professional subscribers.

This program would only be available to broker-dealers registered under the Act, and would cover all TotalView usage fees with respect to both internal usage and re-distribution to customers with whom the firm has a brokerage relationship.[4] Non-broker-dealer vendors and application service providers would not be eligible for the enterprise license, as such firms typically pass through the cost of market data user fees to their customers. This would enable firms to incorporate TotalView data into the software applications they make available to their institutional and retail customers, without providing them the opportunity to re-distribute TotalView data in competition with pure vendors.

The enterprise license would cover fees for TotalView data received directly from Nasdaq as well as data received from third-party vendors (*e.g.*, Bloomberg, Reuters, etc.). Upon signing up for the program, the relevant firm would be entitled to inform any third-party market data vendor they utilize (through a Nasdaq-provided form) that, going forward, any TotalView data usage by the broker-dealer may be reported to Nasdaq on a non-billable basis. Such a structure attempts to address a long-standing concern that broker-dealers are over-billed for market data consumed by one person through multiple market-data display devices. At the same time, the proposed billing structure would continue to provide Nasdaq with accurate reporting information for purposes of usage monitoring and auditing.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[5] in general, and with Section 15A(b)(5) of the Act,[6] in particular, in that the incorporation of an enterprise license for user fees under the TotalView entitlement provides for the equitable allocation of reasonable charges among the persons distributing and purchasing this information. Nasdaq believes that the proposed pricing structure would provide meaningful cost controls to brokers, who typically absorb user fees, seeking to broadly distribute TotalView data to their customers, while preventing them from using such a license to gain an unfair competitive advantage over pure application vendors, who typically pass such costs through. Nasdaq further believes that this rule change would encourage the broader redistribution of the Nasdaq Market Center depth of book order information, thus improving transparency and thereby benefit the investing public.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change, as amended, would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2005–051 on the subject line.

*Paper Comments*

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–051. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the 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–2005–051 and should be submitted on or before July 19, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. E5–3348 Filed 6–27–05; 8:45 am]

**BILLING CODE 8010–01–P**

[4] Distributors who utilize the enterprise license would still be liable for the applicable distributor fees.

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(b)(5).

[7] 17 CFR 200.30–3(a)(12).

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of proposed priorities. Request for public comment.

**SUMMARY:** As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the Federal sentencing guidelines, and in accordance with Rule 5.2 of its Rules of Practice and Procedure, the Commission is seeking comment on possible priority policy issues for the amendment cycle ending May 1, 2006.

**DATES:** Public comment should be received on or before August 15, 2005.

**ADDRESSES:** Send comments to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC 20002–8002, Attention: Public Affairs-Priorities Comment.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, telephone: (202) 502–4590.

**SUPPLEMENTARY INFORMATION:** The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. 994(o) and submits guideline amendments to the Congress not later than the first day of May each year pursuant to 28 U.S.C. 994(p).

While the Commission provides this notice to identify tentative priorities, it recognizes that other factors, most notably changes that may be required as a result of *United States* v. *Booker,* 543 U.S.____ (2005); 125 S.Ct. 738 (2005), as well as the enactment of any legislation requiring Commission action, may affect the Commission's ability to complete work on any or all policy issues by the statutory deadline of May 1, 2006.

For the amendment cycle ending May 1, 2006, and possibly continuing into the amendment cycle ending May 1, 2007, the Commission has identified the following tentative priorities:

(1) Implementation of crime legislation enacted during the 108th Congress and the first session of the 109th Congress warranting a Commission response, including (A) the Family Entertainment and Copyright Act of 2005, Public Law 109–9; (B) the Intellectual Property Protection and Courts Amendment Act of 2004, Public Law 108–482; (C) the Anabolic Steroids Act, Public Law 108–358; (D) the Intelligence Reform and Terrorism Reform Act of 2004, Public Law 108–458; and (E) other legislation, authorizing statutory penalties and creating new offenses, that requires incorporation into the guidelines;

(2) Continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on appropriate responses to *United States* v. *Booker,* including any appropriate guideline changes;

(3) Continuation of its policy work regarding immigration offenses, specifically, offenses under §§ 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) and 2L1.2 (Unlawfully Entering or Remaining in the United States), and Chapter Two, Part L, Subpart 2 (Naturalization and Passports), which also may involve the formation of an ad hoc advisory group on immigration offenses;

(4) Continuation of its work with the congressional, executive, and judicial branches of the government and other interested parties on cocaine sentencing policy, including the update of Commission research, in view of the Commission's 2002 report to Congress, *Cocaine and Federal Sentencing Policy;*

(5) Review, and possible amendment, of commentary in Chapter Eight (Organizations) regarding waiver of the attorney-client privilege and work product protections;

(6) Resolution of a number of circuit conflicts, pursuant to the Commission's continuing authority and responsibility, under 28 U.S.C. § 991(b)(1)(B) and *Braxton* v. *United States,* 500 U.S. 344 (1991), to resolve conflicting interpretations of the guidelines by the federal courts; and

(7) Review and amendment of pertinent guideline provisions to address structural issues regarding the Sentencing Table in Chapter Five, Part A, particularly ''cliff-like'' effects occurring between levels 42 and 43, and a possible adjustment to the offense level computation in cases in which the offense level exceeds level 43.

The Commission hereby gives notice that it is seeking comment on these tentative priorities and on any other issues that interested persons believe the Commission should address during the amendment cycle ending May 1, 2006, including short- and long-term research issues. To the extent practicable, comments submitted on such issues should include the following: (1) A statement of the issue, including scope and manner of study, particular problem areas and possible solutions, and any other matters relevant to a proposed priority; (2) citations to applicable sentencing guidelines, statutes, case law, and constitutional provisions; and (3) a direct and concise statement of why the Commission should make the issue a priority.

**Authority:** 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

**Ricardo H. Hinojosa,**

*Chair.*

[FR Doc. 05–12742 Filed 6–27–05; 8:45 am]

BILLING CODE 2210–40–P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Effective Date

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice of effective date for goods of Mexico for certain modifications of the NAFTA Rules of Origin.

**SUMMARY:** In Proclamation 7870 of February 9, 2005, the President modified the rules of origin under the North American Free Trade Agreement (the ''NAFTA'') incorporated in the Harmonized Tariff Schedule of the United States (the ''HTS''). The modifications were made effective with respect to goods of Canada that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2005. The proclamation stated that the modifications with respect to goods of Mexico would be effective on or after a date to be announced in the **Federal Register** by the USTR. The purpose of this notice is to announce that the effective date for the modifications for goods of Mexico is June 15, 2005. The changes were printed in the **Federal Register** of February 14, 2005, Volume 70, Number 29, pages 7611–7630.

**FOR FURTHER INFORMATION CONTACT:** For further information, please contact Kent Shigetomi, USTR, (202) 395–3412, or *kent_shigetomi@ustr.eop.gov.*

**SUPPLEMENTARY INFORMATION:** Presidential Proclamation 6641 of December 15, 1993 implemented the North American Free Trade Agreement (the ''NAFTA'') with respect to the United States and, pursuant to the North American Free Trade Agreement Implementation Act (the ''NAFTA Implementation Act''), incorporated in the Harmonized Tariff Schedule of the United States (the ''HTS'') the tariff modifications and rules of origin necessary or appropriate to carry out the NAFTA. Section 202 of the NAFTA Implementation Act provides rules for determining whether goods imported into the United States originate in the territory of a NAFTA party and thus are eligible for the tariff and other treatment contemplated under the NAFTA. Section 202(q) of the NAFTA Implementation Act (19 U.S.C. 3332(q)) authorizes the President to proclaim, as a part of the HTS, the rules of origin set out in the NAFTA and to proclaim modifications to such previously proclaimed rules of origin, subject to the consultation and layover requirements of section 103(a) of the NAFTA Implementation Act (19 U.S.C. 3313(a)).

The President determined that the modifications to the HTS contained in Proclamation 7870 and made pursuant to sections 201 and 202 of the NAFTA Implementation Act, were appropriate and proclaimed such changes with respect to goods of Canada on February 9, 2005. The modifications were made effective with respect to goods of Canada that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2005. For goods of Mexico, the President decided that the effective date of the modifications shall be determined by the United States Trade Representative (USTR).

On May 3, 2005, the government of Mexico obtained the necessary authorization to implement the rule of origin changes with respect to qualifying goods entering from the United States. Subsequently, officials from the government of Mexico and the government of the United States agreed to implement these changes with respect to each other's eligible goods, effective June 15, 2005.

**Ambassador Rob Portman,**

*United States Trade Representative.*

[FR Doc. 05–12586 Filed 6–27–05; 8:45 am]

BILLING CODE 3190–W5–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Advisory Circular (AC) 150/5345–53C, Airport Lighting Equipment Certification Program; Proposed Update and Opportunity To Comment

**AGENCY:** Federal Aviation Administration (FAA), US DOT.

**ACTION:** Notice of update of AC150/5345–53B to AC150/5345–53C.

**SUMMARY:** The FAA proposes to replace AC150/5345–53B to AC150/5345–53C to clarify the criteria under the Airport Lighting Equipment Certification Program (ALECP) for acceptance of an organization as a third party certification body (third party certifier) and how manufactures may get equipment qualified under the program. The Secretary of Transportation is providing notice in the **Federal Register** of, and an opportunity for public comment on, AC150/535–43C, Airport Lighting Equipment Certification Program.

**DATES:** Comments must be submitted on or before August 12, 2005.

**ADDRESSES:** Comments may be delivered or mailed to the FAA, Airport Engineering Division, AAS–100, Room 619, 800 Independence Avenue, SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Mr. Rick Marinelli, Manager, Airport Engineering Division, AAS–100, Room 619, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7669.

**SUPPLEMENTARY INFORMATION:** Existing Advisory Circular (AC) 150/5345–53B, Airport Lighting Equipment Certification Program, describes the Airport Lighting Equipment Certification Program (ALECP). It provides information on how an organization can get Federal Aviation Administration (FAA) acceptance as a third party certification body (third party certifier) and how manufacturers may get equipment qualified under the program. The FAA proposes to replace AC150/5345–53B with AC150/5345–53C to clarify the criteria under the Airport Lighting Equipment Certification Program (ALECP) for acceptance of an organization as a third party certification body (third party certifier) and how manufacturers may get equipment qualified under the program. The draft document is available on the Internet. At the same Internet site is a letter to manufacturer relating to the Airport Lighting Equipment Certification Program, dated May 31, 2005. The Office of Airport Safety and Standards may revise the final AC as a result of comments received and further review.

Both the draft AC150/5345–53C and the May 31, 2005, letter to manufacturers may be obtained from the FAA Airports Internet site at *http://www.faa.gov/arp/publications/acs/draftacs.cfm.*

For any further information please contact Mr. Rick Marinelli, Manager, Airport Engineering Division, at (202) 267–7669.

Issued in Washington, DC on June 21, 2005.

**David L. Bennett,**

*Director of Airport Safety and Standards.*

[FR Doc. 05–12723 Filed 6–27–05; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Noise Exposure Map Notice; Orlando Sanford International Airport, Sanford, FL

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by Sanford Airport Authority for Orlando Sanford International Airport under the provisions of 49 U.S.C. 47501 *et. seq* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements.

**DATES:** *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is June 22, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms. Bonnie Baskin, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando Florida 32822, (407) 812–6331, Extension 130.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the noise exposure maps submitted for Orlando Sanford International Airport are in compliance with applicable requirements of Part 150, effective June 22, 2005. Under 49 U.S.C. 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport. An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to take to reduct existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure maps and accompanying documentation submitted by Sanford Airport Authority. The documentation that constitutes the ''noise exposure maps'' as defined in section 150.7 of part 150 includes: Exhibit 1 ''Aircraft Flight Tracks-Proposed IFR Flight Tracks-Runway 9R–27L'', Exhibit 2 ''Existing Land Use'', Exhibit 3 ''2004 DNL Contours'', Exhibit 4 ''2009 DNL Contours'', Exhibit 5 ''Future Land Use'', Table 14 ''2004 DNL Contour Area'', Table 15 ''2004

Population Within the DNL Contours'', Table 16 ''2009 DNL Contour Area'', and Table 17 ''2009 Population Within the DNL Contours''. The FAA has determined that these noise exposure maps and accompanying documentation are in compliance with applicable requirements. This determination is effective on June 22, 2005.

FAA's determination on the airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act.These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the full noise exposure maps documentation and of the FAA's evaluation of the maps are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822; Sanford Airport Authority, 1200 Red Cleveland Boulevard, Sanford,Florida 32773.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida, June 22, 2005.

**W. Dean Stringer, Manager,**

*Orlando Airports District Office.*

[FR Doc. 05–12718 Filed 6–27–05; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2005–33]**

### Petitions for Exemption; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of disposition of prior petition.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the disposition of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**FOR FURTHER INFORMATION CONTACT:** John Linsenmeyer (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on June 21, 2005.

**Anthony F. Fazio,**

*Director, Office of Rulemaking.*

### Disposition of Petitions

*Docket No.:* FAA–2005–20679.

*Petitioner:* Dassault Aviation.

*Sections of 14 CFR Affected:* 14 CFR 91.613(b) and 135.170(c).

*Description of Relief Sought/ Disposition:* Relief from the requirements for material in compartment interiors for Falcon F900EX, F2000EX, F2000, and F50EX series airplanes.

*Denial of Exemption, 06/20/2005, Exemption No. 8569*

[FR Doc. 05–12724 Filed 6–27–05; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 05–12–C–00–MKE To Impose a Passenger Facility Charge (PFC) at General Mitchell International Airport and To Use the Revenue at General Mitchell International Airport and Lawrence J. Timmerman Airport, Milwaukee, WI

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose a PFC at General Mitchell International Airport and to use the revenue at General Mitchell International Airport and Lawrence J. Timmerman Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before July 28, 2005.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at he following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. C. Barry Bateman, Airport Director of the General Mitchell International Airport, Milwaukee, WI at the following address: 5300 S. Howell Ave., Milwaukee, Wisconsin 53207–6189.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Milwaukee under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–713–4363. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose a PFC at General Mitchell International Airport and to use the revenue at General Mitchell International Airport and Lawrence J. Timmerman Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On June 20, 2005 the FAA determined that the application to impose and use the revenue from a PFC submitted by County of Milwaukee was substantially

complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 6, 2005.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* November 1, 2018.

*Proposed charge expiration date:* December 1, 2018.

*Total estimated PFC revenue:* $242,364.

Brief description of proposed projects: General Mitchell International: Reconstruct West Perimeter Road, Runway Safety Area Rehabilitation-Runways 1L, 19R, and 25L (Design); Lawrence J. Timmerman: Install Runway Incursion Signage.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Milwaukee.

Issued in Des Plaines, Illinois on June 22, 2005.

**Sandy Nazar,**

*Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.*

[FR Doc. 05–12717 Filed 6–27–05; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Pipeline and Hazardous Materials Safety Administration

**[Docket No. RSPA–2005–20036 (Notice No. 05–5)]**

### Information Collection Activity Under OMB Review

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comments. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following information collection was published on April 14, 2005 [70 FR 19837].

**DATES:** Comments must be submitted on or before July 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–11), Pipeline and Hazardous Materials Safety Administration, Room 8430, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Testing, Inspection, and Marking Requirements for Cylinders.

*OMB Control Number:* 2137–0022.

*Type of Request:* Extension of a currently approved collection.

*Abstract:* Requirements in § 173.34 for qualification, maintenance and use of cylinders require that cylinders be periodically inspected and retested to ensure continuing compliance with packaging standards. Information collection requirements address registration of retesters and marking of cylinders by retesters with their identification number and retest date following the completion of tests. Records showing the results of inspections and retests must be retained by the cylinder owner or designated agent until expiration of the retest period or until the cylinder is reinspected or retested, whichever occurs first. These requirements are intended to ensure that retesters possess the qualifications necessary to perform tests and to identify to cylinder fillers and users that cylinders are qualified for continuing use. Information collection requirements in § 173.303 require that fillers of acetylene cylinders maintain, for at least 30 days, a daily record of the representative pressure to which cylinders are filled.

*Affected Public:* Fillers, owners, users and retesters of reusable cylinders.

*Estimated Number of Respondents:* 139,352.

*Estimated Number of Responses:* 153,287.

*Annual Estimated Burden Hours:* 168,431.

*Frequency of Collection:* On occasion.

**ADDRESSES:** Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for PHMSA, 725 17th Street, NW., Washington, DC 20503.

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC on June 21, 2005.

**Susan Gorsky,**

*Acting Director, Office of Hazardous Materials Standards.*

[FR Doc. 05–12727 Filed 6–27–05; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8582

**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 8582, Passive Activity Loss Limitations.

**DATES:** Written comments should be received on or before August 29, 2005, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Shear, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Passive Activity Loss Limitations.

*OMB Number:* 1545–1008.

*Form Number:* 8582.

*Abstract:* Under Internal Revenue Code section 469, losses from passive activities, to the extent that they exceed income from passive activities, cannot be deducted against nonpassive income. Form 8582 is used to figure the passive activity loss allowed and the loss to be reported on the tax returns.

*Current Actions:* There are no major 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, individuals, and farms.

*Estimated Number of Respondents:* 3,622,282.

*Estimated Time Per Respondent:* 4 hours, 43 minutes.

*Estimated Total Annual Burden Hours:* 17,435,949.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request For Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 21, 2005.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E5–3364 Filed 6–27–05; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 3491

**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 3491, Consumer Cooperative Exemption Application.

**DATES:** Written comments should be received on or before August 29, 2005, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Consumer Cooperative Exemption Application.

*OMB Number:* 1545–1941.

*Form Number:* A cooperative uses Form 3491 to apply for exemption from filing information returns (Forms 1099–PATR) on patronage distributions of $10 or more to any person during the calendar year.

*Current Actions:* There are no changes being made to the Form 3491 at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit, INdividuals or households, and farms.

*Estimated Number of Respondents:* 200.

*Estimated Time Per Respondent:* 44 minutes.

*Estimated Total Annual Burden Hours:* 148.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request For Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 21, 2005.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E5–3366 Filed 6–27–05; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8843

**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 8843, Statement for Exempt Individuals and Individuals With a Medical Condition.

**DATES:** Written comments should be received on or before August 29, 2005, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet at *RJoseph.Durbala@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Statement for Exempt Individuals With a Medical Condition.

*OMB Number:* 1545–1411.

*Form Number:* Form 8843 is used by an alien individual to explain the basis of the individual's claim that he or she is able to exclude days of presence in the United States because the individual is a teacher/trainee or student; professional athlete; or has a medical condition or problem.

*Current Actions:* There are no changes being made to the Form 8843 at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 150,000.

*Estimated Time Per Respondent:* 1 hour, 10 minutes.

*Estimated Total Annual Burden Hours:* 179,745.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request For Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 23, 2005.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. E5–3367 Filed 6–27–05; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 6 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, July 21, 2005.

**FOR FURTHER INFORMATION CONTACT:** Dave Coffman at 1–888–912–1227, or 206–220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Thursday, July 21, 2005, from 8 a.m. Pacific time to 9:30 p.m. Pacific time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: various IRS issues.

Dated: June 21, 2005.

**Martha Curry,**

*Acting Director, Taxpayer Advocacy Panel.*

[FR Doc. E5–3365 Filed 6–27–05; 8:45 am]

BILLING CODE 4830–01–P

# Corrections

Federal Register
Vol. 70, No. 123
Tuesday, June 28, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Availability of Draft General Reevaluation Report and Supplemental Environmental Impact Statement for the Poplar Island Environmental Restoration Project, Talbot County, MD

*Correction*

In notice document 05–12307 appearing on page 36129 in the issue of Wednesday, June 22, 2005, make the following corrections:

1. On page 36129, in the first column, under the **DATES** heading, in the sixth line, ''BRR'' should read ''GRR''.

2. On the same page, in the third column, in the first full paragraph, in the 10th line, ''Jul6'' should read ''July''.

[FR Doc. C5–12307 Filed 6–27–05; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF DEFENSE

### Department of the Army

### Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Concerning Method and Apparatus for Making Body Heating and Cooling Garments

*Correction*

In notice document 05–12309 appearing on page 36128 in the issue of Wednesday, June 22, 2005, make the following corrections:

1. On page 36128, in the third column, under the **FOR FURTHER INFORMATION CONTACT** heading, in the second line, ''Rosendrans'' should read ''Rosenkrans''.

2. On the same page, in the same column, under the same heading, in the fourth line, ''4938'' should read ''4928''.

[FR Doc. C5–12309 Filed 6–27–05; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2004–18998; Directorate Identifier 2003–NM–253–AD; Amendment 39–14121; AD 2005–12–05]**

**RIN 2120–AA64**

### Airworthiness Directives; Boeing Model 737–200, 737–300, 737–400, 737–500, 737–600, 737–700, 737–800, 737–900, 757–200, and 757–300 Series Airplanes; and McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–30, DC–10–30F, DC–10–40, MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes

*Correction*

In rule document 05–11514 beginning on page 34316 in the issue of Tuesday, June 14, 2005, make the following correction:

**§ 39.13 [Corrected]**

On page 34322, in § 39.13, in Table 6, in the first column, in the sixth entry, ''B2105200–52–01'' should read ''B251200–52–01''.

[FR Doc. C5–11514 Filed 6–27–05; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–05–21176; Directorate Identifier 2005–CE–25–AD; Amendment 39–14128; AD 2005–12–12]**

**RIN 2120–AA64**

### Airworthiness Directives; Cessna Aircraft Company Models 401, 401A, 401B, 402, 402A, 402B, 411, and 411A Airplanes

*Correction*

In rule document 05–11612 beginning on page 34329 in the issue of Tuesday, June 14, 2005, make the following corrections:

**§ 39.13 [Corrected]**

1. On page 34332, in § 39.13, in the table, in the third column, in the first entry, in the first line, ''1000'' should read ''100''.

2. On the same page, in the same section, in the same table, in the first column, in the second entry, ''12,00'' should read ''12,000''.

[FR Doc. C5–11612 Filed 6–27–05; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
June 28, 2005

# Part II

# Department of Housing and Urban Development

## 24 CFR Part 203

## Up-Front Mortgage Insurance Premiums for Loans Insured Under Sections 203(k) and 234(c) of the National Housing Act; Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 203**

**[Docket No. FR–4749–F–02]**

**RIN 2502–AH82**

## Up-Front Mortgage Insurance Premiums for Loans Insured Under Sections 203(k) and 234(c) of the National Housing Act

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** HUD charges an up-front mortgage insurance premium (MIP) for loans that are obligations of its Mutual Mortgage Insurance Fund, and of its general insurance fund only for insurance in connection with Section 8 homeownership. However, to date there has been no provision for up-front MIPs for loans such as home rehabilitation loans under section 203(k) of the National Housing Act (NHA) and condominium unit loans under section 234(c) which are obligations of the general insurance fund. Recent statutory changes now provide for an up-front MIP for those programs. This rule amends HUD's regulations related to mortgage insurance to conform the regulations to the recent statutory changes. This rule implements the October 7, 2003, proposed rule, with the only change made by this final rule being the proposed effective date.

**DATES:** *Effective Date:* December 27, 2005.

**FOR FURTHER INFORMATION CONTACT:** James Beavers, Director, Home Mortgage Insurance Division, Office of Single Family Housing, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone (202) 708–2121 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Statutory Background

Section 207 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2002, Public Law 107–73, approved November 26, 2001, (FY 2002 HUD Appropriations Act) amended section 203(c) of the NHA to include mortgages insured under section 203(k) (rehabilitation loans) and section 234(c) (condominium loans) among those mortgages for which HUD collects an up-front MIP. This up-front MIP is not to exceed 2.25 percent of the amount of the original insured mortgage (or not to exceed 2.0 percent for a first-time homebuyer who completes an approved program of homeownership counseling) at the time of insurance. This statutory provision for up-front MIPs in the sections 203(k) and 234(c) programs (referred to as simply the 203(k) program and 234(c) program) was effective as of November 26, 2001. HUD will only collect up-front MIPs for 203(k) and 234(c) loans, however, originated after the effective date of this final rule.

### II. Regulatory Background

HUD published a proposed rule on October 7, 2003, (68 FR 58007) to amend relevant sections of HUD's regulations in 24 CFR part 203 to conform these regulations to the statutory changes. Specifically, HUD proposed to amend regulations at 24 CFR 203.284(a) and 203.285(a), on up-front MIPs, and § 203.50, on rehabilitation loans under section 203(k). HUD regulations in part 234, which relate to condominium mortgage insurance, incorporate by reference at § 234.255 the provisions of §§ 203.284 and 203.285, and, therefore, include these proposed revisions, a fact that was noted in the preamble of the proposed rule (68 FR 58006). The proposed rule provided that the transition provisions in 24 CFR 203.284 and 203.285 for older mortgage loans would remain as published in the April 1, 2003, edition of title 24 of the Code of Federal Regulations.

### III. Discussion of Public Comments

The public comment period closed on December 8, 2003. Two public commenters submitted comments on the proposed rule, raising several issues. Both commenters were trade associations involved with the mortgage industry. Their comments are as follows:

*Comment:* Up-front MIPs in 203(k) and 234(c) programs should not result in an increased MIP payment for Federal Housing Administration (FHA) borrowers. This commenter states that, while HUD's statement outlines the substitution of an up-front MIP for the current annual MIP, ''the proposal does not set forth specific plans for the MIP structure for Section 203(k) and 234(c) programs.'' This commenter urges HUD to ensure ''that any restructuring of the MIP for these programs maintains the MIPs at levels comparable to or below those currently charged. MIP changes for these and other FHA programs should occur only when a thorough analysis of actual and expected program performance shows such increases to be necessary.''

*HUD Response:* The current General Insurance (GI) Fund annual premium of 50 basis points does not offset the risk of loss from condominium and home rehabilitation loans. Therefore, and consistent with budget assumptions, HUD plans to begin collecting an up-front MIP in addition to the present monthly premium. This up-front MIP requirement brings the insurance of loans on condominium units and properties in need of rehabilitation in line with FHA's 203(b) program that currently requires both a 1.5 percent up-front MIP and .50 percent annual MIP collected on a monthly basis. At this time, FHA plans to use the same mortgage insurance premium rate for 234(c) and 203(k) loans as are used to insure loans in the MMI fund.

*Comment:* An up-front MIP could, through amortization over the life of the loan, improve affordability for homebuyers. One commenter states that it believes that ''affordability could be improved for homebuyers * * * if HUD substituted an up-front MIP, which can be financed and amortized over the life of a loan, for the annual MIP, which has the direct effect of increasing a borrower's monthly payment. In this regard, HUD's proposal would provide the same flexibility that helped borrowers when the section 203(b) program converted from an annual to an up-front MIP.''

*HUD Response:* The up-front MIP may be financed into the mortgage amount, thereby mitigating the cost to the homebuyer.

*Comment:* HUD should also review its regulations regarding non-high-rise condominiums. One commenter states that although it was not part of this proposed rule, HUD should review its regulations regarding non-high-rise condominiums. ''In many cases, affordably-priced townhome and zero lot line communities are subject to significantly different requirements if these units are part of a condominium community as differentiated from fee simple ownership within a planned unit development. These differences result in delays and comparably higher costs for buyers who seek FHA-insured financing to purchase condominiums.''

*HUD Response:* Although HUD's condominium regulations are outside the scope of this rule, HUD appreciates the comment and will examine these regulations under HUD's America's Affordable Communities Initiative, which focuses on identifying and removing barriers (at all levels of government) to affordable housing.

*Comment:* HUD should align its policies for the 203(k) and 234(c) programs with section 203(b). One commenter states that, while it ''supports the change to FHA's regulations to reflect the provisions of Public Law 107–73 [The Department of Veteran's Affairs, HUD, and Independent Agency Appropriation Act for 2002],'' HUD should consider transferring the 234(c) program from the General Insurance/Special Risk Insurance (GI/SRI) Fund to the Mutual Mortgage Insurance (MMI) Fund and modify the calculation and termination policies of the MIP currently collected under 203(k) and 234(c) to be consistent with the mortgage insurance premium under the 203(b) program. This commenter states that the 234(c) program was first placed in the GI/SRI fund due to the fact that condominium financing was considered higher risk. While this risk profile was justified at one time, condominiums today are well-accepted and perform similarly to single family detached and attached housing. Moving the 234(c) program to the MMI fund will add greater consistency to the program. Aligning the mortgage insurance for 203(k) and 234(c) with 203(b) will allow both lenders and FHA to simplify their accounting systems.

*HUD Response:* The section 234(c) program was established by legislation and placed into the GI fund. (See section 234(g) of the National Housing Act, 12 U.S.C. 1715y(g)). Moving the Section 234(c) program from the GI Fund to the MMI Fund would require enabling legislation that HUD will not seek at this time. HUD does agree that ''aligning the mortgage insurance [premium structure] will allow both lenders and FHA to simplify their accounting systems'' and will adopt the same rate structure for section 234(c) and section 203(k) mortgages as on MMI fund mortgages. Within this context, however, HUD retains the flexibility to adjust those rates as needed.

*Comment:* The termination provisions for 203(k) and 234(c) MIPs should be made similar to those in the 203(b) program. In the 203(b) program, MIPs are terminated after the greater of five years or the date when the loan-to-value ratio reaches 78 percent. Likewise, refinance loans with a term of 15 years or less and an initial loan-to-value ratio of less than 90 percent do not have an annual MIP. In the 203(k) and 234(c) programs, MIPs are collected for the life of the loan. The 203(k) and 234(c) programs should be made consistent with these policies. Such consistency would lower costs to FHA and to lenders because they could streamline their systems across programs, and this lower cost would translate into lower costs for borrowers.

*HUD Response:* HUD agrees with the comment and will adopt unearned premium refund and termination of annual premium schedules consistent with mortgages insured under the MMI fund. The public should be aware that there has been a recent change in the law regarding refunds and that HUD may be updating its regulations in this area (see Consolidated Appropriations Act, 2005, Public Law 108–447, Title II, § 223).

*Comment:* FHA should carefully consider whether an up-front MIP on 203(k) and 234(c) should be imposed at this time. One commenter states that the statute permits, but does not mandate an up-front MIP, and that adding an up-front MIP will make the 203(k) and 234(c) programs more expensive to borrowers. These programs are important for first time and low- or moderate-income borrowers, particularly in areas with high home values. In such areas, homes in need of renovation or condominium housing are usually the most affordable housing opportunities. For borrowers of limited means, such housing is a long-term prospect that allows them to enjoy the social and financial benefits of homeownership. Furthermore, these programs support urban areas. For the two-year period ending May 31, 2003, over 85 percent of 203(k) loans were made in Metropolitan Statistical Areas. Housing insured under the 234(c) program is used heavily in urban areas and is often the only housing in a city that is within FHA's mortgage limits. The lack of an up-front MIP on these programs lowers the cost of capital for homebuyers in urban areas and promotes the renovation of housing and the construction of multi-unit housing. Imposing an up-front MIP at this time would not be beneficial to borrowers or to urban areas.

*HUD Response:* HUD has carefully considered the need to require the additional premium, as well as the intent of Congress in enacting the legislation calling for the up-front MIP. While HUD is well aware of the slightly greater cost to the consumer, the up-front MIP, paid by borrowers since 1983 for mortgages insured under the Mutual Mortgage Insurance Fund, is financed into the total loan amount thus eliminating most additional out-of-pocket expense to the borrower and is amortized over the life of the loan. Additionally, maintaining an actuarially sound insurance fund is both consistent with congressional mandate and necessary to preserve FHA's ability to continue to insure loans for underserved homebuyers. Further, over the last decade the average claim rate for insured condominium loans was one percentage point greater than the rate for MMI funds loans. The average claim rate for all insured rehabilitation loans from 1992 to 2000 exceeds the average claim rate of MMI fund loans by two and a half percentage points. Since the historic claim rates of loans insured under sections 234(c) and 203(k) are higher than FHA's primary program, the section 203(b) program, the risk to the fund is greater, and there is no justification for charging lower rates in these programs.

*Comment:* The 203(k) program should be reformed before an up-front MIP is imposed. An up-front MIP may increase revenues to FHA, but will not translate into better performance of the 203(k) program. ''Without compensating program and resources changes, adding an [up-front] MIP will only further discourage use of the 203(k) program with little effect on its performance.'' Imposition of the up-front MIP should be part of a comprehensive reform effort, including lifting the investor moratorium and applying the up-front MIP to investors only, along with other oversight mechanisms.

*HUD Response:* Although program reforms for the 203(k) program are outside the scope of this rule, HUD appreciates such comments and has begun the process of strengthening the rehabilitation mortgage insurance program. Planned reforms focus on eliminating incidences of fraud and other program abuses, and HUD is not now considering lifting the moratorium on investor participation in the 203(k) program. The collection of an up-front MIP on 203(k) loans is one step in the process of making this program actuarially sound.

*Comment:* The rule should have a six-month delayed effective date. One commenter states that the rule should not be effective until six months after the publication of a final rule. This timeframe will allow lenders sufficient time to adjust their systems to accommodate the changes. ''Lenders are increasingly finding that, in an age of automation, instituting change requires substantive reprogramming.''

*HUD Response:* HUD recognizes its responsibility and that of its participating lenders to institute systems changes to accommodate the collection of an up-front MIP on section 234(c) and 203(k) loans. Therefore, HUD will make this rule effective six months after the date of publication, providing ample lead time.

## IV. This Final Rule

Based on the public comments, this final rule implements the proposed rule. In response to comments, the effective date is delayed until six months after the date of publication of this final rule.

## V. Findings and Certifications

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Generally, the amounts of up-front mortgage insurance premiums are amortized in the mortgage and ultimately impose no obligations on businesses.

*Executive Order 12866*

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866 (entitled, ''Regulatory Planning and Review''), which the President issued on September 30, 1993. At the proposed rule stage, data were available for years up to FY 2001. Based on that data, the rule was determined to be economically significant because, although the current impact of the rule was slightly under $100 million, the forecasted impact for the years 2003–2005 was over that threshold. At the final rule stage, the economic analysis was redone with new data available up to FY 2003. The result of this updated economic analysis based on more recent data was that both the current and forecasted impact (for the years FY 2004 through FY 2006) were found to be under $100 million.

Therefore, this rule was determined significant under E.O. 12866 (although not economically significant). Any changes made to the rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC, 20410–0500. The Economic Analysis prepared for this rule is also available for public inspection in the Regulations Division. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Divisions at (202) 708–3055 (this is not a toll-free number).

*Environmental Impact*

This rule involves the establishment of a rate or cost determination and related external administrative or fiscal requirements that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4331 *et seq.*).

*Executive Order 13132, Federalism*

Executive Order 13132 (entitled, ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local government or preempt state law within the meaning of the order.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This final rule does not impose any federal mandates on any State, local, or tribal government, or on the private sector, within the meaning of UMRA.

*Catalog of Federal Domestic Assistance.*

The Catalog of Federal Domestic Assistance number applicable to this rule is 14.117.

## List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

■ Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR part 203 as follows:

## PART 203—SINGLE FAMILY HOUSING MORTGAGE INSURANCE

■ 1. The authority citation for 24 CFR part 203 continues to read as follows:

**Authority:** 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

### Subpart A—Eligibility Requirements and Underwriting Procedures

■ 2. Amend 24 CFR 203.50 by adding a paragraph (m) to read as follows:

**§ 203.50 Eligibility of rehabilitation loans.**

* * * * *

(m) With regard to loans under this section executed on or after December 27, 2005, the Commissioner shall charge an up-front and annual MIP in accordance with 24 CFR 203.284 or 203.285, whichever is applicable.

### Subpart B—Contract Rights and Obligations

■ 3. Amend 24 CFR 203.284 by revising paragraph (a) introductory text and paragraph (b) to read as follows:

**§ 203.284 Calculation of up-front and annual MIP on or after July 1991.**

* * * * *

(a) *Permanent provisions.* Any mortgage executed on or after October 1, 1994, that is an obligation of the Mutual Mortgage Insurance Fund, as well as any mortgage executed after December 27, 2005, which is insured under sections 203(k) or 234(c) of the National Housing Act (12 U.S.C. 1709(k) and 12 U.S.C. 1715y(c)) shall be subject to the following requirements:

* * * * *

(b) *Transition provisions; savings provision.* Mortgages that are obligations of the Mutual Mortgage Insurance Fund and that were insured during Fiscal Years 1991–1994, are governed by 24 CFR 203.284(b) as in effect on April 1, 2003, (see 24 CFR parts 200–499 revised as of April 1, 2003).

* * * * *

■ 4. Amend 24 CFR 203.285 by revising the first sentence of paragraph (a) to read as follows:

**§ 203.285 Fifteen-year mortgages: Calculation of up-front and annual MIP on or after December 26, 1992.**

(a) *Up-front.* Any mortgage for a term of 15 or fewer years executed on or after December 26, 1992, that is an obligation of the Mutual Mortgage Insurance Fund, and any mortgage executed on or after December 27, 2005, to be insured under sections 203(k) and 234(c) of the National Housing Act, shall be subject to a single up-front premium payment established and collected by the Commissioner in an amount not exceeding 2.0 percent of the amount of the original insured principal obligation of the mortgage. * * *

* * * * *

Dated: June 16, 2005.

**Roy A. Bernardi,**

*Deputy Secretary.*

[FR Doc. 05–12610 Filed 6–27–05; 8:45 am]

**BILLING CODE 4210–27–P**

Federal Register

Tuesday,
June 28, 2005

# Part III

# Department of Commerce

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 223 and 224

## Endangered and Threatened Species; Final Listing Determinations; Final Rules and Proposed Rules

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 223 and 224**

**[Docket No. 040525161–5155–02; I.D. 052104F]**

**RIN No. 0648–AR93**

## Endangered and Threatened Species: Final Listing Determinations for 16 ESUs of West Coast Salmon, and Final 4(d) Protective Regulations for Threatened Salmonid ESUs

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

**ACTION:** Final rule.

**SUMMARY:** We, NOAA's National Marine Fisheries Service (NMFS), are issuing final determinations to list 16 Evolutionarily Significant Units (ESUs) of West Coast salmon (chum, *Oncorhynchus keta*; coho, *O. kisutch*, sockeye, *O. nerka*; Chinook, *O. tshawytscha*; pink, *O. gorbuscha*) under the Endangered Species Act (ESA) of 1973, as amended. We have concluded that four ESUs are endangered, and twelve ESUs are threatened, in California, Oregon, Washington, and Idaho. Fifteen of these ESUs were previously listed as threatened or endangered under the ESA, and one ESU was previously designated as a candidate species. With respect to the Oregon Coast coho ESU and ten *O. mykiss* ESUs, we have found that substantial disagreement regarding the sufficiency or accuracy of the relevant data precludes making final listing determinations at this time, and accordingly we are extending the deadline for making our final determinations for these 11 ESUs for an additional 6 months. The findings regarding the extension of the final listing determination for the Oregon Coast coho ESU and for the ten *O. mykiss* ESUs appear in the Proposed Rules section in today's **Federal Register** issue. The ten *O. mykiss* ESUs were previously listed and remain listed pending final agency action.

Also in this notice, we are finalizing amendments to the ESA 4(d) protective regulations for threatened salmonid ESUs. As part of the proposed listing determinations in June 2004, we proposed changes to these protective regulations to provide the necessary flexibility to ensure that fisheries and artificial propagation programs are managed consistently with the conservation needs of ESA-listed ESUs, and to clarify the existing regulations so that they can be more efficiently and effectively interpreted and followed by all affected parties.

Finally, we are soliciting biological and economic information relevant to designating critical habitat for the Lower Columbia River coho salmon ESU.

**DATES:** This final rule is effective August 29, 2005.

**ADDRESSES:** Correspondence concerning this final rule may be addressed to Chief, Protected Resources Division, Northwest Region, NMFS, 1201 Lloyd Boulevard, Suite 1100, Portland, Oregon, 97232–1274; or Chief, Protected Resources Division, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA, 90802–4213.

Information relevant to designating critical habitat for the Lower Columbia River coho ESU may be submitted by: standard mail to Steve Stone, Protected Resources Division, Northwest Region, NMFS, 1201 Lloyd Boulevard, Suite 1100, Portland, Oregon, 97232–1274; e-mail to *LCRcoho_CH.nwr@noaa.gov*; or fax to (503) 230–5441. Please include the identifier ''Information RE: Critical Habitat for Lower Columbia River Coho'' with any information submitted.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding the final listing determinations and the final amendments to the 4(d) protective regulations please contact Scott Rumsey, NMFS, Northwest Region, (503) 872–2791; Craig Wingert, NMFS, Southwest Region, (562) 980–4021; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401. For further information concerning the information request regarding critical habitat for Lower Columbia River coho salmon, please contact Steve Stone, NMFS, Northwest Region, (503) 231–2317.

**SUPPLEMENTARY INFORMATION:** The ESA listing determinations and the amended 4(d) protective regulations for threatened ESUs described in this document are effective August 29, 2005. The take prohibitions applicable to threatened species do not apply to activities specified in an application for a permit or a 4(d) approval for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than August 29, 2005. This ''grace period'' for pending research and enhancement applications will remain in effect until the issuance or denial of authorization, or December 28, 2005, whichever occurs earliest. Additionally, biological and economic information regarding critical habitat for the Lower Columbia River coho ESU must be received no later than 5 p.m. P.S.T. on August 29, 2005 (*see* **ADDRESSES** and Information Solicited).

### Organization of This Final Rule

This **Federal Register** notice describes the final listing determinations for 16 ESUs of West Coast salmon under the ESA, as well as final amendments to the 4(d) protective regulations for threatened ESUs. The pages that follow summarize the comments and information received in response to the proposed listing determinations and proposed protective regulations (69 FR 33102; June 14, 2004), describe any changes from the proposed listing determinations and proposed protective regulations, and detail the final listing determinations for 16 ESUs and the final protective regulations for threatened ESUs. To assist the reader, the content of this notice is organized as follows:

I. Review of Necessary Background Information.
- *Statutory basis for Listing Species Under the Endangered Species Act.*
- *Life History of West Coast Salmon.*
- NMFS' *Past Pacific Salmonid ESA Listings and the Alsea Decision.*
- *Initiation of Coast-Wide ESA Status Reviews for 27 ESUs of Pacific Salmonids.*

II. *Summary of Comments and Information Received in Response to the Proposed Rule.*
- Comments on the Consideration of Artificial Propagation in Listing Determinations.
- Comments on the Consideration of Efforts Being Made to Protect the Species.
- Comments on the Proposed Take Prohibitions and Protective Regulations.
- Comments on ESU-Specific Issues.

III. Summary of Changes from the Proposed Listing Determinations and Proposed Protective Regulations.

IV. Treatment of the Four Listing Determination Steps for Each ESU Under Review.

(1) *Determination of ''Species'' under the ESA*

(2) *Viability Assessments of ESUs* and *Summary of Factors Affecting the Species*

(3) Evaluation of *Efforts Being Made to Protect West Coast Salmonids*

(4) *Final Listing Determinations* of ''threatened,'' ''endangered,'' or ''not warranted,'' based on the foregoing information

V. Take *Prohibitions and Protective Regulations*

VI. *Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA*

VII. *Effective Date of the Final Listing Determinations and Protective Regulations*

VIII. Summary of agency efforts in designating *Critical Habitat* for listed salmon and *O. mykiss* ESUs, and a summary of *Information Solicited* regarding critical

habitat for the Lower Columbia River coho ESU

IX. Description of the *Classification*, NMFS' compliance with various laws and executive orders with respect to this rulemaking (*e.g.*, National Environmental Policy Act, Regulatory Flexibility Act)

X. Description of amendments to the Code of Federal Regulations (*List of Subjects*). This section itemizes the specific changes to Federal law being made based on the foregoing information:

- Amendments to the list of threatened and endangered species
- Amendments to the protective regulations for threatened West Coast salmonids

## Background

### *Listing Species Under the Endangered Species Act*

NMFS is responsible for determining whether species, subspecies, or distinct population segments (DPSs) of Pacific salmon and steelhead are threatened or endangered under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq*). To be considered for listing under the ESA, a group of organisms must constitute a ''species,'' which is defined in section 3 of the ESA to include ''any subspecies of fish or wildlife or plants, and any *distinct population segment* [emphasis added] of any species of vertebrate fish or wildlife which interbreeds when mature.'' In this notice, we are issuing final listing determinations for DPSs of Pacific salmon. To qualify as a DPS, a Pacific salmon population must be substantially reproductively isolated from other conspecific populations and represent an important component in the evolutionary legacy of the biological species. A population meeting these criteria is considered to be an ESU (56 FR 58612; November 20, 1991). In our previous listing determinations for Pacific salmonids under the ESA, we have treated an ESU as constituting a DPS, and hence a ''species,'' under the ESA.

Section 3 of the ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as one ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The statute lists factors that may cause a species to be threatened or endangered (ESA section 4(a)(1)): (a) The present or threatened destruction, modification, or curtailment of its habitat or range; (b) overutilization for commercial, recreational, scientific, or educational purposes; (c) disease or predation; (d) the inadequacy of existing regulatory mechanisms; or (e) other natural or manmade factors affecting its continued existence.

Section 4(b)(1)(A) of the ESA requires NMFS to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account efforts being made to protect the species. We follow a four-step process in making listing determinations for Pacific salmon: (1) We first determine the ESU or species under listing consideration; (2) we determine the viability of the defined ESU and the factors that have led to its decline; (3) we assess efforts being made to protect the ESU, determining if these efforts adequately mitigate threats to the species; and (4) based on the foregoing steps and the statutory listing factors, we determine if the ESU is threatened or endangered, or does not warrant listing under the ESA.

### *Life History of West Coast Salmon*

The specific life-history characteristics of the subject species are summarized in the proposed listing determinations notice (69 FR 33102; June 14, 2004). These species addressed in this notice each exhibit anadromy, meaning that adults migrate from the ocean to spawn in freshwater lakes and streams where their offspring hatch and rear prior to migrating to the ocean to forage until maturity. The migration and spawning times vary considerably among and within species and populations. At spawning, adults pair to lay and fertilize thousands of eggs in freshwater gravel nests or ''redds'' excavated by females. Depending on lake/stream temperatures, eggs incubate for several weeks to months before hatching as ''alevins'' (a larval life stage dependent on food stored in a yolk sac). Following yolk sac absorption, alevins emerge from the gravel as young juveniles called ''fry'' and begin actively feeding. Depending on the species and location, juveniles may spend from a few hours to several years in freshwater areas before migrating to the ocean. The physiological and behavioral changes required for the transition to salt water result in a distinct ''smolt'' stage in most species. En route to the ocean the juveniles may spend from a few days to several weeks in the estuary, depending on the species. The highly productive estuarine environment is an important feeding and acclimation area for juveniles preparing to enter marine waters.

Juveniles and subadults typically spend from 1 to 5 years foraging over thousands of miles in the North Pacific Ocean before returning to freshwater to spawn. Some species, such as coho and Chinook salmon, have precocious life-history types (primarily male fish) that mature and spawn after only several months in the ocean. Spawning migrations known as ''runs'' occur throughout the year, varying in time by species and location. Most adult fish return or ''home'' with great fidelity to spawn in their natal stream, although some do stray to non-natal streams. Salmon species die after spawning.

### *Past Pacific Salmonid ESA Listings and the Alsea Decision*

Pacific salmon ESUs in California and the Pacific Northwest have suffered broad declines over the past hundred years. Since 1991, we have conducted ESA status reviews of six species of Pacific salmonids in California, Oregon, Washington, and Idaho, identifying 52 ESUs, with 25 ESUs currently listed as threatened or endangered (see the Proposed Rule, 69 FR 33102; June 14, 2004, for a detailed summary of previous listing actions for West Coast salmonid ESUs). In past status reviews, we based our extinction risk assessments on whether the naturally spawned fish in an ESU are self-sustaining in their natural ecosystem over the long term. We listed as ''endangered'' those ESUs whose naturally spawned populations were found to have a present high risk of extinction, and listed as ''threatened'' those ESUs whose naturally spawned populations were found likely to become endangered in the foreseeable future.

In past status reviews we did not explicitly consider the contribution of hatchery fish to the overall viability of an ESU, or whether the presence of hatchery fish within the ESU might have the potential for reducing the risk of extinction of the ESU or the likelihood that the ESU would become endangered in the foreseeable future. We generally considered artificial propagation as a threat to the long-term persistence of the naturally spawned populations within an ESU. Under a 1993 Interim Policy on the consideration of artificially propagated Pacific salmon and steelhead under the ESA (58 FR 17573; April 5, 1993), if it was determined that an ESU warranted listing, we then reviewed the associated hatchery stocks to determine if they were part of the ESU. We did not include hatchery stocks in an ESU if: (1) Information indicated that the hatchery stock was of a different genetic lineage than the listed natural populations; (2) information indicated that hatchery practices had produced appreciable

changes in the ecological and life-history characteristics of the hatchery stock and these traits were believed to have a genetic basis; or (3) there was substantial uncertainty regarding the relationship between hatchery fish and the existing natural population(s). The Interim Policy provided that hatchery salmon and steelhead found to be part of an ESU would not be listed under the ESA unless they were found to be essential for the ESU's recovery (*i.e.*, if we determined that the hatchery stock contained a substantial portion of the genetic diversity remaining in the ESU). The result of the Interim Policy was that a listing determination for an ESU depended solely upon the relative health of the natural populations in an ESU, and that most hatchery stocks determined to be part of an ESU were excluded from any listing of the ESU.

Subsequently, in *Alsea Valley Alliance* v. *Evans*, 161 F. Supp. 2d 1154 (D. Or. 2001)(*Alsea*), the U.S. District Court in Eugene, Oregon, set aside our 1998 ESA listing of Oregon Coast coho salmon (*O. kisutch*) because it impermissibly excluded hatchery fish within the ESU from listing. The court ruled that the ESA does not allow listing a subset of a DPS and that, since we had found an ESU constitutes a DPS, we had improperly excluded stocks from the listing that we had determined were part of the ESU. Although the *Alsea* ruling affected only one ESU, the interpretive issue raised by the ruling called into question the validity of the Interim Policy implemented in nearly all of our Pacific salmonid listing determinations.

*Initiation of Coast-Wide ESA Status Reviews*

Following the *Alsea* ruling, NMFS received a total of nine petitions seeking to delist, or to redefine and list, 17 listed salmonid ESUs (see the Proposed Rule for a summary of the petitions; 69 FR 33102; June 14, 2004). We determined that seven of the petitions presented substantial scientific and commercial information that the petitioned actions may be warranted for 16 of the subject ESUs (67 FR 6215, February 11, 2002; 67 FR 40679, June 13, 2002; 67 FR 48601, July 25, 2002). As part of our response to the ESA interpretive issues raised by the *Alsea* ruling, we announced that we would revise the 1993 Interim Policy, and we elected to initiate status reviews for 11 ESUs in addition to the 16 ESUs for which we had accepted delisting/listing petitions (67 FR 6215, February 11, 2002; 67 FR 79898, December 31, 2002).

NMFS' Pacific Salmonid Biological Review Team (BRT) (an expert panel of scientists from several Federal agencies including NMFS, FWS, and the U.S. Geological Survey) reviewed the viability and extinction risk of naturally spawning populations in the 27 ESUs, 16 of which are the subject of this proposed rule (NMFS, 2003b). The BRT evaluated the risk of extinction based on the performance of the naturally spawning populations in each of the ESUs under the assumption that present conditions will continue into the future. The BRT did not explicitly consider artificial propagation in its evaluations.

The BRT assessed ESU-level extinction risk (as indicated by the viability of the naturally spawning populations) at two levels: First, at the individual population level, then at the overall ESU level. The BRT used factors for ''Viable Salmonid Populations'' (VSP; McElhany *et al.*, 2000) to guide its risk assessments. The VSP factors were developed to provide a consistent and logical reference for making viability determinations and are based on a review and synthesis of the conservation biology and salmon literature. Individual populations were evaluated according to the four VSP factors: abundance, productivity, spatial structure (including connectivity), and diversity. These four parameters are universal indicators of species' viability, and individually and collectively function as reasonable predictors of extinction risk. After reviewing all relevant biological information for the populations in a particular ESU, the BRT ascribed an ESU-level risk score for each of the four VSP factors.

The BRT described and assessed ESU-level risk for each of the VSP factors and the ESU-level extinction risk based on the performance of the naturally spawning populations. The BRT's assessment of ESU-level extinction risk uses categories that correspond to the definitions of endangered species and threatened species, respectively, in the ESA: in danger of extinction throughout all or a significant portion of its range, likely to become endangered within the foreseeable future throughout all or a significant portion of its range, or neither. In general, these evaluations did not include consideration of the potential contribution of hatchery stocks to the viability of ESUs, or evaluate efforts being made to protect the species. Therefore, the BRT's findings are not recommendations regarding listing. The BRT's ESU-level extinction risk assessment reflects the BRT's professional scientific judgment, guided by the analysis of the VSP factors, as well as by expectations about the likely interactions among the individual VSP factors. For example, a single VSP factor with a ''High Risk'' score might be sufficient to result in an overall extinction risk assessment of ''in danger of extinction,'' but a combination of several VSP factors with more moderate risk scores could also lead to the same assessment, or a finding that the ESU is ''likely to become endangered.''

To assist in determining the ESU membership of individual hatchery stocks, a Salmon and Steelhead Hatchery Assessment Group (SSHAG), composed of NMFS scientists from the Northwest and Southwest Fisheries Science Centers, evaluated the best available information describing the relationships between hatchery stocks and natural ESA-listed salmon and anadromous *O. mykiss* populations in the Pacific Northwest and California. The SSHAG produced a report, entitled ''Hatchery Broodstock Summaries and Assessments for Chum, Coho, and Chinook Salmon and Steelhead Stocks within Evolutionarily Significant Units Listed under the Endangered Species Act'' (NMFS, 2003a), describing the relatedness of each hatchery stock to the natural component of an ESU on the basis of stock origin and the degree of known or inferred genetic divergence between the hatchery stock and the local natural population(s). We used the information presented in the SSHAG Report to determine the ESU membership of those hatchery stocks within the historical geographic range of a given ESU. Our assessment of individual hatchery stocks and our findings regarding their ESU membership are detailed in the Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b).

The assessment of the effects of ESU hatchery programs on ESU viability and extinction risk is also presented in the Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b). The Report evaluates the effects of hatchery programs on the likelihood of extinction of an ESU on the basis of the four VSP factors (*i.e.*, abundance, productivity, spatial structure, and diversity) and how artificial propagation efforts within the ESU affect those factors. In April 2004, we convened an Artificial Propagation Evaluation Workshop of Federal scientists and managers with expertise in salmonid artificial propagation. The Artificial Propagation Evaluation Workshop reviewed the BRT's findings (NMFS, 2003a), evaluated the Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b), and assessed the overall extinction risk of ESUs with associated hatchery stocks. The discussions and conclusions of the

Artificial Propagation Evaluation Workshop are detailed in a workshop report (NMFS, 2004c). In this document, the extinction risk of an ESU ''in-total'' refers to the assessed level of extinction risk after considering the contributions to viability by all components of the ESU (hatchery origin, natural origin, anadromous, and resident).

On June 3, 2004, we published in the **Federal Register** a proposed policy for the consideration of hatchery-origin fish in ESA listing determinations (Hatchery Listing Policy; 69 FR 31354). On June 14, 2004, we proposed listing determinations for the 27 ESUs under review, proposing that four ESUs be listed as threatened and 23 ESUs be listed as endangered (69 FR 33102). We proposed maintaining the existing ESA listing status for 22 ESUs: Two sockeye ESUs (the endangered Snake River and threatened Ozette Lake sockeye ESUs); eight Chinook ESUs (the endangered Upper Columbia River spring-run ESU, and the threatened Central Valley spring-run, California Coastal, Upper Willamette River, Lower Columbia River, Puget Sound, Snake River fall-run, and Snake River spring/summer-run Chinook ESUs); one coho ESU (the threatened Southern Oregon/Northern California Coast coho ESU); two chum ESUs (the threatened Columbia River and Hood Canal summer-run chum ESUs); and nine *O. mykiss* ESUs (the endangered Southern California *O. mykiss* ESU, and the threatened South-Central California Coast, Central California Coast, California Central Valley, Northern California, Upper Willamette River, Lower Columbia River, Middle Columbia River, and Snake River Basin *O. mykiss* ESUs). We proposed revising the status of three ESA-listed ESUs: The endangered Sacramento River winter-run Chinook and Upper Columbia River *O. mykiss* ESUs were proposed for threatened status; and the threatened Central California Coast coho ESU was proposed for endangered status. Finally, we proposed that two ESUs designated as candidate species be listed as threatened: the Oregon Coast coho and Lower Columbia River coho ESUs. Also as part of the proposed listing determinations, we proposed amending the section 4(d) protective regulations for threatened ESUs to: Exclude listed hatchery fish marked by a clipped adipose fin and resident fish from the ESA take prohibition; and simplify existing 4(d) protective regulations so that the same set of limits apply to all threatened ESUs.

**Summary of Comments and Information Received in Response to the Proposed Rule**

With the publication of the proposed listing determinations for 27 ESUs we announced a 90-day public comment period extending through September 13, 2004. In **Federal Register** notices published on August 31, 2004 (69 FR 53093), September 9, 2004 (69 FR 54637), and October 8, 2004 (69 FR 61347), we extended the public comment period for the proposed policy through November 12, 2004. The public comment period for the proposed listing determinations was open for 151 days. We held 14 public hearings (at eight locations in the Pacific Northwest, and six locations in California) to provide additional opportunities and formats to receive public input (69 FR 53039, August 31, 2004; 69 FR 54620, September 9, 2004; 69 FR 61347, October 8, 2004). Additionally, pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, we conducted an Environmental Assessment (EA) analyzing the proposed amendments to the 4(d) protective regulations for threatened salmonids. As part of the proposed listing determinations and the proposed amendments to the 4(d) protective regulations, we announced that a draft of the EA was available from NMFS upon request (69 FR at 33172; June 14, 2004). Additionally, on November 15, 2004, we published a notice of availability in the **Federal Register** soliciting comment on the draft EA for an additional 30 days (69 FR 65582).

A joint NMFS/FWS policy requires us to solicit independent expert review from at least three qualified specialists, concurrent with the public comment period (59 FR 34270; July 1, 1994). We solicited technical review of the proposed listing determinations from over 50 independent experts selected from the academic and scientific community, Native American tribal groups, Federal and state agencies, and the private sector. In December 2004 the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure, and opportunities for public input. The OMB Peer Review Bulletin, implemented under the Information Quality Act (Pub. L. 106–554), is intended to provide public oversight on the quality of agency information, analyses, and regulatory activities, and applies to information disseminated on or after June 16, 2005. The independent expert review under the joint NMFS/FWS peer review policy, and the comments received from several academic societies and expert advisory panels, collectively satisfy the requirements of the OMB Peer Review Bulletin (NMFS, 2005a).

In response to the requests for information and comments on the proposed hatchery listing policy, the proposed listing determinations, and the proposed amendments to the 4(d) protective regulations, we received over 28,250 comments by fax, standard mail, and e-mail. The majority of the comments received were from interested individuals who submitted form letters or form e-mails. Comments were also submitted by state and tribal natural resource agencies, fishing groups, environmental organizations, home builder associations, academic and professional societies, expert advisory panels (including NMFS' Recovery Science Review Panel, the Independent Science Advisory Board, and the State of Oregon's Independent Multidisciplinary Science Team), farming groups, irrigation groups, and individuals with expertise in Pacific salmonids. The majority of respondents focused on the proposed Hatchery Listing Policy, although many respondents also included comments relevant to the proposed listing determinations and the proposed amendments to the 4(d) protective regulations. The public comments were generally critical of the proposed hatchery listing policy, for a variety of reasons, but were generally favorable of the proposed listing determinations and the manner in which the proposed hatchery listing policy was implemented. Those few comments that addressed the proposed amendments to the 4(d) protective regulations expressed concerns about the practical implications of the proposed changes on the management of hatchery programs as well as on tribal, recreational, and commercial salmon and steelhead fisheries.

We also received comments from four of the independent experts from whom we had requested technical review of the proposed listing determinations. The independent expert reviews were generally supportive of the scientific principles underlying the application of the proposed Hatchery Listing Policy in the proposed listing determinations. However, the reviewers noted several concerns with the proposed Hatchery Listing Policy including: Vague and imprecise policy language; an apparent de-emphasis of the importance of naturally spawned self-sustaining populations for the conservation and recovery of salmonid ESUs, and the goal

of the ESA to conserve the ecosystems upon which they depend; accumulating long-term adverse impacts of artificial propagation due to unavoidable artificial selection and domestication in the hatchery environment; and the lack of scientific evidence that artificial propagation can contribute to the productivity and conservation of viable natural populations over the long term. Two of the reviewers felt that hatchery fish are inherently different from wild fish and should not be included in ESUs, and were concerned that the inclusion of hatchery fish in ESUs would jeopardize the conservation and recovery of native salmonid populations in their natural ecosystems. The other two reviewers were supportive of the scientific basis for including hatchery fish in ESUs, but felt that the policy did not appropriately emphasize that the conservation and recovery of listed ESUs depends upon the viability of wild populations and natural ecosystems over the long term.

There was substantial overlap between the comments from the independent expert reviewers, the independent scientific panels and academic societies, and the substantive public comments. Some of the comments received were not directly pertinent to the proposed listing determinations or the proposed amendments to the 4(d) protective regulations. We will consider and address comments relating to other determinations (for example, the proposed Hatchery Listing Policy (69 FR 31354, June 3, 2004), the proposed critical habitat designations for 20 West Coast salmonid ESUs (69 FR 71880, December 10, 2004; 69 FR 74572, December 14, 2004), and the remanded biological opinion on the Federal Columbia River Power System (see *http://www.salmonrecovery.gov/R_biop_final.shtml*)) in the context of those determinations. With respect to comments received on the Hatchery Listing Policy, the summary of and response to comments below is confined to the implementation of the policy in delineating the ESUs for consideration, and determining their ESA listing status. The reader is referred to the final Hatchery Listing Policy elsewhere in this edition of the **Federal Register** for a summary of the comments received regarding the legal and policy interpretations articulated in the policy.

The summary of comments and our responses below are organized into four general categories: (1) General comments on the consideration of artificial propagation in the proposed listing determinations; (2) general comments on the consideration of efforts being made to protect the species; (3) comments on the proposed amendments to the protective regulations; and (4) comments on ESU-specific issues (for example, the ESU membership of specific hatchery stocks, level of extinction risk assessed for an ESU, and the consideration of specific conservation efforts being made to protect and conserve an ESU).

*General Comments on the Consideration of Artificial Propagation*

*Issue 1:* Several commenters felt that our implementation of the Hatchery Listing Policy's threshold for including hatchery stocks in a given ESU was inconsistent among hatchery programs both within and among ESUs. The commenters felt that in most circumstances quantitative information on the genetic differentiation of a specific hatchery stock relative to the local natural population(s) is not available. The commenters argued that, given the poor availability of genetic data, determinations of whether a given hatchery stock is part of an ESU are ambiguous, highly subjective, and arbitrary.

*Response:* We agree with the commenters that in many cases empirical genetic data are not available to quantitatively assess the level of genetic differentiation and reproductive isolation of a hatchery stock relative to the local natural population(s) in an ESU. The ESA requires that we review the status of the species based upon the ''best available'' scientific and commercial information, and in many instances the agency must rely on qualitative analyses of surrogate information when quantitative genetic data are not available to assist in determining the ''species'' under consideration. For this rulemaking, in lieu of empirical genetic data, we relied on a number of strong biological indicators to inform a qualitative assessment of the level of reproductive isolation and evolutionary divergence, such as stock isolation, selection of run timing, the magnitude and regularity of incorporating natural broodstock, the incorporation of out-of-basin or out-of-ESU eggs or fish, mating protocols, behavioral and life-history traits, *etc.*

*Issue 2:* One commenter disapproved of our approach of evaluating the ESU membership of hatchery fish in terms of individual hatchery programs. The commenter recommended that ESU membership be based on broodstock source, recognizing that a given broodstock may be propagated at several hatchery facilities. The commenter felt that our approach of evaluating hatchery programs confused three important issues: the broodstock source, history, and genetic management of the hatchery fish; the management practices of the hatchery program producing the hatchery fish (such as the timing and location of releasing hatchery fish); and the life-history characteristics of the local natural population where a hatchery stock is being released. The commenter was concerned that evaluating and listing hatchery fish by hatchery program could erroneously result in one group of hatchery fish from a given broodstock source being included in an ESU, and another group of hatchery fish from the same broodstock source not being included in the ESU.

*Response:* The commenter is correct that our approach could, and did, result in hatchery programs being excluded from an ESU despite having been derived from the same broodstock lineage as other hatchery programs included in the ESU. However, we feel it would be inappropriate to determine the ESU membership of hatchery fish solely on the basis of broodstock lineage to the exclusion of a case-by-case analysis of the past and present practices of hatchery programs producing fish within the geographic range of an ESU. The commenter correctly points out that individual hatchery programs may differ in their broodstock lineage, hatchery practices, and the specific ecological conditions into which the hatchery fish are released. The broodstock used represents the raw genetic resources brought into a hatchery program, and provides one useful predictor of ESU membership. How these raw genetic resources are managed and the specific environmental and ecological conditions into which the hatchery fish are released are also key determinants of whether a group of hatchery fish is part of an ESU. Critical considerations in evaluating the relationship of hatchery fish to an ESU include whether it reflects: (1) The level of reproductive isolation characteristic of the natural populations in the ESU; and (2) the ecological, life-history, and genetic diversity that compose the ESU's evolutionary legacy. Information regarding the origin, isolation, and broodstock source and mating protocols of a hatchery program help determine its level of reproductive isolation from the local natural population(s) in an ESU. Information regarding the behavioral and life-history traits of the hatchery fish produced by a program relative to the locally adapted natural populations help inform evaluations of whether the hatchery fish are

representative of the ESU's evolutionary legacy. We feel that it is appropriate to evaluate the ESU membership of hatchery fish with respect to the specific hatchery programs producing them.

*Issue 3:* Many commenters felt that hatchery-origin fish should not be included in ESUs. The commenters discussed scientific studies demonstrating that hatchery-origin fish differ from naturally-spawned fish in physical, physiological, behavioral, reproductive and genetic traits. Commenters argued that hatchery-origin and natural-origin fish should not be included in the same ESU because of these differences.

*Response:* We do not agree that hatchery-origin fish should be universally excluded from ESUs. As articulated in the final Hatchery Listing Policy in this edition of the **Federal Register**, important genetic resources for the conservation and recovery of an ESU can reside in fish spawned in a hatchery as well as in fish spawned in the wild. The established practice of incorporating local natural-origin fish into hatchery broodstock can result in hatchery stocks and natural populations that are not reproductively isolated and that share the same genetic and ecological evolutionary legacy. Under the final Hatchery Listing Policy we determine the ESU membership of hatchery fish by conducting a case-by-case evaluation of the relationship of individual hatchery stocks to the local natural population(s) on the basis of: Stock origin and the degree of known or inferred genetic divergence between the hatchery stock and the local natural population(s); and the similarity of hatchery stocks to natural populations in ecological and life-history traits. Although certain hatchery programs will be determined to be reproductively isolated and not representative of the evolutionary legacy of an ESU (and hence not part of the ESU), we do not believe that such a conclusion is universally warranted for all hatchery stocks. Many hatchery stocks are reproductively integrated with natural populations in an ESU and continue to exhibit the local adaptations composing the ESU's ecological and genetic diversity. We recognize that artificial selection in the hatchery environment may be unavoidable, that a well-managed hatchery stock could eventually diverge from the evolutionary lineage of an ESU, and that a poorly managed hatchery stock could quickly diverge from the evolutionary lineage of an ESU. However, the potential for divergence is not adequate justification for the universal exclusion of hatchery fish from an ESU. Consistent with the ESU policy, a hatchery program should be excluded from an ESU if the hatchery stock exhibits genetic, ecological or life-history traits indicating that it has diverged from the evolutionary legacy of the ESU.

*Issue 4:* Many commenters felt that hatchery-origin fish should be considered only as a threat to the persistence of Pacific salmon and *O. mykiss* ESUs. The commenters cited scientific studies indicating that artificial selection in hatcheries can result in diminished reproductive fitness in hatchery-origin fish in only one generation. Commenters also noted scientific studies describing negative ecological, reproductive, and genetic effects of hatchery stocks on natural populations. The commenters were concerned that including hatchery fish in assessments of extinction risk reduces the importance of conserving self-sustaining populations in the wild, and inappropriately equates naturally produced fish and fish produced with ease in a hatchery.

*Response:* We do not agree that all hatchery programs, and the hatchery fish they produce, can be universally regarded as threats to salmon and *O. mykiss* ESUs. There are so many different ways in which hatchery-origin fish interact with natural populations and the environment that there can be no uniform conclusion about the potential contribution of hatchery-origin fish to the survival of an ESU. As described in the final Hatchery Listing Policy elsewhere in this edition of the **Federal Register**, the consideration of hatchery-origin fish in evaluating the level of extinction risk of an ESU requires a case-by-case analysis of the risks, benefits, and uncertainties of specific hatchery stocks within the geographical area of an ESU. The risks and benefits of artificial propagation to the survival of an ESU over the long term are highly uncertain. The presence of well distributed self-sustaining natural populations that are ecologically and genetically diverse provides the most certain predictor that an ESU is not likely to become endangered in the foreseeable future. The presence of carefully designed and operated hatchery programs, under certain circumstances, may mitigate the risk of extirpation for severely depressed populations in the short term, and thereby reduce an ESU's immediate risk of extinction. Whether the contributions of a hatchery program or group of hatchery programs will warrant an ESU being listed as ''threatened'' rather than ''endangered'' will depend upon the specific demographic risks facing natural populations within the ESU, the availability and condition of the surrounding natural habitat, as well as the factors that led to the ESU's decline and current threats limiting the ESU's recovery.

*Issue 5:* A few commenters felt that extinction risk should be evaluated based on the total abundance of fish within the defined ESU without discriminating between fish of hatchery or natural origin. These commenters contended that the District Court in *Alsea* ruled that once an ESU is defined, risk determinations should not discriminate among its components. The commenters described the risk of extinction as the chance that there will be no living representatives of the species, and that such a consideration must not be biased toward a specific means of production (artificial or natural).

*Response:* The *Alsea* ruling does not require any particular approach to assessing extinction risk. The court ruled that if it is determined that a DPS warrants listing, all members of the defined species must be included in the listing. The court did not rule on how the agency should determine whether the species is in danger of extinction or likely to become so in the foreseeable future. The commenters assert that the viability of an ESU is determined by the total numbers of fish. The risk of extinction of an ESU depends not just on the abundance of fish, but also on the productivity, spatial distribution, and diversity of its component populations (Viable Salmonid Populations (VSP) factors; McElhany *et al.*, 2000; Ruckelshaus *et al.*, 2002). In addition to having sufficient abundance, viable ESUs and populations have sufficient productivity, diversity, and a spatial distribution to survive environmental variation and natural and human catastrophes. The commenters also assume that hatchery managers will continue to produce the same numbers of the same stock and quality of fish with the same success as in the past. In many cases, such assumptions are not warranted.

*Issue 6:* One commenter noted that the proposed ESU delineations included ''naturally spawned fish'' within a given geographical area, and was concerned that as defined the ESUs might be misinterpreted to include the naturally spawned progeny of hatchery fish not included in the ESU. The commenter was concerned that the naturally-spawned progeny of these out-of-ESU hatchery fish would inadvertently be afforded the protections of the ESA, potentially constraining conservation measures intended to reduce the

negative impacts of these fish on listed local natural populations.

*Response:* The final rule defines ESUs as naturally spawned fish originating from a defined geographic area, plus hatchery fish from certain enumerated hatchery programs. It is possible that within any geographic area there may be out-of-ESU hatchery strays spawning with other out-of-ESU hatchery strays to produce progeny that biologically would not be considered part of the ESU. As a practical matter, however, it is seldom possible to distinguish the progeny of these matings from the progeny of within-ESU natural spawners, without elaborate (and potentially inconclusive) tests. Accordingly, we have defined the ESUs to make the listings unambiguous and the ESA protections easily enforceable.

Of the 16 ESUs addressed in this final rule, four ESUs have associated out-of-ESU hatchery programs: the Lower Columbia River Chinook, Upper Columbia River spring-run Chinook, Puget Sound Chinook, and Snake River spring/summer-run Chinook ESUs. In some instances the progeny of out-of-ESU hatchery fish may be distinguished by distinct patterns of habitat use, spawning location, run timing, or other means. In such a case we may determine that protection of those fish is not necessary for conservation of the ESU and approve actions that result in take, through sections 4(d), 7(a)(2), 10(a)(1)(A) or 10(a)(1)(B) of the ESA, as appropriate. NMFS will also use these statutory authorities to minimize harmful impacts to the listed ESUs from out-of-ESU hatchery fish spawning in the wild.

*General Comments on the Consideration of Protective Efforts*

*Issue 7:* Several commenters criticized the evaluation of efforts being made to protect the species in the proposed listing determinations (see 69 FR at 33142 through 33157; June 14, 2004). The commenters argued that the joint NMFS/FWS ''Policy for Evaluation of Conservation Efforts When Making Listing Decisions'' (''PECE''; 68 FR 15100; March 28, 2003) does not apply to currently listed species. In addition to this criticism the commenters felt that our treatment of protective efforts in the proposed listing determinations failed to address the criteria required under PECE for evaluating the certainty of implementation and effectiveness of protective efforts. (The commenters also provided criticisms specific to the consideration of protective efforts for the Sacramento River winter-run Chinook ESU, see Issue 13 in the ''Comments on ESU-specific Issues'' section, below).

*Response:* Section 4(b)(1)(A) of the ESA requires the Secretary of Commerce to make listing determinations ''solely on the basis of the best scientific and commercial data available * * * after conducting a review of the status of the species *and after taking into account those efforts, if any, being made * * * to protect such species*'' (emphasis added). When making listing determinations, we therefore evaluate efforts being made to protect the species to determine if those measures reduce the threats facing an ESU and ameliorate its assessed level of extinction risk. In judging the efficacy of protective efforts, we rely on the guidance provided in PECE. PECE provides direction for the consideration of protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, state and local governments, tribal governments, businesses, organizations, and individuals) that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness. The policy articulates 15 criteria for evaluating the certainty of implementation and effectiveness of protective efforts to aid in determination of whether a species should be listed as threatened or endangered. Evaluations of the certainty an effort will be implemented include whether: The necessary resources (*e.g.*, funding and staffing) are available; the requisite agreements have been formalized such that the necessary authority and regulatory mechanisms are in place; there is a schedule for completion and evaluation of the stated objectives; and (for voluntary efforts) the necessary incentives are in place to ensure adequate participation. The evaluation of the certainty of an effort's effectiveness is made on the basis of whether the effort or plan: establishes specific conservation objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; and is likely to improve the species' viability at the time of the listing determination.

The commenters are correct that PECE does not explicitly apply to changing a species' listing status from endangered to threatened, or to delisting actions. NMFS and FWS noted that recovery planning is the appropriate vehicle to provide case-by-case guidance on the actions necessary to delist or change a species' listing status. The agencies left open whether specific policy guidance would be developed to instruct the consideration of conservation efforts for the purposes of changing a species' listing status or delisting a species, and such guidance has not yet been developed. Recovery planning efforts for the listed ESUs under review have not progressed to the point that they can provide guidance on the specific actions that would inform a decision to delist or change an ESU's listing status. In lieu of further policy guidance, PECE provides a useful and appropriate general framework to guide consistent and predictable evaluations of protective efforts.

We agree with the commenters that the regional summary of protective efforts provided as part of the proposed listing determinations does not provide a detailed treatment of the fifteen criteria articulated in PECE. However, only one of the proposed listings for the 16 ESUs addressed in this notice relied on the determination that protective efforts ameliorated risks to an ESU's abundance, productivity, spatial structure, and diversity as a basis for proposing that a previously endangered species be listed as threatened (the Sacramento River winter-run Chinook ESU). (The final listing determination for the Sacramento River winter-run Chinook ESU does not rely on an evaluation of protective efforts.) Our review of protective efforts provided in the proposed listing determinations concluded that the efforts do not as yet individually or collectively provide sufficient certainty of implementation and effectiveness to alter the assessed level of extinction risk for the other ESUs under review. A detailed documentation of the fifteen criteria articulated in PECE is not necessary unless we rely on protective efforts to overcome our assessment of extinction risk and the five factors identified in ESA section 4(a)(1).

*Comments on Protective Regulations*

*Issue 8:* Several commenters believe the ESA does not allow us to apply different levels of protections to hatchery and natural-origin fish in an ESU by not applying the take prohibitions to threatened hatchery fish that have had their adipose fin removed prior to release into the wild. The commenters argue that the *Alsea* ruling found that all fish included in an ESU must be protected equally if it is found that the ESU in-total warrants listing.

*Response 14:* The *Alsea* ruling does not require us to implement protective regulations equally among components of threatened ESUs. The *Alsea* ruling found that the ESA does not allow us to

list a subset of a DPS or ESU, and that all components of an ESU (natural populations, hatchery stocks, and resident populations) must be included in a listing if it is determined that an ESU warrants listing as threatened or endangered.

The section 9(a) take prohibitions (16 U.S.C. 1538(a)(1)(B)) apply to species listed as endangered. In the case of threatened species, ESA Section 4(d) leaves it to the Secretary's discretion whether and to what extent to promulgate protective regulations. Section 4(d) of the ESA states that ''[w]henever a species is listed as a threatened species * * *, the Secretary shall issue such regulations *as he deems necessary and advisable* to provide for the conservation of such species' [emphasis added]. ''The Secretary may * * * prohibit with respect to any threatened species any act prohibited under section 9(a)(1) * * * with respect to endangered species.'' This gives the Secretary flexibility under section 4(d) to tailor protective regulations that appropriately reflect the biological condition of each threatened ESU and the intended role of listed hatchery fish.

We find that it is necessary and advisable for conservation of the ESUs to prohibit take only of natural-origin fish and hatchery fish with the adipose fin left intact. The majority of hatchery programs produce fish for harvest rather than for conservation. Protecting those fish intended for harvest is not necessary for the conservation of the ESU. To the contrary, if too many hatchery fish are allowed to spawn naturally, it may pose ecological and genetic risks to the natural populations in the ESU. Removal of some hatchery fish before they are allowed to spawn may thus be necessary for the conservation of some ESUs. This concern is discussed in more detail in the final Hatchery Listing Policy elsewhere in this edition of the **Federal Register**.

Hatchery production that is surplus to conservation needs may thus create population pressures that cannot be relieved except through harvest of the surplus. An alternative approach to conservation would be to simply produce fewer hatchery fish. While reducing hatchery production might be another option for addressing this threat, the hatchery production itself is in many cases important for redressing lost treaty harvest opportunities (as well as meeting other societal values). Allowing the continued production of hatchery fish for harvest, and not prohibiting the take of listed marked hatchery fish, balances the conservation needs of listed ESUs against other Federal obligations.

*Issue 9:* Several commenters were concerned that excluding threatened hatchery fish with a clipped adipose fin (hereafter, ''ad-clipped'') from 4(d) protections would be perceived by managers as strong pressure to expand the use of mark-selective fisheries. (A ''mark-selective'' fishery is one in which anglers can retain only ad-clipped hatchery fish, while any unmarked fish that are caught must be released. Mark-selective fisheries are intended to protect the weaker stock(s) in a mixed-stock fishery, while allowing for harvest opportunities on stronger stocks. Mass-marking by clipping the adipose fins of hatchery fish that are intended for harvest is used to provide an easily distinguished visual cue for anglers). Some of these commenters suggested an alternative would be to prohibit the take of ''naturally spawned fish,'' and fish from specified conservation hatcheries.

Commenters also noted that many ad-clipped hatchery fish are released from conservation programs for recovery purposes and thus merit take prohibitions. The commenters were concerned that the proposed 4(d) protective regulations would require conservation hatchery managers to release hatchery fish with their adipose fins intact so that the take prohibitions would apply. The commenters argued that this would force hatchery managers to use alternative marking methods that are more expensive, more difficult to implement, and less effective.

*Response:* The amended prohibitions do not mandate that listed hatchery fish be ad-clipped, nor do they mandate the use of mark-selective fisheries. State and tribal hatchery and fishery managers use an array of management tools depending on the needs of individual salmonid populations and resource use objectives. Among these tools are mass marking and mark-selective fisheries. Although the amended protective regulations do not require it, ad-clipping may be the best strategy to achieve their goals for some hatchery programs. These ad-clipped hatchery fish can be harvested in fisheries that have appropriate ESA authorization, including, but not limited to, mark-selective fisheries. However, the amended 4(d) protective regulations do not mandate any particular management strategy provided the strategy is consistent with the conservation and recovery objectives of listed ESUs. An alternative approach would have been to prohibit the take of naturally spawned fish and fish from specific conservation hatcheries. We have instead chosen to rely on the adipose-fin clip because it provides a readily identifiable and enforceable feature for distinguishing those fish protected by the ESA take prohibitions.

The commenters are correct that hatchery fish intended for conservation purposes will not be afforded ESA protection against take if they are released with a clipped adipose fin. Managers of conservation hatchery programs may choose to use alternative marking methods to assist research and monitoring efforts such that the take prohibitions apply to the fish they produce. We acknowledge that the prospect of listing more than 130 West Coast hatchery programs presents challenges to hatchery and fishery management in California, Oregon, Washington, and Idaho. We believe that exempting ad-clipped fish from the take prohibitions is the preferable regulatory option, as compared to the alternative of prohibiting take of all listed hatchery fish. Allowing for the take of listed ad-clipped hatchery fish provides a clearly enforceable distinction for when take prohibitions apply, and provides additional flexibility to more effectively manage fisheries, control the number and proportion of hatchery fish spawning in the wild, and minimize potentially adverse impacts of hatchery fish on natural populations. Although the proposed approach provides management flexibility, we recognize that it may present some challenges. We will continue to work with state and tribal managers to address any challenges in a way that minimizes adverse impacts on affected parties, while achieving conservation and resource use objectives for listed ESUs.

*Issue 10:* A few commenters felt that NMFS should extend the ''grace period'' for applications for coverage under the 4(d) limits to: Apply to applications for all limits rather than just for scientific research and enhancement activities; allow for more than 60 days to submit an application; and allow for more than 6 months to obtain approval under a 4(d) limit. The commenters felt sufficient time must be allowed for entities to prepare and process applications for 4(d) coverage. The commenters were concerned that NMFS does not have the necessary resources to process applications and issue authorizations within 6 months, given the likely high volume of new 4(d) applications and the significant administrative burden associated with processing and authorizing 4(d) applications. The commenters stressed that any delays in issuing authorizations under 4(d) would disrupt important fisheries and would also risk impeding progress on important recovery efforts.

*Response:* We are concerned about the potential for disruption of ongoing scientific research, monitoring, and conservation activities, especially during the coming summer/fall field seasons. Consistent with the previously promulgated 4(d) protective regulations, the amended regulations finalized in this notice include a ''temporary'' limit or 6-month grace period for ongoing scientific research and enhancement activities provided a permit application is received by NMFS within 60 days of this notice (see **DATES**, above). Applicants will be subject to the take prohibitions if their permit application is denied, rejected as insufficient, or the 6-month grace period expires, whichever occurs earliest.

We do not feel that a similar 6-month grace period is warranted for limits addressing other activities affecting threatened ESUs. In this notice we are amending existing 4(d) protective regulations for threatened ESUs that are already listed under the ESA (except for the Lower Columbia River coho ESU, which is a new threatened listing). Thus, activities affecting the subject ESUs already have ESA coverage through the existing 4(d) protective regulations, through section 10 permits, as a result of section 7 consultation, or are in the process of obtaining such authorization. The amended 4(d) protective regulations will become effective within 60 days of the publication of this notice (see **DATES**, above). We believe that the grace period allows sufficient time to amend existing ESA authorizations consistent with the revised 4(d) protective regulations. Some activities will not need ESA coverage immediately after the amended protective regulations go into effect because the actions do not affect listed species. We will work with regional co-managers to prioritize activities and programs on the basis of how urgently each needs ESA coverage.

We have anticipated that processing new 4(d) applications submitted in response to the amended 4(d) protective regulations will increase agency workload. As a result, we are evaluating our resource needs and are fully committed to meeting future program demands. We encourage entities to work together in developing plans for 4(d) approval that cover wide geographic scales and multiple activities, thus reducing the number of individual programs that need to be reviewed. While enforcement may be initiated against activities that take protected salmonids, our clear preference is to work with persons or entities to promptly shape their programs and activities to include credible and reliable conservation measures for listed salmon and *O. mykiss* ESUs.

*Issue 11:* Two Federal agencies (the Bureau of Land Management (BLM), and the U.S. Forest Service (FS)) requested that we amend the limits concerning land management activities on state, private, and tribal lands to include activities on Federal lands that implement regional Land Resource Management Plans (LRMPs) and aquatic conservation strategies. The BLM and FS recognized that including Federal lands in these limits on the take prohibitions would not eliminate their requirement to consult under section 7 of the ESA. However, BLM and FS felt that extending these limits to Federal lands would make the section 7 consultation process more efficient, and minimize or eliminate the need to develop and implement reasonable and prudent measures, as well as mandatory terms and conditions for actions covered under a section 7 Incidental Take Statement.

*Response:* It is not possible to extend existing 4(d) limits to cover Federal activities implemented under FS and BLM LRMPs because the existing limits address land management activities conducted under differing regulatory authorities and relationships. If we were to adopt a new 4(d) limit covering the LRMPs, it would require review and approval of specific activities, similar to the current 4(d) limits. The LRMPs address general classes of FS and BLM actions, and lack the specificity required for a 4(d) limit. For a 4(d) limit to cover future unidentified actions, without subsequent review and approval, the limit would have to specify narrowly defined activities to be conducted according to strict guidelines within stringent project management conditions. Adopting limits that require subsequent review and approval would not provide any relief to Federal agencies and would, to the contrary, increase regulatory review.

As the BLM and FS acknowledged, the 4(d) limits on the take prohibitions do not relieve Federal agencies of their duty under section 7 of the ESA to consult with NMFS if actions they fund, authorize, or carry out may affect listed species. The various 4(d) limits may be useful to Federal agencies as guidance in developing and implementing their conservation programs. To the extent that Federal actions subject to section 7 consultation are consistent with the terms of a 4(d) limit, the consultation process may be greatly simplified. However, granting BLM's and FS'' request to explicitly include certain Federal activities in several 4(d) limits would not diminish their section 7 obligations.

*Comments on ESU-Specific Issues*

*Issue 12:* We received many helpful ESU-specific comments of an editorial nature. These comments noted inadvertent errors in the proposed listing determinations and offered non-substantive but nonetheless clarifying changes to wording.

*Response:* We have incorporated these editorial-type comments in the ESU definitions, descriptions of ESU status, and the final listing determinations. As these comments do not result in substantive changes to this final rule, we have not detailed the changes made.

*Sacramento River Winter-Run Chinook ESU*

*Issue 13:* Several commenters contended that our proposal to reclassify the endangered Sacramento River winter-run Chinook ESU as threatened was not justified because the BRT concluded it was at a high risk of extinction and we overstated the benefits of protective efforts such as the Battle Creek restoration project. They argued that this program in particular was uncertain to be fully implemented, funded, or successful in establishing a second population of this ESU in Battle Creek. In addition, they argued that 2004 changes in the Central Valley Project operations criteria (CVP–OCAP) provided less protection for this ESU than did the previous water project operational criteria.

*Response:* We acknowledge the BRT concluded this ESU still continues to be at a high risk of extinction, primarily because of concerns about the spatial structure (the ESU is represented by a single population) and the loss of diversity. As indicated in the proposed rule, however, we believe that many important protective efforts have been implemented over the past 10 to 15 years that have contributed to the increased abundance and productivity of this ESU in recent years, as have favorable ocean conditions. These protective efforts include changes in the operation of the Central Valley and State Water Projects, implementation of many CALFED Bay-Delta Program (CALFED) and other habitat restoration projects (*e.g.*, screening of water diversions), changes in ocean and freshwater harvest management, and successful implementation of the hatchery supplementation program at Livingston Stone National Fish Hatchery (NFH). We agree with commenters, however, that the Battle Creek restoration project, which was cited in the proposed rule to support the proposed reclassification,

has not been fully implemented and that its funding and future success are uncertain at this time.

We disagree, however, that the 2004 CVP–OCAP provides less protection to this ESU than previous water project operations criteria. The new CVP–OCAP continues to provide adequate control of temperatures for spawning in the upper Sacramento River despite changes in the temperature control point and carryover storage requirements. We fully analyzed the new CVP–OCAP operations in a biological opinion issued in 2004 and concluded that these operational changes would not jeopardize the continued existence of this ESU.

In light of the concerns raised about the adequacy and benefits of protective efforts for this ESU, particularly the Battle Creek restoration project, we are withdrawing our proposal to reclassify this ESU as threatened. We conclude that the Sacramento River winter-run Chinook ESU continues to warrant listing as an endangered species. We will continue to monitor the status of this ESU and the implementation of protective efforts throughout the California Central Valley. We may reconsider reclassification of the ESU's listing status in the future as these protective efforts mature (the Battle Creek restoration project in particular) and are fully implemented, and their certainty of effectiveness can be more fully assessed.

*Central Valley Spring-Run Chinook*

*Issue 14:* Several commenters questioned whether naturally spawning spring-run Chinook in the Feather River should be included in the listed ESU given that they are genetically similar to the Feather River Hatchery stock which was not proposed as part of the Central Valley spring-run Chinook ESU.

*Response:* We agree with the commenters that naturally spawning spring-run Chinook in the Feather River are genetically similar to the Feather River Hatchery spring-run Chinook stock. Although the hatchery stock shows evidence of introgression with Central Valley fall-run Chinook and is divergent from other within-ESU naturally spawning populations in Deer, Mill and Butte Creeks, both the Feather River naturally spawning population and the Feather River Hatchery spring-run Chinook stock continue to exhibit a distinct early-returning spring-run phenotype. NMFS' SSHAG report (NMFS, 2003a) found that if it was determined that the naturally spawning spring-run Chinook population in the Feather River was part of the ESU, then the Feather River Hatchery spring-run Chinook stock might also be considered part of the ESU. NMFS' Central Valley Technical Recovery Team believes that this early run timing in the Feather River represents the evolutionary legacy of the spring-run Chinook populations that once spawned above Oroville Dam, and that the extant population in the Feather River may be the only remaining representative of this important ESU component (NMFS, 2004d). The Feather River Hatchery spring-run Chinook stock may play an important role in the recovery of spring-run Chinook in the Feather River Basin as efforts progress to restore natural spring-run populations in the Feather and Yuba Rivers. The California Department of Fish and Game (CDFG) has recently initiated marking of all early returning fish to the Feather River Hatchery, and is incorporating only those early-run fish into the Feather River Hatchery spring-run Chinook stock. The California Department of Water Resources also plans to construct a weir to create geographic isolation for spring-run Chinook in the Feather River. These efforts are intended to reduce introgression by Central Valley fall-run Chinook, thereby further isolating and preserving this important early-returning spring-run Chinook phenotype in the Feather River. Recent results indicate that a small percentage of these marked early-run hatchery fish (*i.e.*, those that do not return to the hatchery or are not harvested) are spawning naturally in the Feather River. Based on a consideration of this information, we have determined that: (1) The naturally spawning population of spring-run Chinook in the Feather River represents the level of reproductive isolation and the evolutionary legacy of the ESU, and thus warrants inclusion in the ESU; and (2) the Feather River Hatchery spring-run Chinook stock is no more divergent relative to this local natural population than would be expected between two closely related populations in the ESU, and thus it also warrants inclusion in the ESU. Accordingly, we have revised the ESU definition of the Central Valley spring-run Chinook ESU in this final rule to include the natural population of spring-run Chinook in the Feather River as well as the Feather River Hatchery spring-run Chinook stock (see the ''Determination of 'Species' under the ESA'' section, below).

*Upper Willamette River Chinook ESU*

*Issue 15:* The Oregon Department of Fish and Wildlife (ODFW) felt that the Clackamas Hatchery spring-run Chinook program (ODFW stock #19), which was proposed for inclusion in the Upper Willamette River Chinook ESU, should not be included as part of the ESU. ODFW contended that the Clackamas Hatchery should be excluded from the ESU because the program consists of a long-term domesticated broodstock founded from a mix of non-local (but within ESU) populations, and the program is managed for isolation between the hatchery stock and the local natural populations.

*Response:* The Clackamas spring Chinook broodstock (ODFW stock #19) was initiated in 1976 and is the most recently founded broodstock in the entire ESU. Since hatchery fish released from this program were not all externally marked until 1997, it is unknown how many natural-origin fish have been incorporated into the broodstock since the program was initiated. However, based on the number of natural-origin fish that have entered the hatchery over the last 3 years since all hatchery returns have been marked, it is likely some natural-origin fish have been incorporated regularly into the broodstock since it was established. When this hatchery program began, naturally-produced spring Chinook numbered in the hundreds. It is likely that the subsequent increases in the number of natural-origin Clackamas spring-run Chinook includes the progeny of naturally spawning hatchery-origin fish from the Clackamas Hatchery. Based on this information, the Clackamas Hatchery stock is likely no more divergent from the local natural population than are closely related natural populations in the ESU, and thus it is appropriate for this hatchery stock to be included as part of the Upper Willamette River Chinook ESU.

*Lower Columbia River Chinook ESU*

*Issue 16:* ODFW felt that the Big Creek tule (Big Creek, OR) fall-run Chinook hatchery program, which was proposed for inclusion in the Lower Columbia River Chinook ESU, should not be included in the ESU. ODFW contended that the Big Creek tule Chinook program is substantially diverged from the local natural populations in the ESU because it has incorporated non-local (but within ESU) fish in the hatchery broodstock, and the program is unable to actively collect and incorporate natural-origin fish into the broodstock because returning hatchery-origin fish are unmarked and indistinguishable from returning natural-origin fish.

*Response:* We respectfully disagree with ODFW's contention that the Big Creek Tule fall-run Chinook hatchery program should be excluded from the Lower Columbia River Chinook ESU. The Big Creek Hatchery program has

been releasing hatchery tule fall-run Chinook into Big Creek since 1941 and has incorporated non-local (but within-ESU) hatchery and naturally produced fall-run Chinook into the hatchery broodstock. The program is currently using only hatchery-origin and natural-origin fish returning to Big Creek Hatchery. The level of natural-origin tule fall-run Chinook that are used in the broodstock is unknown due to the low marking rate of hatchery fall-run Chinook released from the facility. However, natural production within this population has been swamped by a high proportion of naturally spawning hatchery-origin fish, and available spawning habitat is constrained by the weir at the hatchery. Consequently, the distinction between the natural-origin and hatchery-origin fall Chinook is minimal. Presently, Big Creek Hatchery fall Chinook are probably not distinguishable from the existing natural population, and thus it is appropriate for this hatchery stock to be included as part of the ESU.

*Puget Sound Chinook ESU*

*Issue 17:* Two commenters felt that the Issaquah Creek (Cedar River, Washington), George Adams and Rick's Pond (Skokomish River, Washington), and Hamma Hamma (Westside Hood Canal, Washington) hatchery fall-run Chinook programs, which were not proposed for inclusion in the Puget Sound Chinook ESU, should be included and listed as part of the ESU. The commenters contended that recent genetic analyses (Spidle and Currens, 2005; Marshall, 2000a, 2000b), the broodstock source for the hatchery programs, and their spawning migration timing supported their inclusion in the ESU.

*Response:* The commenters reach different conclusions regarding the ESU membership of the subject hatchery programs largely because they evaluated their level of divergence relative to different reference natural populations than we did in the proposed listing determination for the Puget Sound Chinook ESU. After reviewing the comments received, other recently available scientific information, and the guidance provided in the final Hatchery Listing Policy, we agree with the commenters that the Issaquah Creek, George Adams, Rick's Pond, and Hamma Hamma fall-run Chinook hatchery programs should be included and listed as part of the ESU. Accordingly we have revised the defined ESU (see the ''Determination of 'Species' under the ESA'' section below) in this final listing determination. In the following paragraphs we provide a brief summary of the information considered in making this change from the proposed listing determination.

Each of the four hatchery programs addressed by the commenters presents a unique challenge in determining what the appropriate ''local natural population'' is for evaluating the level of genetic divergence exhibited by a hatchery program and for determining its ESU membership. These four hatchery programs produce hatchery stocks that are non-indigenous to the local area, but were derived from hatchery stocks founded elsewhere in the Puget Sound Chinook ESU (principally from the Green River hatchery stock lineage). If any existed, the historically native natural populations in the areas where these hatchery programs release their production have been extirpated and replaced by the introduced hatchery stocks (Ruckelshaus *et al.*, in press). Available genetic and tagging information indicates that the existing natural populations are derived from the introduced hatchery stocks and do not represent the historically present local populations. In evaluating the level of divergence exhibited by such a hatchery stock one might compare it to: (1) What is believed to have been the historically native natural population; (2) the out-of-basin natural population from which the hatchery stock was derived; or (3) the existing natural population in the local area that is largely, if not completely, derived from naturally spawning introduced hatchery fish. The commenters argue that the existing local natural population is the appropriate benchmark against which to evaluate a hatchery program's level of divergence. In developing the proposed ESU delineations, however, we evaluated hatchery programs relative to the natural populations from which they were founded, and considered several factors in determining their level of divergence (such as the incorporation of natural-origin fish into the hatchery broodstock, rearing and release practices, whether hatchery fish exhibit locally adaptive life-history traits reflective of the natural population, etc.).

The final Hatchery Listing Policy states that ''hatchery stocks with a level of genetic divergence relative to the *local natural population(s)* that is no more than what would be expected between closely related natural populations within the ESU * * * are considered part of the ESU'' [emphasis added]. In the proposed ESU delineation for the Puget Sound Chinook ESU we concluded that the Issaquah Creek, George Adams, Rick's Pond, and Hamma Hamma fall-run Chinook hatchery programs should not be included due to their non-indigenous origin, and their likely substantial divergence from the founding natural population and hatchery lineage. These programs are intended to produce fish for harvest in an isolated setting, and have not been designed or managed with the intention of seeding the local watersheds with hatchery fish that ecologically and genetically represent natural Chinook (WDFW, 2003a). Despite the intent of these programs, the existing natural populations are likely the progeny of naturally spawning hatchery fish from these non-local programs. Available information indicates that these four hatchery programs are no more diverged from the (existing) local natural populations than what would be expected between closely related natural populations within the ESU, and thus we conclude that they are part of the ESU.

In the proposed ESU determination for the Puget Sound Chinook ESU, we proposed excluding the Hoodsport fall-Chinook hatchery program from the ESU. Our conclusion, similar to the four hatchery programs discussed above, was based on an evaluation of divergence of the Hoodsport hatchery program relative to the stock from which it was derived. Upon re-evaluation consistent with the revised findings for the Issaquah Creek, George Adams, Rick's Pond, and Hamma Hamma hatchery programs, we conclude that the Hoodsport Hatchery program is not part of the ESU. Finch Creek, where the Hoodsport Hatchery program is located, historically and currently lacks an extant local natural Chinook salmon population.

*Southern Oregon/Northern California Coast Coho ESU*

*Issue 18:* One commenter disagreed with the proposed determination that the Southern Oregon/Northern California Coast coho ESU is threatened. The commenter asserted that the available data are inadequate to rigorously assess the risk of extinction of the ESU. The commenter further argued that the available data show increasing abundance in the ESU, and do not indicate that Southern Oregon/Northern California Coast coho salmon are likely to become endangered in the foreseeable future throughout all or a significant potion of its range. In addition, the commenter felt that the State of California's coho salmon recovery plan provides sufficient protections to remove the threat that the ESU will become endangered.

*Response:* We respectfully disagree with the commenter's conclusion that

the Southern Oregon/Northern California Coast coho ESU does not warrant listing. The commenter is correct that there are few data available for naturally spawned populations in the ESU, particularly for the portion of the ESU in California. (The Rogue River population in Oregon is the notable exception, providing the only robust time series of natural-origin abundance in the ESU.) The BRT's status review update report and our proposed threatened determination for this ESU acknowledged this paucity of data for populations in California. However, the ESA requires that we make listing determinations ''solely on the basis of the best scientific and commercial data *available* * * *'' [emphasis added] (ESA section 4(b)(1)(A)). The BRT evaluated all available indices of spawner abundance, and historical and current distribution. The strong majority of the BRT concluded that the ESU is ''likely to become endangered in the foreseeable future.'' The recent increases in ESU abundance noted by the commenter were fully considered by the BRT and in the proposed listing determination. The BRT was encouraged by indications of strong returns in 2001 for several California populations and an apparent increase in the distribution of coho in historically occupied streams. However, the BRT cautioned that the recent increase in abundance and distribution, presumably due to a combination of favorable freshwater and marine conditions, must be evaluated in the context of more than a decade of poor ESU performance, remaining concerns regarding the high level of hatchery production in the ESU, and the loss of local populations in several river systems.

In developing the proposed threatened listing determination for the Southern Oregon/Northern California Coast coho ESU, we considered the potential contributions of many conservation measures, including California's 2003 State listing of coho, and its subsequent efforts in developing and implementing a comprehensive recovery plan for coho in the State (69 FR at 33148; June 14, 2004). We concluded that if ''successfully implemented the State recovery plan will provide substantial benefits to both the Central California Coast and Southern Oregon/Northern California Coast coho ESUs, however, the long-term prospects for plan funding and implementation are uncertain.'' Although a wide range of important protective efforts have been implemented in both Oregon and California, these protective efforts, as yet, do not sufficiently reduce threats to the ESU. Protective efforts, as evaluated pursuant to PECE, do not provide sufficient certainty of implementation and effectiveness to alter the conclusion that the Southern Oregon/Northern California Coast coho ESU is threatened.

*Lower Columbia River Coho ESU*

*Issue 19:* The Washington Department of Fish and Wildlife (WDFW) argued that the Kalama River Type-N and Type-S hatchery coho programs, which were not proposed for inclusion in the Lower Columbia River coho ESU, should be considered part of the ESU. WDFW acknowledged that the number of local natural-origin fish incorporated in the broodstock for these hatcheries is unknown prior to 1998, and for the Kalama River Type-N hatchery program, non-local sources of broodstock have been used when there were insufficient returns of local fish to meet the program's broodstock needs. However, WDFW noted that adults returning to the Kalama Basin are given priority for incorporation into the hatchery broodstock, and for the Kalama River Type-S hatchery these fish have been sufficient to meet the broodstock needs of the program. In 2004 WDFW proposed integrating the maximum possible level of natural-origin fish into the respective broodstocks for these programs.

WDFW also noted that the Washougal Type-N hatchery coho program was evaluated in NMFS' Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b) and recommended for inclusion in the ESU, but apparently was inadvertently omitted from the proposed listing determination. WDFW recommended that the Washougal Type-N hatchery coho program be included as part of the Lower Columbia River coho ESU.

ODFW opposed the inclusion of Oregon hatchery coho programs in the Lower Columbia River coho ESU. ODFW argued that the Big Creek Hatchery (ODFW stock # 13), Sandy Hatchery (ODFW stock # 11), Bonneville/Cascade/Oxbow Complex (ODFW stock # 14), and Eagle Creek NFH (ODFW stock # 19) broodstocks propagated at the Oregon hatchery facilities should not be regarded as part of the ESU as all are long-term domesticated broodstocks, all have incorporated various levels of out-of-basin (but within ESU) stocks, and all are managed for isolation between the hatchery stocks and any local natural coho populations. For these reasons ODFW recommended excluding the following Oregon hatchery coho programs from the Lower Columbia River coho ESU: Big Creek Hatchery (Big Creek, Oregon), Astoria High School STEP (Youngs Bay, Oregon), Warrenton High School STEP (Youngs Bay, Oregon), CEDC Coho Salmon Program (Youngs Bay, Oregon), Sandy Hatchery (Sandy River, Oregon), and the Bonneville/Cascade/Oxbow Complex (Lower Columbia River Gorge, Oregon) hatchery coho programs. ODFW also noted that the Eagle Creek NFH (Clackamas River, Oregon) coho hatchery program was apparently inadvertently omitted from the proposed listing determination.

*Response:* The commenters are correct that the Washougal Type-N and Eagle Creek NFH hatchery coho programs were inadvertently omitted from the proposed listing determinations. We have fixed that oversight by including these two programs as part of the Lower Columbia River coho ESU in the final listing determination (see ''Determination of Species under the ESA'' section, below).

We concur with WDFW that the Kalama River Type-N and Type-S hatchery coho programs should be included within the ESU (see ''Determination of Species under the ESA'' section, below). Although it is unknown if these programs represent the populations that were historically present, they do represent the current populations within the basin. Both Type-N and Type-S coho were historically present in the Kalama River but not in great abundance, with habitat limited to the area below Kalama Falls. Both natural and hatchery-origin Type-N and Type-S coho salmon were used in the broodstocks prior to 1998. Subsequently all hatchery production has been marked, and broodstocks were limited to only hatchery-origin coho from 1998 to 2004. In 2004, WDFW proposed to begin incorporating natural-origin coho into the broodstocks. The incorporation of Type-N coho salmon released into the Kalama River from other basins has occurred in recent years, though the origin of the Type-N coho is representative of the Type-N coho within the ESU. With implementation of WDFW's proposal to incorporate natural-origin coho salmon into the broodstock, the hatchery stock will become even more similar to the extant natural populations. The Type-S program has been self-sustaining (*i.e.*, it has not had to incorporate fish from other basins) since 1992.

We disagree with ODFW that the Big Creek Hatchery, Astoria High School STEP, Warrenton High School STEP, Sandy Hatchery, and the Bonneville/Cascade/Oxbow Complex hatchery coho programs should be excluded from the

Lower Columbia River coho ESU. We acknowledge that these programs have incorporated within-ESU hatchery coho from outside the local historical population(s) and that the hatcheries have been managed as isolated programs. However, these programs originated from within-ESU natural coho stocks and incorporated local natural-origin coho into the broodstock until the late 1990s (when the practice of mass marking hatchery coho was implemented and only marked hatchery-origin fish were incorporated into the broodstock). The Sandy Hatchery program has been the exception, having been developed from only Sandy River natural coho salmon with limited introductions from non-local ESU populations (the last of which occurred in 1952). Within the populations where these hatchery coho programs release their production, returning hatchery-origin adults contribute substantially to natural spawning. As described in the Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b; 2005b) and by the BRT (NMFS, 2003b) all of these hatchery programs represent the existing local spawning populations, and they also represent a large proportion of the remaining genetic material for many of the smaller tributaries within the ESU.

*Issue 20:* Several commenters were opposed to the proposed listing of the Lower Columbia River coho ESU. WDFW and ODFW suggested that conservation measures for coho and other salmonids in the Lower Columbia region, if evaluated pursuant to PECE, might substantially mitigate risks to the Lower Columbia River coho ESU such that it would not warrant ESA listing. In particular, the commenters highlighted the beneficial contributions of: (1) The Lower Columbia Fish Recovery Board's (LCFRB) recovery plan for salmonids in the Lower Columbia region; (2) the 1999 listing of Lower Columbia River coho as an ''endangered'' species on the State of Oregon's Endangered Species List; and (3) the recovery plan for Lower Columbia River coho developed and adopted by the Oregon Fish and Wildlife Commission in 2001, which specifies State conservation measures with respect to harvest, hatchery operations, fish passage, and habitat restoration necessary to achieve recovery goals.

*Response:* We respectfully disagree with the suggestion that conservation measures under the LCFRB and Oregon recovery plans substantially reduce risks to the ESU to the point that Lower Columbia River coho are not in danger of extinction or likely to become endangered in the foreseeable future. Of an estimated 23 historical populations in the ESU, there are only two extant populations in the Sandy and Clackamas Rivers, and approximately 40 percent of historical habitat is currently inaccessible. Of the extant populations, the total recent mean abundance is less than 1,500 naturally spawning adults, posing significant risks due to depensatory and stochastic demographic processes. The BRT found extremely high levels of risk to the ESU's abundance, productivity, spatial structure, and diversity, and the majority concluded that the ESU is ''in danger of extinction.'' In proposing Lower Columbia River coho as threatened, we concluded that the genetic reserve represented by the 21 hatchery programs within this ESU mitigated the immediacy of extinction risk in the short term. However, we cautioned that long-term reliance on the continued operation of these hatchery programs is inherently risky.

The commenters suggest that the LCFRB recovery plan and Oregon's Lower Columbia River coho recovery plan satisfy the criteria under PECE for certainty of implementation and effectiveness. PECE requires that conservation efforts provide such certainty at the time of a listing determination, and although we are very supportive of these recovery planning efforts, we feel that these efforts lack this certainty. For example, while the LCFRB and Oregon coho recovery plans lay out actions that, if implemented, would address threats to Lower Columbia River coho, all the laws and regulations necessary to implement those actions are not yet in place, nor is there a high level of certainty that the actions will be funded. Similarly, while the plans identify the nature and extent of threats to Lower Columbia River coho, they do not as yet address the full suite of PECE criteria for certainty of effectiveness (such as establishing quantifiable performance measures for monitoring compliance and effectiveness, and employing adaptive management). While we expect that as the plans evolve these elements will be developed, our listing determination must be based on whether the plans are *currently* certain to improve the status of the species.

As noted in PECE, ''there are circumstances in which the threats to a species are so imminent and/or complex that it will be almost impossible to develop an agreement or plan that includes conservation efforts that will result in making the listing unnecessary'' (68 FR at 15101; March 28, 2003). We are concerned that the severity of the demographic risks facing the two extant natural populations in the ESU makes it extremely unlikely that any conservation program or suite of programs could sufficiently mitigate extinction risk such that the ESU would not warrant listing.

*Issue 21:* In their comments on the proposed threatened determination for the Lower Columbia River coho ESU, ODFW noted that it was unclear whether the defined ESU includes naturally produced coho in the Willamette River Basin upstream of Willamette Falls (Oregon City, Oregon). ODFW noted that an apparently robust and self-sustaining population of coho has been established above the falls as a result of introductions of Lower Columbia River hatchery coho. These hatchery releases have been stopped, and the coho returning above the falls are naturally produced. ODFW recommended against including the coho population above Willamette Falls in the Lower Columbia River coho ESU because they occur outside of the native range of coho, and may pose a potential threat to native Upper Willamette spring-run Chinook and winter steelhead listed as threatened.

*Response:* The historical upstream extent of coho in the Willamette River Basin was Willamette Falls. Coho salmon returning to spawn in fall during low-flow conditions were unable to pass above the falls (only species with early spring migration timing during higher flow conditions, spring-run Chinook and winter steelhead, were historically able to pass above Willamette Falls (Myers *et al.*, 2001)). However, as early as 1885, fish ladders were constructed at the falls to aid the passage of anadromous fish in low flow conditions. The ladders have subsequently been modified and rebuilt, as recently as 1971 and 1975 (Bennett, 1987; PGE, 1994).

Although the coho population in the Upper Willamette River Basin is outside of the historical geographic range of the Lower Columbia River coho ESU, the question remains whether this population satisfies the criteria for inclusion in the ESU: (1) It is not substantially reproductively isolated from the ESU; and (2) it reflects the ESU's evolutionary legacy. The technical paper describing the ESU concept (Waples, 1991) notes that an introduced population outside of the historic range of the species may be considered part of an ESU if it supports natural production in areas that are ecologically similar to and geographically near the source natural population(s). The Upper Willamette River Basin is ecologically complex and

arguably shares ecological features with extant and historical coho populations in the Lower Columbia River coho ESU. However, it is worth noting that all of the anadromous salmonid species that historically spawned in the Upper Willamette River (*O. mykiss,* cutthroat trout, spring-run Chinook) are delineated into separate ESUs from lower Columbia River populations of the same species. The delineation of separate Upper Willamette River ESUs is based in part on historic genetic differences reflecting reproductive isolation, but also because of distinct ecological features.

We are uncertain whether the Upper Willamette River coho population is representative of the genetic lineage of the Lower Columbia River coho ESU. Introductions of coho into the Upper Willamette River Basin began on a regular basis in 1952 (Williams, 1983). Coho salmon (at various life-history stages) were released in the Willamette River and 17 major tributaries above Willamette Falls from thirteen different hatchery programs. The predominant hatchery stock released was from the Bonneville/Cascade/Oxbow Complex (considered within the ESU); however, several out-of-ESU hatchery stocks from the northern Oregon Coast were also introduced at several locations through the early 1970s. There is insufficient information to determine if this introduced coho population reflects the level of reproductive isolation in the Lower Columbia River coho ESU given the mixture of within-ESU and out-of-ESU hatchery stocks used to found the population, and the lack of genetic data to evaluate its level of divergence relative to the extant populations in the Sandy and Clackamas Rivers. Given this uncertainty, we do not feel that there is sufficient information to support including the Upper Willamette River coho population as part of the Lower Columbia River coho ESU at this time. If information becomes available indicating that the Upper Willamette River coho population is not substantially reproductively isolated from the Lower Columbia River coho ESU, we may take such opportunity to review the ESU membership of the introduced population.

*Issue 22:* Several commenters felt that we lack sufficient site-specific information to justify including co-occurring resident and anadromous *O. mykiss* in the same ESU. The commenters acknowledged that there is general evidence indicating that where the two life-history forms co-occur they interbreed, are genetically and phenotypically indistinguishable, and can produce offspring of the alternate life-history form. However, the commenters felt that we lack the population-specific genetic and behavioral information to extrapolate these observations universally to all populations and ESUs where resident and anadromous *O. mykiss* have overlapping distributions.

The commenters further noted that in the proposed listing determinations resident populations included in *O. mykiss* ESUs were determined to have minor contributions to the viability of the ESUs. (In the proposed listing determinations we concluded that, despite the reduced risk to abundance for certain *O. mykiss* ESUs due to qualitatively abundant rainbow trout populations, the collective contribution of the resident life-history form to the viability of an ESU in-total is unknown and may not substantially reduce an ESU's risk of extinction (NMFS, 2004; 69 FR 33102, June 14, 2004)). The commenters questioned why resident *O. mykiss* populations should be included in an ESU given that they have little, if any, contribution to the viability of the ESU.

*Response:* We believe that the best available scientific information indicates that: (1) Where resident and anadromous *O. mykiss* co-occur they share a common gene pool, and collectively exhibit the adaptive life-history, ecological, and behavioral traits composing an important component in the evolutionary legacy of the species; and (2) some components of an *O. mykiss* ESU will (on average) have a larger contribution to its viability, while other components will have a comparatively weaker contribution to the ESU's viability, with a persistence that may be dependent upon their connectivity with other more productive components of the ESU. However, we agree that substantial disagreement exists regarding the sufficiency and accuracy of the data. Several efforts are underway that may resolve scientific disagreement regarding the sufficiency and accuracy of data relevant to these ESUs (*i.e.*, the relationship between resident rainbow trout and anadromous steelhead and the contribution of resident rainbow trout to the viability of *O. mykiss* ESUs). We will gather more data and engage further debate among scientific experts before making final determinations regarding these ESUs. A separate notice of 6-month extension of the deadline for making final listing determinations on the *O. mykiss* ESUs appears in today's issue of the **Federal Register**.

*Issue 23:* In March 2005 the State of Oregon released a draft Oregon Coastal Coho Assessment (draft assessment) of the viability of the Oregon Coast coho ESU, as well as of the contributions of the Oregon Plan for Salmon and Watersheds to conserving the Oregon Coast coho ESU. Oregon's draft assessment concluded that the Oregon Coast coho ESU is viable. We announced in a **Federal Register** notice that we would be considering the information presented by Oregon in determining the final listing status for the ESU, and we solicited public comment on Oregon's draft assessment during a 30-day public comment period (70 FR 6840; February 9, 2005). The comments received by NMFS and Oregon raised a number of concerns regarding the sufficiency and adequacy of the data and analyses used in the draft assessment. On May 6, 2005, Oregon released a final Oregon Coastal Coho Assessment (final assessment) that incorporates and responds to the comments received, and includes several substantive changes intended to address the concerns raised regarding the sufficiency and adequacy of the draft assessment.

*Response:* We will extend the deadline for the final listing determination for the Oregon Coast coho ESU for 6 months to analyze Oregon's final assessment in light of the comments received on the draft assessment. Additionally, we are soliciting additional information regarding the sufficiency and adequacy of the final assessment. This extension will enable us to make a final listing determination based upon the best available scientific information. A separate notice of 6-month extension of the deadline for making a final listing determination on the Oregon Coast coho ESU appears in this issue of the **Federal Register**.

**Summary of Changes From the Proposed Listing Determinations and Proposed Protective Regulations**

Based on the comments received, we have made several substantive changes to the proposed ESU definitions and listing determinations, as discussed in the response to comments (above), and detailed below. We do not detail minor changes of an editorial nature (see Response to Issue 12, above).

The listing determination for the Sacramento River winter-run Chinook ESU has been changed from ''threatened'' (as proposed), to ''endangered'' (see Issue 13, above). The ESU is currently listed as an endangered species.

For the Central Valley spring-run Chinook ESU we have included the natural population of spring-run Chinook in the Feather River, as well as

the Feather River Hatchery spring-run Chinook program, in the ESU. The Feather River Hatchery spring-run Chinook program and the associated natural population were not proposed as part of the ESU (see Issue 14, above).

For the Puget Sound Chinook ESU we have included the following hatchery programs as part of the ESU: the Issaquah Creek (Cedar River, Washington), George Adams and Rick's Pond (Skokomish River, Washington), and Hamma Hamma (Westside Hood Canal, Washington) hatchery fall-run Chinook programs. These hatchery programs were not proposed as part of the ESU (see Issue 17, above).

For the Lower Columbia River coho ESU we have included the following programs as part of the ESU: Kalama River Type-N (Washington), Kalama River Type-S (Washington), Washougal River Type-N (Washington), and Eagle Creek NFH (Clackamas River, Oregon) hatchery coho programs. The Eagle Creek NFH and Washougal River Type-N hatchery programs were inadvertently omitted from the proposed listing determination (see Issue 19, above). The Kalama River Type-N and Type-S hatchery coho programs were not proposed as part of the ESU (see Issue 19, above).

**Treatment of the Four Listing Determination Steps for Each ESU Under Review**

*Determination of ''Species'' Under the ESA*

To qualify for listing as a threatened or endangered species, a population (or group of populations) of West Coast salmonids must be considered a ''species'' as defined under the ESA. The ESA defines a species to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature'' (ESA section 3(16)). NMFS published a policy (56 FR 58612; November 20, 1991) describing the agency's application of the ESA definition of ''species'' to anadromous Pacific salmonid species. This policy provides that a Pacific salmonid population (or group of populations) will be considered a DPS, and hence a ''species'' under the ESA, if it represents an ESU of the biological species. An ESU must be reproductively isolated from other conspecific population units, and it must represent an important component in the evolutionary legacy of the biological species. The first criterion, reproductive isolation, need not be absolute, but must be strong enough to permit evolutionarily important differences to accrue in different population units. The second criterion is met if the population unit contributes substantially to the ecological and genetic diversity of the species. Guidance on the application of this policy is contained in 56 FR 58612 (November 20, 1991) and Waples (1991). As noted in the *''Past Pacific Salmonid ESA Listings and the Alsea Decision''* section above, all components included in an ESU (natural populations, hatchery stocks, resident populations, etc.) must be listed if it is determined that the ESU in-total is threatened or endangered under the ESA.

We have reviewed the ESU relationships of hatchery salmon stocks (NMFS, 2003a; 2004b; 2005b). Hatchery stocks are included in an ESU if it is determined that they are not reproductively isolated from populations in the ESU, and they are representative of the evolutionary legacy of the ESU (see the ''Consideration of Artificial Propagation in Listing Determinations'' section above). Hatchery stocks are considered representative of the evolutionary legacy of an ESU, and hence included in the ESU, if it is determined that they are genetically no more than moderately divergent from the natural population (see final Hatchery Listing Policy elsewhere in this edition of the **Federal Register**). If a hatchery stock is more divergent from the local natural population, this indicates that the hatchery stock is reproductively isolated from the ESU.

The hatchery components are detailed below for each ESU, as applicable. More detailed descriptions of the hatchery stocks included in the ESUs below can be found in the revised Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2005b). A given hatchery stock determined to be part of an ESU may be propagated at multiple sites. To more clearly convey the hatchery fish that are included in a given ESU, the ESU descriptions below list the artificial propagation programs that propagate hatchery stocks determined to be part of the 16 ESUs addressed in this final rule. A list of those specific artificial propagation programs by ESU is provided for reference in Table 1 at the end of this section.

*Snake River Sockeye ESU*—The Snake River sockeye ESU includes populations of anadromous sockeye salmon in the Snake River Basin, Idaho (extant populations occur only in the Stanley Basin) (56 FR 58619; November 20, 1991), residual sockeye salmon in Redfish Lake, Idaho, as well as one captive propagation hatchery program (Table 1). Artificially propagated sockeye salmon from the Redfish Lake Captive Propagation program are considered part of this ESU. We have determined that this artificially propagated stock is no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b).

Subsequent to the 1991 listing determination for the Snake River sockeye ESU, a ''residual'' form of Snake River sockeye (hereafter ''residuals'') was identified. The residuals often occur together with anadromous sockeye salmon and exhibit similar behavior in the timing and location of spawning. Residuals are thought to be the progeny of anadromous sockeye salmon, but are generally nonanadromous. In 1993 NMFS determined that the residual population of Snake River sockeye that exists in Redfish Lake is substantially reproductively isolated from kokanee (*i.e.*, nonanadromous populations of *O. nerka* that become resident in lake environments over long periods of time), represents an important component in the evolutionary legacy of the biological species, and thus merits inclusion in the Snake River sockeye ESU. Constituents and co-managers were subsequently advised that residual sockeye salmon in Redfish Lake are part of the ESU and are listed as an endangered species ''subject to all the protection, prohibitions, and requirements of the ESA that apply to Snake River sockeye salmon'' (letter from Acting NMFS Director Nancy Foster to Constituents, dated March 19, 1993).

*Ozette Lake Sockeye ESU*—The Ozette Lake sockeye ESU includes all naturally spawned populations of sockeye salmon in Ozette Lake and streams and tributaries flowing into Ozette Lake, Washington (64 FR 14528; March 25, 1999). Two artificial propagation programs are considered to be part of this ESU (Table 1): The Umbrella Creek and Big River sockeye hatchery programs. We have determined that these artificially propagated stocks are no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b).

*Sacramento Winter-run Chinook ESU*—The Sacramento winter-run Chinook ESU includes all naturally spawned populations of winter-run Chinook salmon in the Sacramento River and its tributaries in California (59 FR 440; January 1, 1994), as well as two

artificial propagation programs (Table 1): Winter-run Chinook from the Livingston Stone National Fish Hatchery (NFH), and winter run Chinook in a captive broodstock program maintained at Livingston Stone NFH and the University of California Bodega Marine Laboratory. We have determined that these artificially propagated stocks are no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b).

*Central Valley Spring-run Chinook ESU*—The Central Valley spring-run Chinook ESU includes all naturally spawned populations of spring-run Chinook salmon in the Sacramento River and its tributaries in California, including the Feather River (64 FR 50394; September 16, 1999). One artificial propagation program is considered part of the ESU (Table 1): The Feather River Hatchery spring run Chinook program (see response to Issue 14 in the ''Summary of Comments and Information Received'' section, above). We have determined that this artificially propagated stock is no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b).

*California Coastal Chinook ESU*—The California Coastal Chinook ESU includes all naturally spawned populations of Chinook salmon from rivers and streams south of the Klamath River to the Russian River, California (64 FR 50394; September 16, 1999). Seven artificial propagation programs are considered to be part of the ESU (Table 1): The Humboldt Fish Action Council (Freshwater Creek), Yager Creek, Redwood Creek, Hollow Tree, Van Arsdale Fish Station, Mattole Salmon Group, and Mad River Hatchery fall-run Chinook hatchery programs. We have determined that these artificially propagated stocks are no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b).

*Upper Willamette River Chinook ESU*—The Upper Willamette River Chinook ESU includes all naturally spawned populations of spring-run Chinook salmon in the Clackamas River and in the Willamette River, and its tributaries, above Willamette Falls, Oregon (64 FR 14208; March 24, 1999). Seven artificial propagation programs are considered to be part of the ESU (Table 1): The McKenzie River Hatchery (Oregon Department of Fish and Wildlife (ODFW) stock # 24), Marion Forks/North Fork Santiam River (ODFW stock # 21), South Santiam Hatchery (ODFW stock # 23) in the South Fork Santiam River, South Santiam Hatchery (ODFW stock # 23) in the Calapooia River, South Santiam Hatchery (ODFW stock # 23) in the Mollala River, Willamette Hatchery (ODFW stock # 22), and Clackamas hatchery (ODFW stock # 19) spring-run Chinook hatchery programs. We have determined that these artificially propagated stocks are no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b).

*Lower Columbia River Chinook ESU*—The Lower Columbia River Chinook ESU includes all naturally spawned populations of Chinook salmon from the Columbia River and its tributaries from its mouth at the Pacific Ocean upstream to a transitional point between Washington and Oregon east of the Hood River and the White Salmon River, and includes the Willamette River to Willamette Falls, Oregon, exclusive of spring-run Chinook salmon in the Clackamas River (64 FR 14208; March 24, 1999). Seventeen artificial propagation programs are considered to be part of the ESU (Table 1): The Sea Resources Tule Chinook Program, Big Creek Tule Chinook Program, Astoria High School (STEP) Tule Chinook Program, Warrenton High School (STEP) Tule Chinook Program, Elochoman River Tule Chinook Program, Cowlitz Tule Chinook Program, North Fork Toutle Tule Chinook Program, Kalama Tule Chinook Program, Washougal River Tule Chinook Program, Spring Creek NFH Tule Chinook Program, Cowlitz spring Chinook Program in the Upper Cowlitz River and the Cispus River, Friends of the Cowlitz spring Chinook Program, Kalama River spring Chinook Program, Lewis River spring Chinook Program, Fish First spring Chinook Program, and the Sandy River Hatchery (ODFW stock #11) Chinook hatchery programs. We have determined that these artificially propagated stocks are no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b).

*Upper Columbia River Spring-run Chinook ESU*—The Upper Columbia River spring-run Chinook ESU includes all naturally spawned populations of Chinook salmon in all river reaches accessible to Chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington, excluding the Okanogan River (64 FR 14208; March 24, 1999). Six artificial propagation programs are considered to be part of the ESU (Table 1): The Twisp River, Chewuch River, Methow Composite, Winthrop NFH, Chiwawa River, and White River spring-run Chinook hatchery programs. We have determined that these artificially propagated stocks are no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b).

*Puget Sound Chinook ESU*—The Puget Sound Chinook ESU includes all naturally spawned populations of Chinook salmon from rivers and streams flowing into Puget Sound including the Straits of Juan De Fuca from the Elwha River, eastward, including rivers and streams flowing into Hood Canal, South Sound, North Sound and the Strait of Georgia in Washington (64 FR 14208; March 24, 1999). Twenty-six artificial propagation programs are considered to be part of the ESU (Table 1): The Kendal Creek Hatchery, Marblemount Hatchery (fall, spring yearlings, spring subyearlings, and summer run), Harvey Creek Hatchery, Whitehorse Springs Pond, Wallace River Hatchery (yearlings and subyearlings), Tulalip Bay, Issaquah Hatchery, Soos Creek Hatchery, Icy Creek Hatchery, Keta Creek Hatchery, White River Hatchery, White Acclimation Pond, Hupp Springs hatchery, Voights Creek Hatchery, Diru Creek, Clear Creek, Kalama Creek, George Adams Hatchery, Rick's Pond Hatchery, Hamma Hamma Hatchery, Dungeness/Hurd Creek Hatchery, and Elwha Channel Hatchery Chinook hatchery programs. We have determined that these artificially propagated stocks are no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b; and see Response to Issue 17, above).

*Snake River Fall-run Chinook ESU*—The Snake River fall-run Chinook ESU includes all naturally spawned populations of fall-run Chinook salmon in the mainstem Snake River below Hells Canyon Dam, and in the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River subbasins (57 FR 14653, April 22, 1992; 57 FR 23458, June 3, 1992). Four artificial propagation programs are considered to be part of the ESU (Table 1): The Lyons Ferry Hatchery, Fall Chinook Acclimation Ponds Program, Nez Perce Tribal Hatchery, and Oxbow Hatchery fall-run

Chinook hatchery programs. We have determined that these artificially propagated stocks are no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b).

*Snake River Spring/Summer Chinook ESU*—The Snake River spring/summer-run Chinook ESU includes all naturally spawned populations of spring/summer-run Chinook salmon in the mainstem Snake River and the Tucannon River, Grande Ronde River, Imnaha River, and Salmon River subbasins (57 FR 23458; June 3, 1992). Fifteen artificial propagation programs are considered to be part of the ESU (Table 1): The Tucannon River conventional Hatchery, Tucannon River Captive Broodstock Program, Lostine River, Catherine Creek, Lookingglass Hatchery Reintroduction Program (Catherine Creek stock), Upper Grande Ronde, Imnaha River, Big Sheep Creek, McCall Hatchery, Johnson Creek Artificial Propagation Enhancement, Lemhi River Captive Rearing Experiment, Pahsimeroi Hatchery, East Fork Captive Rearing Experiment, West Fork Yankee Fork Captive Rearing Experiment, and the Sawtooth Hatchery spring/summer-run Chinook hatchery programs. We have determined that these artificially propagated stocks are no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b).

*Central California Coast Coho ESU*—The Central California Coast coho ESU includes all naturally spawned populations of coho salmon from Punta Gorda in northern California south to and including the San Lorenzo River in central California, as well as populations in tributaries to San Francisco Bay, excluding the Sacramento-San Joaquin River system (61 FR 56138; October 31, 1996). Four artificial propagation programs are considered part of this ESU (Table 1): The Don Clausen Fish Hatchery Captive Broodstock Program, Scott Creek/King Fisher Flats Conservation Program, Scott Creek Captive Broodstock Program, and the Noyo River Fish Station egg-take Program coho hatchery programs. We have determined that these artificially propagated stocks are no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b).

*Southern Oregon/Northern California Coast Coho ESU*—The Southern Oregon/Northern California Coast coho ESU includes all naturally spawned populations of coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California (62 FR 24588; May 6, 1997). Three artificial propagation programs are considered to be part of the ESU (Table 1): The Cole Rivers Hatchery (ODFW stock # 52), Trinity River Hatchery, and Iron Gate Hatchery coho hatchery programs. We have determined that these artificially propagated stocks are no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b).

*Lower Columbia River Coho ESU*—The Lower Columbia River coho ESU includes all naturally spawned populations of coho salmon in the Columbia River and its tributaries from the mouth of the Columbia up to and including the Big White Salmon and Hood Rivers, and includes the Willamette River to Willamette Falls, Oregon. Twenty-five artificial propagation programs are considered to be part of the ESU (Table 1): The Grays River, Sea Resources Hatchery, Peterson Coho Project, Big Creek Hatchery, Astoria High School (STEP) Coho Program, Warrenton High School (STEP) Coho Program, Elochoman Type-S Coho Program, Elochoman Type-N Coho Program, Cathlamet High School FFA Type-N Coho Program, Cowlitz Type-N Coho Program in the Upper and Lower Cowlitz Rivers, Cowlitz Game and Anglers Coho Program, Friends of the Cowlitz Coho Program, North Fork Toutle River Hatchery, Kalama River Type-N Coho Program, Kalama River Type-S Coho Program, Lewis River Type-N Coho Program, Lewis River Type-S Coho Program, Fish First Wild Coho Program, Fish First Type-N Coho Program, Syverson Project Type-N Coho Program, Washougal River Type-N Coho Program, Eagle Creek NFH, Sandy Hatchery, and the Bonneville/Cascade/Oxbow complex coho hatchery programs. We have determined that these artificially propagated stocks are no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b; see Response to Issue 19, above).

*Columbia River Chum ESU*—The Columbia River chum ESU includes all naturally spawned populations of chum salmon in the Columbia River and its tributaries in Washington and Oregon (64 FR 14508; March 25, 1999). Three artificial propagation programs are considered to be part of the ESU (Table 1): The Chinook River (Sea Resources Hatchery), Grays River, and Washougal River/Duncan Creek chum hatchery programs. We have determined that these artificially propagated stocks are no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b).

*Hood Canal Summer-run Chum ESU*—The Hood Canal summer-run chum includes all naturally spawned populations of summer-run chum salmon in Hood Canal and its tributaries as well as populations in Olympic Peninsula rivers between Hood Canal and Dungeness Bay, Washington (64 FR 14508; March 25, 1999). Eight artificial propagation programs are considered to be part of the ESU (Table 1): The Quilcene NFH, Hamma Hamma Fish Hatchery, Lilliwaup Creek Fish Hatchery, Union River/Tahuya, Big Beef Creek Fish Hatchery, Salmon Creek Fish Hatchery, Chimacum Creek Fish Hatchery, and the Jimmycomelately Creek Fish Hatchery summer-run chum hatchery programs. We have determined that these artificially propagated stocks are no more divergent relative to the local natural population(s) than what would be expected between closely related natural populations within the ESU (NMFS, 2005b).

TABLE 1.—LIST OF ARTIFICAL PROPAGATION PROGRAMS INCLUDED IN EVOLUTIONARILY SIGNIFICANT UNITS (ESUS) OF WEST COAST SALMON

| Evolutionary significant unit (ESU) and included artificial propagation program(s) | Run timing | Location (state) |
|---|---|---|
| Snake River sockeye ESU: | | |
| Redfish Lake Captive Propagation Program | n/a | Stanley Basin (Idaho). |
| Ozette Lake sockeye ESU: | | |
| Umbrella Creek Hatchery—Makah Tribe | n/a | Ozette Lake (Washington). |
| Big River Hatchery—Makah Tribe | n/a | Ozette Lake (Washington). |

TABLE 1.—LIST OF ARTIFICAL PROPAGATION PROGRAMS INCLUDED IN EVOLUTIONARILY SIGNIFICANT UNITS (ESUS) OF WEST COAST SALMON—Continued

| Evolutionary significant unit (ESU) and included artificial propagation program(s) | Run timing | Location (state) |
|---|---|---|
| Sacramento River winter-run Chinook ESU: | | |
| Livingston Stone National Fish Hatchery (NFH) Conservation Program | Winter | Sacramento River (California). |
| Captive Broodstock Program | Winter | Livingston Stone NFH & Univ. of Calif. Bodega Marine Laboratory (California). |
| Central Valley spring-run Chinook ESU: | | |
| Feather River Hatchery | Spring | Feather River (California). |
| California Coastal Chinook ESU: | | |
| Freshwater Creek/Humboldt Fish Action Council | Fall | Freshwater Creek, Humboldt Bay (California). |
| Yager Creek Hatchery | Fall | Yager Creek, Van Duzen River (California). |
| Redwood Creek Hatchery | Fall | Redwood Creek, South Fork Eel River (California). |
| Hollow Tree Creek Hatchery | Fall | Eel River (California). |
| Mattole Salmon Group Hatchery | Fall | Squaw Creek, Mattole River (California). |
| Van Arsdale Fish Station | Fall | Eel River (California). |
| Mad River Hatchery | Fall | Mad River (California). |
| Upper Willamette River Chinook ESU: | | |
| McKenzie River Hatchery (Oregon Department of Fish & Wildlife (ODFW) stock #24). | Spring | McKenzie River (Oregon). |
| Marion Forks Hatchery (ODFW stock #21) | Spring | North Fork Santiam River (Oregon). |
| South Santiam Hatchery (ODFW stock #23) | Spring | South Fork Santiam River (Oregon). |
| South Santiam Hatchery (ODFW stock #23) | Spring | Calapooia River (Oregon). |
| South Santiam Hatchery (ODFW stock #23) | Spring | Mollala River (Oregon). |
| Willamette Hatchery (ODFW stock #22) | Spring | Middle Fork Willamette River (Oregon). |
| Clackamas Hatchery (ODFW stock #19) | Spring | Clackamas River (Oregon). |
| Lower Columbia River Chinook ESU: | | |
| Sea Resources Tule Chinook Program | Fall | Chinook River (Washington). |
| Big Creek Tule Chinook Program | Fall | Big Creek (Oregon). |
| Astoria High School (STEP) Tule Chinook Program | Fall | Big Creek (Oregon). |
| Warrenton High School (STEP) Tule Chinook Program | Fall | Big Creek (Oregon). |
| Elochoman River Tule Chinook Program | Fall | Elochoman River (Washington). |
| Cowlitz Tule Chinook Program | Fall | Lower Cowlitz River (Washington). |
| North Fork Toutle Tule Chinook Program | Fall | Cowlitz River (Washington). |
| Kalama Tule Chinook Program | Fall | Kalama River (Washington). |
| Washougal River Tule Chinook Program | Fall | Washougal River (Washington). |
| Spring Creek NFH Tule Chinook Program | Fall | Upper Columbia River Gorge (Washington). |
| Cowlitz spring Chinook Program | Fall | Upper Cowlitz River (Washington). |
| Cowlitz spring Chinook Program | Spring | Cispus River (Washington). |
| Friends of Cowlitz spring Chinook Program | Spring | Upper Cowlitz River (Washington). |
| Kalama River spring Chinook Program | Spring | Kalama River (Washington). |
| Lewis River spring Chinook Program | Spring | Lewis River (Washington). |
| Fish First spring Chinook Program | Spring | Lewis River (Washington). |
| Sandy River Hatchery (ODFW stock #11) | Spring | Sandy River (Oregon). |
| Upper Columbia River spring Chinook ESU: | | |
| Twisp River | Spring | Methow River (Washington). |
| Chewuch River | Spring | Methow River (Washington). |
| Methow Composite | Spring | Methow River (Washington). |
| Winthrop NFH (Methow Composite stock) | Spring | Methow River (Washington). |
| Chiwawa River | Spring | Wenatchee River (Washington). |
| White River | Spring | Wenatchee River (Washington). |
| Puget Sound Chinook ESU: | | |
| Kendall Creek Hatchery | Spring | North Fork Nooksack River (Washington). |
| Marblemount Hatchery | Fall | Lower Skagit River (Washington). |
| Marblemount Hatchery (yearlings) | Spring | Upper Skagit River (Washington). |
| Marblemount Hatchery (sub-yearlings) | Spring | Upper Skagit River (Washington). |
| Marblemount Hatchery | Summer | Upper Skagit River (Washington). |
| Harvey Creek Hatchery | Summer | North Fork Stillaguamish River (Washington). |
| Whitehorse Springs Pond | Summer | North Fork Stillaguamish River (Washington). |
| Wallace River Hatchery (yearlings) | Summer | Skykomish River (Washington). |
| Wallace River Hatchery (sub-yearlings) | Summer | Skykomish River (Washington). |
| Tulalip Bay (Bernie Kai-Kai Gobin Hatchery/Tulalip Hatchery) | Summer | Skykomish River/Tulalip Bay (Washington). |
| Issaquah Hatchery | Fall | Cedar River (Washington). |
| Soos Creek Hatchery | Fall | Green River (Washington). |
| Icy Creek Hatchery | Fall | Green River (Washington). |
| Keta Creek—Muckelshoot Tribe | Fall | Green River (Washington). |
| White River Hatchery | Spring | White River (Washington). |
| White Acclimation Pond | Spring | White River (Washington). |
| Hupp Springs Hatchery | Spring | White River (Washington). |
| Voights Creek Hatchery | Fall | Puyallup River (Washington). |
| Diru Creek | Fall | Puyallup River (Washington). |
| Clear Creek | Fall | Nisqually River (Washington). |
| Kalama Creek | Fall | Nisqually River (Washington). |

TABLE 1.—LIST OF ARTIFICAL PROPAGATION PROGRAMS INCLUDED IN EVOLUTIONARILY SIGNIFICANT UNITS (ESUS) OF WEST COAST SALMON—Continued

| Evolutionary significant unit (ESU) and included artificial propagation program(s) | Run timing | Location (state) |
|---|---|---|
| George Adams Hatchery | Fall | Skokomish River (Washington). |
| Rick's Pond Hatchery | Fall | Skokomish River (Washington). |
| Hamma Hamma Hatchery | Fall | Westside Hood Canal (Washington). |
| Dungeness/Hurd Creek Hatchery | Fall | Dungeness River (Washington). |
| Elwha Channel Hatchery | Fall | Elwha River (Washington). |
| Snake River fall-run Chinook ESU: | | |
| Lyons Ferry Hatchery | Fall | Snake River (Washington). |
| Fall Chinook Acclimation Ponds Program—Pittsburg, Captain John, and Big Canyon ponds. | Fall | Snake River (Washington). |
| Nez Perce Tribal Hatchery—including North Lapwai Valley, Lakes Gulch, and Cedar Flat Satellite facilities. | Fall | Snake and Clearwater Rivers (Idaho). |
| Oxbow Hatchery | Fall | Snake River (Oregon, Idaho). |
| Snake River spring/summer-run Chinook ESU: | | |
| Tucannon River Hatchery (conventional) | Spring | Tucannon River (Washington). |
| Tucannon River Captive Broodstock Program | Spring | Tucannon River (Washington). |
| Lostine River (captive/conventional) | Summer | Grande Ronde (Oregon). |
| Catherine Creek (captive/conventional) | Summer | Grande Ronde (Oregon). |
| Lookingglass Hatchery (reintroduction) | Summer | Grande Ronde (Oregon). |
| Upper Grande Ronde (captive/conventional) | Summer | Grande Ronde (Oregon). |
| Imnaha River | Spring/ Summer. | Imnaha River (Oregon). |
| Big Sheep Creek | Spring/ Summer. | Imnaha River (Oregon). |
| McCall Hatchery | Spring | South Fork Salmon River (Idaho). |
| Johnson Creek Artificial Propagation Enhancement | Spring | East Fork South Fork Salmon River (Idaho). |
| Lemhi River Captive Rearing Experiment | Spring | Lemhi River (Idaho). |
| Pahsimeroi Hatchery | Summer | Salmon River (Idaho). |
| East Fork Captive Rearing Experiment | Spring | East Fork Salmon River (Idaho). |
| West Fork Yankee Fork Captive Rearing Experiment | Spring | Salmon River (Idaho). |
| Sawtooth Hatchery | Spring | Upper Mainstem Salmon River (Idaho). |
| Central California Coast coho ESU: | | |
| Don Clausen Fish Hatchery Captive Broodstock Program | n/a | Dry Creek, Russian River (California). |
| Scott Creek/Kingfisher Flat Hatchery Conservation Program (Monterey Bay Salmon and Trout Project). | n/a | Big Creek, Scott Creek (California). |
| Scott Creek Captive Broodstock Program | n/a | NOAA Southwest Fisheries Science Center, Santa Cruz (California). |
| Noyo River Fish Station egg-take program | n/a | Nonoyo River (California). |
| Southern Oregon/Northern California Coast coho ESU: | | |
| Cole Rivers Hatchery (ODFW stock #52) | n/a | Rogue River (Oregon). |
| Trinity River Hatchery | n/a | Trinity River (California). |
| Iron Gate Hatchery | n/a | Klamath River (California). |
| Lower Columbia River coho ESU: | | |
| Grays River | Type-S | Grays River (Washington). |
| Sea Resources Hatchery | Type-S | Grays River (Washington). |
| Peterson Coho Project | Type-S | Grays River (Washington). |
| Big Creek Hatchery (ODFW stock #13) | n/a | Big Creek (Oregon). |
| Astoria High School (STEP) Coho Program | n/a | Youngs Bay (Oregon). |
| Warrenton High School (STEP) Coho Program | n/a | Youngs Bay (Oregon). |
| Elochoman Type-S Coho Program | Type-S | Elochoman River (Washington). |
| Elochoman Type-N Coho Program | Type-N | Elochoman River (Washington). |
| Cathlamet High School FFA Type-N Coho Program | Type-N | Elochoman River (Washington). |
| Cowlitz Type-N Coho Program | Type-N | Upper Cowlitz River (Washington). |
| Cowlitz Type-N Coho Program | Type-N | Lower Cowlitz River (Washington). |
| Cowlitz Game and Anglers Coho Program | n/a | Lower Cowlitz River (Washington). |
| Friends of the Cowlitz Coho Program | n/a | Lower Cowlitz River (Washington). |
| North Fork Toutle River Hatchery | Type-S | Cowlitz River (Washington). |
| Kalama River Type-N Coho Program | Type-N | Kalama River (Washington). |
| Kalama River Type-N Coho Program | Type-S | Kalama River (Washington). |
| Lewis River Type-N Coho Program | Type-N | North Fork Lewis River (Washington). |
| Lewis River Type-S Coho Program | Type-S | North Fork Lewis River (Washington). |
| Fish First Wild Coho Program | n/a | North Fork Lewis River (Washington). |
| Fish First Type-N Coho Program | Type-N | North Fork Lewis River (Washington). |
| Syverson Project Type-N Coho Program | Type-N | Salmon River (Washington). |
| Washougal River Type-N Coho Program | Type-N | Washougal River (Washington). |
| Eagle Creek NFH | n/a | Clackamas River (Oregon). |
| Sandy Hatchery (ODFW stock #11) | Late | Sandy River (Oregon). |
| Bonneville/Cascade/Oxbow Complex (ODFW stock #14) | n/a | Lower Columbia River Gorge (Oregon). |
| Columbia River chum ESU: | | |
| Chinook River/Sea Resources Hatchery | Fall | Chinook River (Washington). |
| Grays River | Fall | Grays River (Washington). |

TABLE 1.—LIST OF ARTIFICAL PROPAGATION PROGRAMS INCLUDED IN EVOLUTIONARILY SIGNIFICANT UNITS (ESUS) OF WEST COAST SALMON—Continued

| Evolutionary significant unit (ESU) and included artificial propagation program(s) | Run timing | Location (state) |
|---|---|---|
| Washougal Hatchery/Duncan Creek | Fall | Washougal River (Washington). |
| Hood Canal summer-run chum ESU: | | |
| Quilcene/ Quilcene NFH | Summer | Big Quilcene River (Washington). |
| Hamma Hamma Fish Hatchery | Summer | Western Hood Canal (Washington). |
| Lilliwaup Creek Fish Hatchery | Summer | Southwestern Hood Canal (Washington). |
| Union River/Tahuya | Summer | Union River (Washington). |
| Big Beef Creek Fish Hatchery | Summer | North Hood Canal (Washington). |
| Salmon Creek Fish Hatchery | Summer | Discovery Bay (Washington). |
| Chimacum Creek Fish Hatchery | Summer | Port Townsend Bay (Washington). |
| Jimmycomelately Creek Fish Hatchery | Summer | Sequim Bay (Washington). |

*Viability Assessments of ESUs*

The Pacific Salmonid BRT evaluated the risk of extinction faced by naturally spawning populations in each of the ESUs addressed in this proposed rule (NMFS, 2003b). As noted above, the BRT did not explicitly consider potential contributions of hatchery stocks or protective efforts in their evaluations. For each ESU the BRT evaluated overall extinction risk after assessing ESU-level risk for the four VSP factors: abundance, productivity, spatial structure, and diversity. We then assessed the effects of ESU hatchery programs on ESU viability and extinction risk relative to the BRT's assessment for the naturally spawning component of the ESU (NMFS, 2004b, 2005b). The effects of hatchery programs on the extinction risk of an ESU in-total were evaluated on the basis of the factors that the BRT determined are currently limiting the ESU (*e.g.*, abundance, productivity, spatial structure, and diversity), and how artificial propagation efforts within the ESU affect those factors. The Artificial Propagation Evaluation Workshop (NMFS, 2004c) reviewed the BRT's findings (NMFS, 2003a), evaluated the Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b), and assessed the overall extinction risk of ESUs with associated hatchery stocks. The BRT and the Artificial Propagation Evaluation Workshop assessed the extinction risk for the naturally spawning populations in an ESU, and for the ESU in-total, respectively. The level of extinction risk was categorized into three categories: ''in danger of extinction;'' ''likely to become endangered within the foreseeable future;'' or ''not in danger of extinction or likely to become endangered within the foreseeable future.'' Although these overall risk categories resemble the definitions of ''endangered'' and ''threatened'' as defined in the ESA, the BRT and the Workshop did not evaluate protective efforts in assessing ESU extinction risk (efforts being made to protect the species are evaluated in the ''Evaluation of Protective Efforts'' section, below). Thus, the extinction risk assessments described in this section are not necessarily indicative of whether an ESU warrants listing as a threatened or endangered species. The reader is referred to the BRT's report (NMFS, 2003b), the Salmonid Hatchery Inventory and Effects Evaluation Report (NMFS, 2004b, 2005b), and the Workshop Report (NMFS, 2004c) for more detailed descriptions of the viability of individual natural populations and hatchery stocks within these ESUs.

*Snake River Sockeye ESU*—The residual form of Redfish Lake sockeye, determined to be part of the ESU in 1993, is represented by a few hundred fish. Snake River sockeye historically were distributed in four lakes within the Stanley Basin, but the only remaining population resides in Redfish Lake. Only 16 naturally produced adults have returned to Redfish Lake since the Snake River sockeye ESU was listed as an endangered species in 1991. All 16 fish were taken into the Redfish Lake Captive Propagation Program, which was initiated as an emergency measure in 1991. The return of over 250 adults in 2000 was encouraging; however, subsequent returns from the captive program in 2001 and 2002 have been fewer than 30 fish.

The BRT found extremely high risks for each of the four VSP categories. Informed by this assessment, the BRT unanimously concluded that the Snake River sockeye ESU is ''in danger of extinction.''

There is a single artificial propagation program producing Snake River sockeye salmon in the Snake River basin. The Redfish Lake sockeye salmon stock was originally founded by collecting the entire anadromous adult return of 16 fish between 1990 and 1997, a small number of residual sockeye salmon, and a few hundred smolts migrating from Redfish Lake. These fish were put into a Captive Broodstock program as an emergency measure to prevent extinction of this ESU. Since 1997, nearly 400 hatchery-origin anadromous sockeye adults have returned to the Stanley Basin from juveniles released by the program. Redfish Lake sockeye salmon have also been reintroduced into Alturas and Pettit Lakes using progeny from the captive broodstock program. The captive broodstock program presently consists of several hundred fish of different year classes maintained at facilities in Eagle (Idaho) and Manchester (Washington).

Our assessment of the effects of artificial propagation on ESU extinction risk concluded that the Redfish Lake Captive Broodstock Program does not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). The Artificial Propagation Evaluation Workshop noted that the Captive Broodstock Program has prevented likely extinction of the ESU. This program has increased the total number of anadromous adults, attempted to increase the number of lakes in which sockeye salmon are present in the upper Salmon River (Stanley Basin), and preserved what genetic diversity remains in the ESU. Although the program has increased the number of anadromous adults in some years, it has yet to produce consistent returns. The majority of the ESU now resides in the captive program composed of only a few hundred fish. The long-term effects of captive rearing are unknown. The consideration of artificial propagation does not substantially mitigate the BRT's assessment of extreme risks to ESU abundance, productivity, spatial structure, and diversity. Informed by the BRT's findings (NMFS, 2003b) and our assessment of the effects of artificial propagation on the viability of the ESU

(NMFS, 2005b), the Artificial Propagation Evaluation Workshop concluded that the Snake River sockeye ESU in-total is ''in danger of extinction'' (NMFS, 2004c).

*Ozette Lake Sockeye ESU*—Evaluating extinction risk for the Ozette Lake sockeye ESU is complicated by incomplete historical data with uncertain errors and biases. The Makah Tribe's fisheries program, however, is engaged in significant efforts to improve sampling techniques and to adjust for biases in historical data. The number of returning adults has increased in recent years, but is believed to be well below historical levels. Prior to 2002 an uncertain fraction of the returns was of hatchery origin, generating uncertainty in evaluating trends in the abundance and productivity of the naturally spawned component of the ESU. Accurately assessing trends in natural spawners is further complicated by the poor visibility in the lake. Habitat degradation, siltation, and alterations in the lake level regime have resulted in the loss of numerous beach spawning sites. The BRT expressed concern that the reduction in the number of spawning aggregations poses risks for ESU spatial structure and diversity.

The BRT expressed moderately high concern for each of the VSP risk categories. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Ozette Lake sockeye ESU is ''likely to become endangered within the foreseeable future,'' with the minority being split between ''in danger of extinction'' and ''not in danger of extinction or likely to become endangered within the foreseeable future.''

There are two artificially propagated stocks considered to be part of the Ozette Lake sockeye salmon ESU (Table 1). The program, operated by the Makah Tribe, is derived from native broodstock and has the primary objective of establishing viable sockeye salmon spawning aggregations in two Ozette Lake tributaries where spawning has not been observed for many decades, if ever. The program includes research, monitoring, and evaluation activities designed to determine success in recovering the propagated populations to viable levels, and to determine the demographic, ecological, and genetic effects on target and non-target (*i.e.*, Ozette Lake beach) spawning aggregations. The Makah Program will be reevaluated for termination (or continuation) after 12 years of operation.

Our assessment of the effects of artificial propagation on ESU extinction risk concluded that the Makah supplementation program at Umbrella Creek and Big River does not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). The program has increased the abundance of natural spawners and natural-origin sockeye in the Ozette Lake tributaries. However, it is unknown whether these tributaries were historically spawning habitat. The program (by design) has not increased the abundance of natural spawners or natural origin beach spawners in Ozette Lake. Despite the relative increases in abundance due to the supplementation program, the total ESU abundance remains small for a single sockeye population. The contribution of artificial propagation to the ESU's productivity is uncertain. Only since 2000 have the hatchery returns been sufficient to meet the program's broodstock goals. The Makah program at present serves as an important genetic reserve with the continuing loss of beach spawning habitat. The reintroduction of spawners to Ozette Lake tributaries reduces risks to ESU spatial structure. Although there currently is no evidence of genetic divergence between the hatchery program and the founding population, the isolation of the hatchery program and adaptation to tributary habitats may in time cause the tributary spawning aggregations to diverge from founding beach spawning aggregations. Although the program has a beneficial effect on ESU abundance and spatial structure, it has neutral or uncertain effects on ESU productivity and diversity. Informed by the BRT's findings (NMFS, 2003b) and our assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2005b), the Artificial Propagation Evaluation Workshop concluded that the Ozette Lake sockeye ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

*Sacramento River Winter-run Chinook ESU*—The Sacramento River winter-run ESU is represented by a single extant naturally spawning population that has been completely displaced from its historical spawning habitat by the construction of Shasta and Keswick Dams. The remaining spawning habitat is artificially maintained by cold-water releases from the reservoir behind Shasta Dam. The naturally spawning component of the ESU has exhibited marked improvements in abundance and productivity in recent years. The recent increases in abundance are encouraging, relative to the years of critically low abundance of the 1980s and early 1990s; however, the recent 5-year geometric mean is only 3 percent of the peak post-1967 5-year geometric mean. The BRT was particularly concerned about risks to the ESU's diversity and spatial structure. Construction of Shasta Dam merged at least four independent winter-run Chinook populations into a single population, representing a substantial loss of genetic diversity, life-history variability, and local adaptation. Episodes of critically low abundance, particularly in the early 1990s, for the single remaining population imposed ''bottlenecks'' that further reduced genetic diversity. The BRT found extremely high risk for each of the four VSP risk categories. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Sacramento winter-run ESU is ''in danger of extinction.'' The minority opinion of the BRT was that the ESU is ''likely to become endangered within the foreseeable future.''

Two artificial propagation programs are considered to be part of the Sacramento River winter-run Chinook ESU (Table 1; NMFS, 2005b). The artificial propagation of winter-run Chinook is carried out at the Livingston Stone National Fish Hatchery (NFH) on the mainstem Sacramento River above Keswick Dam. The captive broodstock program is maintained at two locations: the Livingston Stone NFH and at the University of California's Bodega Marine Laboratory. These programs have been operated for conservation purposes since the early 1990s and both were identified as high priority recovery actions in NMFS' 1997 Draft Recovery Plan for this ESU. The artificial propagation program was established to supplement the abundance of the naturally spawning winter-run Chinook population and thereby assist in its population growth and recovery. The captive broodstock program was established in the early 1990s when the naturally spawning population was at critically low levels (less than 200 spawners) in order to preserve the ESU's remaining genetic resources and to establish a reserve for potential use in the artificial propagation program. Because of increased natural escapement over the last several years, consideration is being given to terminating the captive broodstock program.

An assessment of the effects of these artificial propagation programs on the viability of the ESU in-total concluded that they decrease risk to some degree by contributing to increased ESU abundance and diversity, but have a neutral or uncertain effect on

productivity and spatial structure of the ESU (NMFS, 2005b). Spawning escapement of winter-run Chinook has increased since the inception of the program and may account for up to 10 percent of the total number of fish spawning naturally in a given year. Improvements in freshwater habitat conditions, harvest management, as well as improved ocean conditions, however, are thought to be the major factors responsible for the increased abundance of the ESU since the early 1990s. Effects on productivity are uncertain, but studies are underway to assess the effect of artificial propagation on fitness and productivity of artificially propagated fish. Although abundance of spawners has increased, in part due to artificial propagation, the spatial distribution of spawners has not expanded. The primary reason is that the naturally spawning population is artificially maintained by cool water releases from Shasta/Keswick dams, and the spatial distribution of spawners is largely governed by water year type and the ability of the Central Valley Project to manage water temperatures in the upper Sacramento River. A second naturally spawning population is considered critical to the long-term viability of this ESU, and plans are underway to eventually establish a second population in the upper Battle Creek watershed using the artificial propagation program as a source of fish. However, the program has yet to be implemented because of the need to complete habitat restoration efforts in that watershed. The artificial propagation program has contributed to maintaining diversity of the ESU through careful use of spawning protocols and other tools that maximize genetic diversity of propagated fish and minimize impacts on naturally spawning populations. In addition, the artificial propagation and captive broodstock programs collectively serve as a genetic repository which serves to preserve the genome of the ESU.

Informed by the BRT's findings (NMFS, 2003b) and our assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2005b), the Artificial Propagation Evaluation Workshop concluded that this ESU in-total is ''in danger of extinction'' (NMFS, 2004c).

*Central Valley Spring-run Chinook ESU*—Extensive construction of dams throughout the Sacramento-San Joaquin Basin has reduced the California Central Valley spring Chinook ESU to only a small portion of its historical distribution, generating concerns about risks to the spatial structure and diversity of the ESU. The ESU has been reduced to only three naturally spawning independent populations that are free of hatchery influence from an estimated 17 historical populations. These three populations (Deer, Mill and Butte Creek which are tributaries to the Sacramento River) are in close geographic proximity, increasing the ESU's vulnerability to disease or catastrophic events. There are other natural populations (*i.e.*. Clear, Antelope, Big Chico, and Beegum Creeks) of spring Chinook, but the Central Valley Technical Recovery Team considers them to be dependent upon the populations in Deer, Mill, and Butte Creek. As discussed in the Summary of Comments and Information Received (see Issue 14), the naturally spawning spring Chinook of hatchery origin in the Feather and Yuba Rivers are also considered to be part of this ESU as is the spring-run Chinook hatchery stock at Feather River Hatchery. The BRT was concerned that the Feather River spring-run Chinook hatchery population represents a risk factor for the naturally spawning populations in Deer, Mill and Butte Creeks. The Feather River Hatchery produces spring-run Chinook that are genetically more similar to fall-run Chinook, probably due to hybridization at the hatchery, though these fish still exhibit an early returning ''spring'' behavior. The off-site release location for fish produced at the hatchery is believed to contribute to a high straying rate of hatchery fish which increases the likelihood the Feather River hatchery origin fish could interact negatively with the extant natural populations in the ESU. To address these concerns, CDFG initiated efforts in 2002 to restore and enhance the spring run genotype at the Feather River Hatchery. Although the recent 5-year mean abundance for the three naturally spawning populations in the ESU remains small (ranging from nearly 500 to over 4,500 spawners), short- and long-term productivity trends are positive, and population sizes have shown continued increases over the abundance levels of the 1980s (with 5-year mean population sizes of 67 to 243 spawners). The BRT noted moderately high risk for the abundance, spatial structure, and diversity VSP factors, and a lower risk for the productivity factor reflecting recent positive trends. Informed by this risk assessment, the strong majority opinion of the BRT was that the Central Valley spring-run Chinook ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion of the BRT was that the ESU is ''in danger of extinction.'' There Feather River Hatchery spring-run Chinook stock included in this ESU does not mitigate the BRT's assessment that the ESU is ''likely to become endangered within the foreseeable future.''

*California Coastal Chinook ESU*—Evaluation of the viability of the naturally spawning component of the California Coastal Chinook ESU is hindered by the limited availability of data, particularly regarding the abundance and spatial distribution of natural populations within the ESU. Additionally, the data that are available are of varying type, quality and temporal coverage, and are generally not amenable to rigorous estimation of abundance or robust statistical analyses of trends. The little historical and current abundance information that is available indicates that (putative) natural ESU population abundance levels remain depressed relative to historical levels. Evidence suggests that populations have been extirpated or nearly extirpated in the southern part of the ESU, or are extremely low in abundance. This observation, in combination with the apparent loss of the spring-run Chinook life history in the Eel River Basin and elsewhere in the ESU, indicates risks to the diversity of the ESU. Recently available natural abundance estimates in the Russian River are in excess of 1,300 fish for 2000–2002. These data suggest either the presence of a naturally producing population in the Russian River, or represent straying from other basins or ESUs. No data are available to assess the genetic relationship of the Russian River fish to populations in this or other ESUs. The BRT found moderately high risks for all VSP risk categories, and underscored a strong concern due to the paucity of information and the resultant uncertainty generated in evaluating the ESU's viability. Informed by this risk assessment and the related uncertainty, the majority opinion of the BRT was that the naturally spawned component of the California Coastal Chinook ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion of the BRT was that the naturally spawned component of the ESU is ''in danger of extinction.''

Seven artificial propagation programs that produce Chinook salmon are considered to be part of the California Coastal Chinook ESU (Table 1; NMFS, 2005b). Six of these programs (Freshwater Creek, Yager Creek, Redwood Creek, Hollow Tree Creek, Mattole River Salmon Group, and Mad River Hatchery) are relatively small programs with production goals of less than 80,000 fish that have been operated for restoration purposes for more than

20 years. Because of State funding limitations, it is likely that these programs will be terminated after 2004. These programs are small-scale supplementation facilities operated by local groups or companies in cooperation with the CDFG under its cooperative hatchery program. The Van Arsdale Fish Station has been operated for over 30 years by CDFG for supplementation purposes in the upper Eel River. Because of State funding limitations, the operations at the Station were terminated in 2003. The seven hatchery programs are primarily located in the northern portion of the ESU's range and most are in the Eel River.

An assessment of the effects of these small artificial propagation programs on the viability of the ESU in-total concluded that they collectively decrease risk to some degree by contributing to local increases in abundance, but have a neutral or uncertain effect on productivity, spatial structure or diversity of the ESU (NMFS, 2005b). There have been no demonstrable increases in natural abundance from the five cooperative hatchery programs, with the possible exception of increased abundance in the Freshwater Creek natural population and as a result of the rescue and rearing activities by the Mattole Salmon Group. In part, this is because there is limited natural population monitoring in the watersheds where the hatchery programs are located. No efforts have been undertaken to assess the productivity of hatchery produced fish or to assess the effects of hatchery produced fish on natural origin fish productivity. The seven hatchery populations in this ESU are primarily located in the northern portion of the ESU's range and overlap with natural origin fish populations. With the exception of Freshwater Creek where local distribution may have expanded in association with the natural population increase, there are no demonstrable beneficial effects on spatial structure. The six cooperative programs use only natural-origin fish as broodstock and mark all production with an adipose fin clip to ensure that hatchery-origin fish are not incorporated into the broodstock.

Informed by the BRT's findings (NMFS, 2003b) and our assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2005b), the Artificial Propagation Evaluation Workshop concluded that this ESU in-total is ''likely to become endangered within the foreseeable future'' (NMFS, 2004c).

*Upper Willamette River Chinook ESU*—There are no direct estimates of natural-origin spawner abundance for the Upper Willamette River Chinook ESU. The abundance of adult spring Chinook salmon (hatchery and natural fish) passing Willamette Falls has remained relatively steady over the past 50 years (ranging from approximately 20,000 to 70,000 fish), but is only a fraction of peak abundance levels observed in the 1920s (approximately 300,000 adults). Interpretation of abundance levels is confounded by a high but uncertain fraction of hatchery produced fish. The McKenzie River population has shown substantial increases in total abundance (hatchery origin and natural origin fish) in the last 2 years, while trends in other natural populations in the ESU are generally mixed. With the relatively large incidence of naturally spawning hatchery fish in the ESU, it is difficult to determine trends in productivity for natural-origin fish. The BRT estimated that despite improving trends in total productivity (including hatchery origin and natural origin fish) since 1995, productivity would be below replacement in the absence of artificial propagation. The BRT was particularly concerned that approximately 30 to 40 percent of total historical habitat is now inaccessible behind dams. These inaccessible areas, however, represent a majority of the historical spawning habitat. The restriction of natural production to just a few areas increases the ESU's vulnerability to environmental variability and catastrophic events. Losses of local adaptation and genetic diversity through the mixing of hatchery stocks within the ESU, and the introgression of out-of-ESU hatchery fall-run Chinook, have represented threats to ESU diversity. However, the BRT was encouraged by the recent cessation of releases of the fall-run hatchery fish, as well as by improved marking rates of hatchery fish to assist in monitoring and in the management of a marked-fish selective fishery.

The BRT found moderately high risks for all VSP categories. Informed by this risk assessment, the strong majority opinion of the BRT was that the naturally spawned component of the Upper Willamette River Chinook ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion was that this ESU is ''in danger of extinction.''

Seven artificial propagation programs in the Willamette River produce fish that are considered to be part of the Upper Willamette River Chinook ESU. All of these programs are funded to mitigate for lost or degraded habitat and produce fish for harvest purposes.

Our assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). An increasing proportion of hatchery-origin returns has contributed to increases in total ESU abundance. However, it is unclear whether these returning hatchery and natural fish actually survive overwintering to spawn. Estimates of pre-spawning mortality indicate that a high proportion (>70 percent) of spring Chinook die before spawning in most ESU populations. In recent years, hatchery fish have been used to reintroduce spring Chinook back into historical habitats above impassible dams (*e.g.*, in the South Santiam, North Santiam, and McKenzie Rivers), slightly decreasing risks to ESU spatial structure. Within-ESU hatchery fish exhibit differing life-history characteristics from natural ESU fish. High proportions of hatchery-origin natural spawners in remaining natural production areas (*i.e.*, in the Clackamas and McKenzie Rivers) may thereby have negative impacts on within and among population genetic and life-history diversity. Collectively, artificial propagation programs in the ESU have a slight beneficial effect on ESU abundance and spatial structure, but neutral or uncertain effects on ESU productivity and diversity. Informed by the BRT's findings (NMFS, 2003b) and our assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2005b), the Artificial Propagation Evaluation Workshop concluded that the Upper Willamette River Chinook ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

*Lower Columbia River Chinook ESU*—Many populations within the Lower Columbia River Chinook ESU have exhibited pronounced increases in abundance and productivity in recent years, possibly due to improved ocean conditions. Abundance estimates of naturally spawned populations in this ESU, however, are uncertain due to a high (approximately 70 percent) fraction of naturally spawning hatchery fish and a low marking rate (only 1 to 2 percent) of hatchery produced fish. Abundance estimates of naturally produced spring Chinook have improved since 2001 due to the marking of all hatchery spring Chinook releases, allowing for the enumeration of hatchery spring Chinook at weirs, traps and on spawning grounds. Despite recent improvements, long-term trends in productivity are below replacement for the majority of

populations in the ESU. It is estimated that 8 to 10 of approximately 31 historical populations in the ESU have been extirpated or nearly extirpated. Although approximately 35 percent of historical habitat has been lost in this ESU due to the construction of dams and other impassable barriers, this ESU exhibits a broad spatial distribution in a variety of watersheds and habitat types. Natural production currently occurs in approximately 20 populations, although only one population has a mean spawner abundance exceeding 1,000 fish. The BRT expressed concern that the spring-run populations comprise most of the extirpated populations. The disproportionate loss of the spring-run life history represents a risk for ESU diversity. Additionally, of the four hatchery spring-run Chinook populations considered to be part of this ESU, two are propagated in rivers that are within the historical geographic range of the ESU but that likely did not support spring-run populations. High hatchery production in the Lower Columbia River poses genetic and ecological risks to the natural populations in the ESU, and complicates assessments of their performance. The BRT also expressed concern over the introgression of out-of-ESU hatchery stocks.

The BRT found moderately high risks for all VSP categories. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Lower Columbia River Chinook ESU is ''likely to become endangered within the foreseeable future,'' with the minority being split between ''in danger of extinction'' and ''not in danger of extinction or likely to become endangered within the foreseeable future.''

There are 17 artificial propagation programs releasing hatchery Chinook salmon that are considered to be part of the Lower Columbia River Chinook ESU (Table 1). All of these programs are designed to produce fish for harvest, with three of these programs also being implemented to augment the naturally spawning populations in the basins where the fish are released. These three programs integrate naturally produced spring Chinook salmon into the broodstock in an attempt to minimize the genetic effects of returning hatchery adults that spawn naturally.

Our assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Hatchery programs have increased total returns and numbers of fish spawning naturally, thus reducing risks to ESU abundance. Although these hatchery programs have been successful at producing substantial numbers of fish, their effect on the productivity of the ESU in-total is uncertain. Additionally, the high level of hatchery production in this ESU poses potential genetic and ecological risks to the ESU, and confounds the monitoring and evaluation of abundance trends and productivity. The Cowlitz River spring Chinook salmon program produces parr for release into the upper Cowlitz River Basin in an attempt to re-establish a naturally spawning population above Cowlitz Falls Dam. Such reintroduction efforts increase the ESU's spatial distribution into historical habitats, and slightly reduce risks to ESU spatial structure. The few programs that regularly integrate natural fish into the broodstock may help preserve genetic diversity within the ESU. However, the majority of hatchery programs in the ESU have not converted to the regular incorporation of natural broodstock, thus limiting this risk reducing feature at the ESU scale. Past and ongoing transfers of broodstock among hatchery programs in different basins represent a risk to within and among population diversity. Collectively, artificial propagation programs in the ESU provide slight benefits to ESU abundance, spatial structure, and diversity, but have neutral or uncertain effects on ESU productivity. Informed by the BRT's findings (NMFS, 2003b) and our assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2005b), the Artificial Propagation Evaluation Workshop concluded that the Lower Columbia River Chinook ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

*Upper Columbia River Spring-run Chinook ESU*—All populations in the Upper Columbia River spring-run Chinook ESU exhibited pronounced increases in abundance in 2001. These increases are particularly encouraging following the last decade of steep declines to record, critically low escapements. Despite strong returns in 2001, both recent 5-year and long term productivity trends remain below replacement. The five hatchery spring-run Chinook populations considered to be part of this ESU (Table 1) are programs aimed at supplementing natural production areas. These programs have contributed substantially to the abundance of fish spawning naturally in recent years. However, little information is available to assess the impact of these high levels of supplementation on the long-term productivity of natural populations. Spatial structure in this ESU was of little concern as there is passage and connectivity among almost all ESU populations, although it is estimated that approximately 58 percent of historical habitat has been lost. During years of critically low escapement (1996 and 1998) extreme management measures were taken in one of the three major spring Chinook producing basins by collecting all returning adults into hatchery supplementation programs. Such actions reflect the ongoing vulnerability of certain segments of this ESU. The BRT expressed concern that these actions, while appropriately guarding against the catastrophic loss of populations, may have compromised ESU population structure and diversity.

The BRT's assessment of risk for the four VSP categories reflects strong concerns regarding abundance and productivity, and comparatively less concern for ESU spatial structure and diversity. The BRT's assessment of overall extinction risk faced by the naturally spawned component of the Upper Columbia River spring-run Chinook ESU was divided between ''in danger of extinction'' and ''likely to become endangered within the foreseeable future,'' with a slight majority opinion that the ESU is ''in danger of extinction.''

Six artificial propagation programs in the Upper Columbia River Basin produce spring-run Chinook in the Methow and Wenatchee Rivers that are considered to be part of the Upper Columbia River spring-run Chinook ESU (Table 1). The Entiat NFH operating in the Entiat River is not included in the ESU, and is intended to remain isolated from the local natural population. The within ESU hatchery programs are conservation programs intended to contribute to the recovery of the ESU by increasing the abundance and spatial distribution of naturally spawned fish, while maintaining the genetic integrity of populations within the ESU. Three of the conservation programs incorporate local natural broodstock to minimize adverse genetic effects, and follow broodstock protocols guarding against the overcollection of the natural run. The remaining within-ESU hatchery programs are captive broodstock programs. These programs also adhere to strict protocols for the collection, rearing, maintenance, and mating of the captive brood populations. All of the six artificial propagation programs considered to be part of the ESU include extensive monitoring and evaluation efforts to continually evaluate the extent and implications of

any genetic and behavioral differences that might emerge between the hatchery and natural stocks.

Genetic evidence suggests that the within-ESU programs remain closely related to the naturally spawned populations and maintain local genetic distinctiveness of populations within the ESU. The captive broodstock programs may exhibit lower fecundity and younger average age-at-maturity compared to the natural populations from which they were derived. However, the extensive monitoring and evaluation efforts employed afford the adaptive management of any unintended adverse effects. Habitat Conservation Plans (HCPs) with the Chelan and Douglas Public Utility Districts and binding mitigation agreements ensure that these programs will have secure funding and will continue into the future. These hatchery programs have undergone ESA section 7 consultation to ensure that they do not jeopardize the continued existence of the ESU, and they have received ESA section 10 permits for production through 2007. Annual reports and other specific information reporting requirements ensure that the terms and conditions as specified by NMFS are followed. These programs, through adherence to best professional practices, have not experienced disease outbreaks or other catastrophic losses.

Our assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Overall, the hatchery programs in the ESU have increased the total abundance of fish considered to be part of the ESU. Specifically, the two hatchery programs in the Wenatchee Basin have contributed to reducing abundance risk. However, it is uncertain whether the four programs in the Methow Basin have provided a net benefit to abundance. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. The overall impact of the hatchery programs on ESU spatial structure is neutral. The Wenatchee Basin programs are managed to promote appropriate spatial structure, and they likely reduce spatial structure risk in that basin. The Methow Basin hatchery programs, however, concentrate spawners near the hatchery facilities, altering population spatial structure and increasing vulnerability to catastrophic events. Overall, within-ESU hatchery programs do not moderate risks to ESU diversity. The Wenatchee Basin programs do help preserve population diversity though the incorporation of natural-origin fish into broodstock. The Methow Basin programs, however, incorporate few natural fish with hatchery-origin fish predominating on the spawning grounds. Additionally, the presence of out-of-ESU Carson stock Chinook in the Methow Basin remains a concern, although the stock is in the process of being terminated. The out-of-ESU Entiat hatchery program is a source of significant concern to the ESU. The Entiat stock may have introgressed significantly with or replaced the native population. Although the artificial propagation programs in the ESU have a slight beneficial effect on ESU abundance, they do not mitigate other key risk factors identified by the BRT. Informed by the BRT's findings (NMFS, 2003b) and our assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2005b), the Artificial Propagation Evaluation Workshop concluded that the Upper Columbia River spring-run Chinook ESU in-total is ''in danger of extinction'' (NMFS, 2004c).

*Puget Sound Chinook ESU*—Assessing extinction risk for the Puget Sound Chinook ESU is complicated by high levels of hatchery production and a limited availability of information on the fraction of natural spawners that are of hatchery-origin. Although populations in the ESU have not experienced the dramatic increases in abundance in the last 2 to 3 years that have been evident in many other ESUs, more populations have shown modest increases in escapement in recent years than have declined (13 populations versus nine). Most populations have a recent 5-year mean abundance of fewer than 1,500 natural spawners, with the Upper Skagit population being a notable exception (the recent 5-year mean abundance for the Upper Skagit population approaches 10,000 natural spawners). Currently observed abundances of natural spawners in the ESU are several orders of magnitude lower than estimated historical spawner capacity, and well below peak historical abundance (approximately 690,000 spawners in the early 1900s). Recent 5-year and long-term productivity trends remain below replacement for the majority of the 22 extant populations of Puget Sound Chinook. The BRT was concerned that the concentration of the majority of natural production in just a few subbasins represents a significant risk. Natural production areas, due to their concentrated spatial distribution, are vulnerable to extirpation due to catastrophic events. The BRT was concerned by the disproportionate loss of early run populations and its impact on the diversity of the Puget Sound Chinook ESU. The Puget Sound Technical Recovery Team has identified 31 historical populations (Ruckelshaus *et al.*, 2002), nine of which are believed to be extinct, most of which were ''early run'' or ''spring'' populations. Past hatchery practices that transplanted stocks among basins within the ESU and present programs using transplanted stocks that incorporate little local natural broodstock represent additional risk to ESU diversity. In particular, the BRT noted that the pervasive use of Green River stock, and stocks subsequently derived from the Green River stock, throughout the ESU may reduce the genetic diversity and fitness of naturally spawning populations.

The BRT found moderately high risks for all VSP categories. Informed by this risk assessment, the strong majority opinion of the BRT was that the naturally spawned component of the Puget Sound Chinook ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion was in the ''not in danger of extinction or likely to become endangered within the foreseeable future'' category.

There are currently 26 programs artificially propagating Puget Sound Chinook salmon that are considered to be part of the ESU (Table 1). Eight of the programs are directed at conservation, and are specifically implemented to preserve and increase the abundance of native populations in their natal watersheds where habitat needed to sustain the populations naturally at viable levels has been lost or degraded. Each of these conservation hatchery programs includes research, monitoring, and evaluation activities designed to determine success in recovering the propagated populations to viable levels, and to determine the demographic, ecological, and genetic effects of each program on target and non-target salmonid populations. The remaining programs considered to be part of the ESU are operated primarily for fisheries harvest augmentation purposes (some of which also function as research programs) using transplanted within-ESU-origin Chinook salmon as broodstock.

Our assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). The conservation and hatchery augmentation programs collectively have increased the total abundance of the ESU. The conservation programs

have increased the abundance of naturally spawning Chinook, and likely have reduced abundance risks for these populations. The large numbers of Chinook produced by the harvest augmentation programs, however, have resulted in considerable numbers of strays. Any potential benefits from these programs to abundance likely are offset by increased ecological and genetic risks. There is no evidence that any of the 26 ESU hatchery programs have contributed to increased abundances of natural-origin Chinook, despite decades of infusing natural spawning areas with hatchery fish. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. Four programs are planting hatchery fish above impassible dams, providing some benefit to ESU spatial structure. However, the ongoing practice of transplanting stocks within the ESU and incorporating little natural local-origin broodstock continues to pose significant risks to ESU spatial structure and diversity. The conservation hatchery programs function to preserve remaining genetic diversity, and likely have prevented the loss of several populations. Among the harvest augmentation programs are yearling Chinook release programs. Yearling Chinook programs may be harmful to local natural-origin populations due to increased risks of predation and the reduction of within-population diversity. Collectively, artificial propagation programs in the ESU provide a slight beneficial effect to ESU abundance and spatial structure, but neutral or uncertain effects to ESU productivity and diversity. Informed by the BRT's findings (NMFS, 2003b) and our assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2005b), the Artificial Propagation Evaluation Workshop concluded that the Puget Sound Chinook ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

*Snake River Fall-run Chinook ESU*—The abundance of natural-origin spawners in the Snake River fall-run Chinook ESU for 2001 (2,652 adults) was in excess of 1,000 fish for the first time since counts began at the Lower Granite Dam in 1975. The recent 5-year mean abundance of 871 naturally produced spawners, however, generated concern that despite recent improvements, the abundance level is very low for an entire ESU. With the exception of the marked increase in 2001, the ESU has fluctuated between approximately 500 to 1,000 natural spawners since 1975, suggesting a higher degree of stability in growth rate at low population levels than is seen in other salmonid populations. Increasing returns reflect improved ocean conditions, improved management of the mainstem hydrosystem flow regime, decreased harvest, and an increasing contribution from the Lyons Ferry Hatchery supplementation program. However, due to the large fraction of naturally spawning hatchery fish, it is difficult to assess the productivity of the natural population. Depending upon the assumption made regarding the reproductive contribution of hatchery fish, long-term and short-term trends in productivity are at or above replacement. It is estimated that approximately 80 percent of historical spawning habitat was lost (including the most productive areas) with the construction of a series of Snake River mainstem dams. The loss of spawning habitats and the restriction of the ESU to a single extant naturally spawning population increase the ESU's vulnerability to environmental variability and catastrophic events. The diversity associated with populations that once resided above the Snake River dams has been lost, and the impact of straying out-of-ESU fish has the potential to further compromise ESU diversity. Recent improvements in the marking of out-of-ESU hatchery fish and their removal at Lower Granite Dam have reduced the impact of these strays. However, introgression below Lower Granite Dam remains a concern. The BRT voiced concern that the practice of collecting fish below Lower Granite Dam for broodstock incorporates non-ESU strays into the Lyons Ferry Hatchery program, and poses additional risks to ESU diversity. Straying of out-of-ESU hatchery fall Chinook salmon from outside the Snake River Basin was identified as a major risk factor in the late 1980s to mid 1990s. Out-of-ESU hatchery strays have been much reduced due to the removal of hatchery strays at downstream dams, and a reduction in the number of fish released into the Umatilla River (where the majority of out-of-ESU strays originated).

The BRT found moderately high risk for all VSP categories. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Snake River fall-run Chinook ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion assessed ESU extinction risk as ''in danger of extinction,'' although a slight minority fell in the ''not in danger of extinction or likely to become endangered within the foreseeable future'' category.

There are four artificial propagation programs producing Snake River fall Chinook salmon in the Snake River basin, all based on the Lyons Ferry Hatchery stock and considered to be part of the Snake River fall-run Chinook ESU (Table 1). When naturally spawning fall Chinook declined to fewer than 100 fish in 1991, most of the genetic legacy of this ESU was preserved in the Lyons Ferry Hatchery broodstock (NMFS, 1991c). These four hatchery programs are managed to enhance listed Snake River fall Chinook salmon and presently include the Lyons Ferry Hatchery, Fall Chinook Acclimation Ponds Program, Nez Perce Tribal Hatchery, and Oxbow Hatchery (an Idaho Power Company mitigation hatchery). These existing programs release fish into the mainstem Snake River and Clearwater River which represent the majority of the remaining habitat available to this ESU.

Our assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). These hatchery programs have contributed to the recent substantial increases in total ESU abundance, including both natural-origin and hatchery-origin ESU components. Spawning escapement has increased to several thousand adults (from a few hundred in the early 1990s) due in large part to increased releases from these hatchery programs. These programs collectively have had a beneficial effect on ESU abundance in recent years. The BRT noted, however, that the large but uncertain fraction of naturally spawning hatchery fish complicates assessments of ESU productivity. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. As ESU abundance has increased in recent years, ESU spatial distribution has increased. The Snake River fall-run Chinook hatchery programs contributed to this reduction in risk to ESU spatial distribution. The Lyons Ferry stock has preserved genetic diversity during critically low years of abundance. However, the ESU-wide use of a single hatchery broodstock may pose long-term genetic risks, and may limit adaptation to different habitat areas. Although the ESU presently consists of a single independent population, it was most likely composed of diverse production centers. Additionally, the broodstock collection practices employed pose risks to ESU spatial structure and diversity. Release

strategies practiced by the ESU hatchery programs (*e.g.*, extended captivity for about 15 percent of the fish before release) are in conflict with the Snake River fall-run Chinook life history, and may compromise ESU diversity. Collectively, artificial propagation programs in the ESU provide slight benefits to ESU abundance, spatial structure, and diversity, but have neutral or uncertain effects on ESU productivity. Informed by the BRT's findings (NMFS, 2003b) and our assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2005b), the Artificial Propagation Evaluation Workshop concluded that the Snake River fall-run Chinook ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

*Snake River Spring/Summer Chinook ESU*—The aggregate return (including hatchery and natural-origin fish) of Snake River spring/summer-run Chinook in 2001 exhibited a large increase over recent abundances. Many, but not all, of the 29 natural production areas within the ESU experienced large abundance increases in 2001 as well, with two populations nearing the abundance levels specified in NMFS' 1995 Proposed Snake River Recovery Plan (NMFS, 1995b). However, approximately 79 percent of the 2001 return of spring-run Chinook was of hatchery origin. Short-term productivity trends were at or above replacement for the majority of natural production areas in the ESU, although long-term productivity trends remain below replacement for all natural production areas, reflecting the severe declines since the 1960s. Although the number of spawning aggregations lost in this ESU due to the establishment of the Snake River mainstem dams is unknown, this ESU has a wide spatial distribution in a variety of locations and habitat types. The BRT considered it a positive sign that the out-of-ESU Rapid River broodstock has been phased out of the Grande Ronde system. There is no evidence of wide-scale straying by hatchery stocks, thereby alleviating diversity concerns somewhat. Nonetheless, the high level of hatchery production in this ESU complicates the assessments of trends in natural abundance and productivity.

The BRT found moderately high risk for the abundance and productivity VSP factors, and comparatively lower risk for spatial structure and diversity. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Snake River spring/summer-run Chinook ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion assessed ESU extinction risk as ''in danger of extinction,'' although a slight minority concluded that the ESU is in the ''not in danger of extinction or likely to become endangered within the foreseeable future'' category.

There are 15 artificial propagation programs producing spring/summer-run Chinook salmon that are considered to be part of the Snake River spring/summer-run Chinook ESU (Table 1). A portion of these programs are managed to enhance listed natural populations, including the use of captive broodstock hatcheries in the upper Salmon River, Lemhi River, East Fork Salmon River, and Yankee Fork populations. These enhancement programs all use broodstocks founded from the local native populations. Currently, the use of non-ESU broodstock sources is restricted to Little Salmon/Rapid River (lower Salmon River tributary), mainstem Snake River at Hells Canyon, and the Clearwater River.

Our assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Overall, these hatchery programs have contributed to the increases in total ESU abundance and in the number of natural spawners observed in recent years. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. Some reintroduction and outplanting of hatchery fish above barriers and into vacant habitat has occurred, providing a slight benefit to ESU spatial structure. All of the within-ESU hatchery stocks are derived from local natural populations and employ management practices designed to preserve genetic diversity. The Grande Ronde Captive Broodstock programs likely have prevented the extirpation of the local natural populations. Additionally, hatchery releases are managed to maintain wild fish reserves in the ESU in an effort to preserve natural local adaptation and genetic variability. Collectively, artificial propagation programs in the ESU provide benefits to ESU abundance, spatial structure, and diversity, but have neutral or uncertain effects on ESU productivity. Informed by the BRT's findings (NMFS, 2003b) and our assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2005b), the Artificial Propagation Evaluation Workshop concluded that the Snake River spring/summer-run Chinook ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

*Central California Coast Coho ESU*—Information on the abundance and productivity trends for the naturally spawning component of the Central California Coast coho ESU is extremely limited. There are no long-term time series of spawner abundance for individual river systems. Analyses of juvenile coho presence-absence information, juvenile density surveys, and irregular adult counts for the South Fork Noyo River indicate low abundance and long-term downward trends for the naturally spawning populations throughout the ESU. Improved ocean conditions coupled with favorable stream flows and harvest restrictions have contributed to increased returns in 2001 in streams in the northern portion of the ESU, as indicated by an increase in the observed presence of fish in historically occupied streams. Data are particularly lacking for many river basins in the southern two-thirds of the ESU where naturally spawning populations are considered to be at the greatest risk. The extirpation or near extirpation of natural coho salmon populations in several major river basins, and across most of the southern historical range of the ESU, represents a significant risk to ESU spatial structure and diversity. Artificial propagation of coho salmon within the Central California Coast ESU has declined since the ESU was listed in 1996 though it continues at the Noyo River and Scott Creek facilities, and two captive broodstock populations have recently been established. Genetic diversity risk associated with out-of-basin transfers appears to be minimal, but diversity risk from domestication selection and low effective population sizes in the remaining hatchery programs remains a concern. An out-of-ESU artificial propagation program for coho was operated at the Don Clausen hatchery on the Russian River through the mid 1990s, but was terminated in 1996. Termination of this program was considered by the BRT as a positive development for naturally produced coho in this ESU. For the naturally spawning component of the ESU, the BRT found very high risk for the abundance, productivity, and spatial structure VSP parameters and comparatively moderate risk with respect to the diversity VSP parameter. The lack of direct estimates of the performance of the naturally spawned populations in this ESU, and the associated uncertainty this generates, was of specific concern to the BRT. Informed by the VSP risk assessment

and the associated uncertainty, the strong majority opinion of the BRT was that the naturally spawned component of the Central California Coast coho ESU was ''in danger of extinction.'' The minority opinion was that this ESU is ''likely to become endangered within the foreseeable future.''

Four artificial propagation programs are considered to be part of the Central California Coast coho ESU (Table 1; NMFS, 2005b). The Noyo River program is an augmentation program located in the northern portion of the ESU which regularly incorporates local natural-origin fish into the broodstock and releases fish into the Noyo River watershed. The program has been in operation for over 50 years, but the program has recently been discontinued. The Monterey Bay Salmon and Trout Project is an artificial propagation program that is operated as a conservation program designed to supplement the local natural population, located in the southern portion of the ESU (south of San Francisco) where natural populations are at the highest risk of extinction. Relatively small numbers of fish are spawned and released from this program on Scott Creek, but natural-origin fish are routinely incorporated into the broodstock. Recently, captive broodstock programs have been established for the Russian River and Scott Creek populations in order to preserve the genetic resources of these two naturally spawning populations and for use in artificial programs. Artificially propagated fish from these two captive broodstock programs will be outplanted in the Russian River and Scott Creek watersheds to supplement local natural populations. The Russian River program is integrated with a habitat restoration program designed to improve habitat conditions and subsequent survival for outplanted coho juveniles.

An assessment of the effects of these four artificial propagation programs on the viability of the ESU in-total concluded that they decrease risk of extinction to some degree by contributing to increased ESU abundance and diversity, but have a neutral or uncertain effect on the productivity or spatial structure of the ESU (NMFS, 2005b). The three conservation programs are considered crucial to the recovery of this ESU, but it is unclear if they have had any beneficial effect on natural spawner abundance. The Noyo River program which had been operated for over 50 years is being terminated because it has not met CDFG's goal of increasing coho salmon abundance. Productivity of coho salmon in the Noyo River is thought to be reduced or unaffected by long term artificial propagation in that watershed. It is uncertain how effective the captive broodstock and rearing programs in the Russian River and Scott Creek will be in increasing productivity, but efforts in the Russian River are coupled with a major habitat restoration effort which may improve natural population productivity. The two captive broodstock programs will hopefully contribute to future abundance and improved spatial structure of the ESU, but out-planting has yet to be implemented so long term benefits are uncertain. The Monterey Bay Salmon and Trout Program is thought to be responsible for sustaining the presence of natural origin coho salmon in Scott Creek, which is at the southern extent of the ESU's range. Both of the captive broodstock programs, particularly the Scott Creek program, are genetic repositories which serve to preserve the genome of the ESU thereby reducing genetic diversity risks. Informed by the BRT's findings (NMFS, 2003b) and our assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2005b), the Artificial Propagation Evaluation Workshop concluded that the Central California Coast coho ESU in-total is ''in danger of extinction'' (NMFS, 2004c).

*Southern Oregon/Northern California Coast Coho ESU*—The only reliable time series of adult abundance for the naturally spawning component of the Southern Oregon/Northern California Coast coho ESU is for the Rogue River population in southern Oregon. The California portion of the ESU is characterized by a paucity of data, with only a few available spawner indices and presence-absence surveys. The recent 5-year mean abundance for the Rogue River is approximately 5,000 natural spawners and is the highest such abundance for the Rogue River data series (since 1980). Both long- and short-term productivity trends for Rogue River natural spawners are above replacement. The BRT concluded, based on an analysis of pre-harvest abundance, however, that these positive trends for the Rogue River population reflect the effects of reduced harvest rather than improved freshwater conditions and population productivity. Less reliable indices of spawner abundance in several California populations suggest flat or declining trends. Relatively low levels of observed presence in historically occupied coho streams (32–56 percent from 1986 to 2000) indicate continued low abundance in the California portion of this ESU. Indications of stronger 2001 returns in several California populations, presumably due to favorable freshwater and ocean conditions, is encouraging but must be evaluated in the context of more than a decade of generally poor performance. Nonetheless, the high occupancy rate of historical streams in 2001 suggests that much habitat remains accessible to coho salmon. Although extant populations reside in all major river basins within the ESU, the BRT was concerned about the loss of local populations in the Trinity, Klamath, and Rogue river systems. The high hatchery production in these systems may mask trends in ESU population structure and pose risks to ESU diversity. The recent termination of several out-of-ESU hatcheries in California is expected to result in decreased risks to ESU diversity. The BRT found moderately high risks for abundance and productivity VSP categories, with comparatively lower risk for spatial structure and diversity. Informed by this risk assessment, the strong majority opinion of the BRT was that the naturally spawned component of the Southern Oregon/Northern California Coast coho ESU is ''likely to become endangered within the foreseeable future.'' The minority opinion assessed ESU extinction risk as ''in danger of extinction,'' although a slight minority concluded that the ESU is in the ''not in danger of extinction or likely to become endangered within the foreseeable future'' category.

There are three artificial propagation programs releasing hatchery coho salmon that are considered to be part of the Southern Oregon/Northern California Coast Coho ESU. The Rogue River hatchery in Oregon and the Trinity River and Iron Gate hatcheries (Klamath River) in California are all mitigation programs designed to produce fish for harvest, but they integrate naturally produced coho salmon into the broodstock in an attempt to minimize the genetic effects of returning hatchery adults that spawn naturally. All three programs have been in operation for several decades with smolt production goals ranging from 75,000 to 500,000 fish.

An assessment of the effects of these three artificial propagation programs on the viability of the ESU in-total concluded that they decrease risk of extinction by contributing to increased ESU abundance, but have a neutral or uncertain effect on the productivity, spatial structure and diversity of the ESU (NMFS, 2005b). Abundance of the ESU in-total has been increased as a result of these artificial propagation programs, particularly in the Rogue and Trinity Rivers. In the Rogue River,

hatchery origin fish have averaged approximately half of the returning spawners over the past 20 years. In the Trinity River, most naturally spawning fish are thought to be of hatchery origin based on weir counts at Willow Creek. The effects of these artificial propagation programs on ESU productivity and spatial structure are limited. Only three rivers have hatchery populations and natural populations are depressed throughout the range of the ESU. The effects of these hatchery programs on ESU diversity are likely limited. Natural origin fish have been incorporated into the broodstock but the magnitude of natural fish use is unknown. Informed by the BRT's findings (NMFS, 2003b) and our assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2005b), the Artificial Propagation Evaluation Workshop concluded that the Southern Oregon/Northern California Coast coho ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

*Lower Columbia River Coho ESU*—There are only two extant populations in the Lower Columbia River coho ESU with appreciable natural production (the Clackamas and Sandy River populations), from an estimated 23 historical populations in the ESU. Although adult returns in 2000 and 2001 for the Clackamas and Sandy River populations exhibited moderate increases, the recent 5-year mean of natural-origin spawners for both populations represents less than 1,500 adults. The Sandy River population has exhibited recruitment failure in 5 of the last 10 years, and has exhibited a poor response to reductions in harvest. During the 1980s and 1990s natural spawners were not observed in the lower tributaries in the ESU. Coincident with the 2000–2001 abundance increases in the Sandy and Clackamas populations, a small number of coho spawners of unknown origin have been surveyed in some lower tributaries. Short- and long-term trends in productivity are below replacement. Approximately 40 percent of historical habitat is currently inaccessible, which restricts the number of areas that might support natural production, and further increases the ESU's vulnerability to environmental variability and catastrophic events. The extreme loss of naturally spawning populations, the low abundance of extant populations, diminished diversity, and fragmentation and isolation of the remaining naturally produced fish confer considerable risks to the ESU. The paucity of naturally produced spawners in this ESU is contrasted by the very large number of hatchery produced adults. The abundance of hatchery coho returning to the Lower Columbia River in 2001 and 2002 exceeded one million and 600,000 fish, respectively. The BRT expressed concern that the magnitude of hatchery production continues to pose significant genetic and ecological threats to the extant natural populations in the ESU. However, these hatchery stocks at present collectively represent a significant portion of the ESU's remaining genetic resources. The 25 hatchery stocks considered to be part of the ESU (Table 1), if appropriately managed, may prove essential to the restoration of more widespread naturally spawning populations.

The BRT found extremely high risks for each of the VSP categories. Informed by this risk assessment, the strong majority opinion of the BRT was that the naturally spawned component of the Lower Columbia River coho ESU is ''in danger of extinction.'' The minority opinion was that the ESU is ''likely to become endangered within the foreseeable future.''

All of the 25 hatchery programs included in the Lower Columbia River coho ESU are designed to produce fish for harvest, with two small programs designed to also augment the natural spawning populations in the Lewis River Basin. Artificial propagation in this ESU continues to represent a threat to the genetic, ecological, and behavioral diversity of the ESU. Past artificial propagation efforts imported out-of-ESU fish for broodstock, generally did not mark hatchery fish, mixed broodstocks derived from different local populations, and transplanted stocks among basins throughout the ESU. The result is that the hatchery stocks considered to be part of the ESU represent a homogenization of populations. Several of these risks have recently begun to be addressed by improvements in hatchery practices. Out-of-ESU broodstock is no longer used, and near 100-percent marking of hatchery fish is employed to afford improved monitoring and evaluation of broodstock and (hatchery- and natural-origin) returns. However, many of the within-ESU hatchery programs do not adhere to best hatchery practices. Eggs are often transferred among basins in an effort to meet individual program goals, further compromising ESU spatial structure and diversity. Programs may use broodstock that does not reflect what was historically present in a given basin, limiting the potential for artificial propagation to establish locally adapted naturally spawning populations. Many programs lack Hatchery and Genetic Management Plans that establish escapement goals appropriate for the natural capacity of each basin, and that identify goals for the incorporation of natural-origin fish into the broodstock.

Our assessment of the effects of artificial propagation on ESU extinction risk concluded that hatchery programs collectively mitigate the immediacy of extinction risk for the Lower Columbia River coho ESU in-total in the short term, but that these programs do not substantially reduce the extinction risk of the ESU in the foreseeable future (NMFS, 2004c). At present, within ESU hatchery programs significantly increase the abundance of the ESU in-total. Without adequate long-term monitoring, the contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. The hatchery programs are widely distributed throughout the Lower Columbia River, reducing the spatial distribution of risk to catastrophic events. Additionally, reintroduction programs in the Upper Cowlitz River may provide additional reduction of ESU spatial structure risks. As mentioned above, the majority of the ESU's genetic diversity exists in the hatchery programs. Although these programs have the potential of preserving historical local adaptation and behavioral and ecological diversity, the manner in which these potential genetic resources are presently being managed poses significant risks to the diversity of the ESU in-total. At present, the Lower Columbia River coho hatchery programs reduce risks to ESU abundance and spatial structure, provide uncertain benefits to ESU productivity, and pose risks to ESU diversity. Overall, artificial propagation mitigates the immediacy of ESU extinction risk in the short-term, but is of uncertain contribution in the long term.

Over the long term, reliance on the continued operation of these hatchery programs is risky (NMFS, 2005b). Several Lower Columbia River coho hatchery programs have been terminated, and there is the prospect of additional closures in the future. With each hatchery closure, any potential benefits to ESU abundance and spatial structure are reduced. Risks of operational failure, disease, and environmental catastrophes further complicate assessments of hatchery contributions over the long term. Additionally, the two extant naturally spawning populations in the ESU were described by the BRT as being ''in danger of extinction.'' Accordingly, it is likely that the Lower Columbia River coho ESU may exist in hatcheries only

within the foreseeable future. It is uncertain whether these isolated hatchery programs can persist without the incorporation of natural-origin fish into the broodstock. Although there are examples of salmonid hatchery programs having been in operation for relatively long periods of time, these programs have not existed in complete isolation. Long-lived hatchery programs historically required infusions of wild fish in order to meet broodstock goals. The long-term sustainability of such isolated hatchery programs is unknown. It is uncertain whether the Lower Columbia River coho isolated hatchery programs are capable of mitigating risks to ESU abundance and productivity into the foreseeable future. In isolation, these programs may also become more than moderately diverged from the evolutionary legacy of the ESU, and hence no longer merit inclusion in the ESU. Under either circumstance, the ability of artificial propagation to buffer the immediacy of extinction risk over the long-term is uncertain. Informed by the BRT's findings (NMFS, 2003b) and our assessment of the short- and long-term effects of artificial propagation programs on the viability of the ESU (NMFS, 2005b), the Artificial Propagation Evaluation Workshop concluded that the Lower Columbia coho ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

*Columbia River Chum ESU*—Approximately 90 percent of the historical populations in the Columbia River chum ESU are extirpated or nearly so. During the 1980s and 1990s, the combined abundance of natural spawners for the Lower and Upper Columbia River Gorge, Washougal, and Grays River populations was below 4,000 adults. In 2002, however, the abundance of natural spawners exhibited a substantial increase evident at several locations in the ESU. The preliminary estimate of natural spawners is approximately 20,000 adults. The cause of this dramatic increase in abundance is unknown. Improved ocean conditions, the initiation of a supplementation program in the Grays River, improved flow management at Bonneville Dam, favorable freshwater conditions, and increased survey sampling effort may all have contributed to the elevated 2002 abundance. However, long- and short-term productivity trends for ESU populations are at or below replacement. The loss of off-channel habitats and the extirpation of approximately 17 historical populations increase the ESU's vulnerability to environmental variability and catastrophic events. The populations that remain are low in abundance, and have limited distribution and poor connectivity.

The BRT found high risks for each of the VSP categories, particularly for ESU spatial structure and diversity. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Columbia River chum ESU is ''likely to become endangered within the foreseeable future,'' with a minority opinion that it is ''in danger of extinction.''

There are three artificial propagation programs producing chum salmon considered to be part of the Columbia River chum ESU. These are conservation programs designed to support natural production. The Washougal Hatchery artificial propagation program provides artificially propagated chum salmon for re-introduction into recently restored habitat in Duncan Creek, Washington. This program also serves as a genetic reserve for the naturally spawning population in the mainstem Columbia River below Bonneville Dam, which can access only a portion of spawning habitat during low flow conditions. The other two programs are designed to augment natural production in the Grays River and the Chinook River in Washington. All these programs use naturally produced adults for broodstock. These programs were only recently established (1998–2002), with the first hatchery chum returning in 2002.

Our assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). The Columbia River chum hatchery programs have only recently been initiated, and are beginning to provide benefits to ESU abundance. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. The Sea Resources and Washougal Hatchery programs have begun to provide benefits to ESU spatial structure through reintroductions of chum salmon into restored habitats in the Chinook River and Duncan Creek, respectively. These three programs have a neutral effect on ESU diversity. Collectively, artificial propagation programs in the ESU provide a slight beneficial effect to ESU abundance and spatial structure, but have neutral or uncertain effects on ESU productivity and diversity. Informed by the BRT's findings (NMFS, 2003b) and our assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2005b), the Artificial Propagation Evaluation Workshop concluded that the Columbia River chum ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

*Hood Canal Summer Chum ESU*—Adult returns for some populations in the Hood Canal summer-run chum ESU showed modest improvements in 2000, with upward trends continuing in 2001 and 2002. The recent 5-year mean abundance is variable among populations in the ESU, ranging from one fish to nearly 4,500 fish. Hood Canal summer-run chum are the focus of an extensive rebuilding program developed and implemented since 1992 by the state and tribal co-managers. Two populations (the combined Quilcene and Union River populations) are above the conservation thresholds established by the rebuilding plan. However, most populations remain depressed. Estimates of the fraction of naturally spawning hatchery fish exceed 60 percent for some populations, indicating that reintroduction programs are supplementing the numbers of total fish spawning naturally in streams. Long-term trends in productivity are above replacement for only the Quilcene and Union River populations. Buoyed by recent increases, seven populations are exhibiting short-term productivity trends above replacement. Of an estimated 16 historical populations in the ESU, seven populations are believed to have been extirpated or nearly extirpated. Most of these extirpations have occurred in populations on the eastern side of Hood Canal, generating additional concern for ESU spatial structure. The widespread loss of estuary and lower floodplain habitat was noted by the BRT as a continuing threat to ESU spatial structure and connectivity. There is some concern that the Quilcene hatchery stock is exhibiting high rates of straying, and may represent a risk to historical population structure and diversity. However, with the extirpation of many local populations, much of this historical structure has been lost, and the use of Quilcene hatchery fish may represent one of a few remaining options for Hood Canal summer-run chum conservation.

The BRT found high risks for each of the VSP categories. Informed by this risk assessment, the majority opinion of the BRT was that the naturally spawned component of the Hood Canal summer-run chum ESU is ''likely to become endangered within the foreseeable

future,'' with a minority opinion that the ESU is ''in danger of extinction.''

There are currently eight programs releasing summer chum salmon that are considered to be part of the Hood Canal summer chum ESU (Table 1). Six of the programs are supplementation programs implemented to preserve and increase the abundance of native populations in their natal watersheds. These supplementation programs propagate and release fish into the Salmon Creek, Jimmycomelately Creek, Big Quilcene River, Hamma Hamma River, Lilliwaup Creek, and Union River watersheds. The remaining two programs use transplanted summer-run chum salmon from adjacent watersheds to reintroduce populations into Big Beef Creek and Chimacum Creek, where the native populations have been extirpated. Each of the hatchery programs includes research, monitoring, and evaluation activities designed to determine success in recovering the propagated populations to viable levels, and to determine the demographic, ecological, and genetic effects of each program on target and non-target salmonid populations. All the Hood Canal summer-run chum hatchery programs will be terminated after 12 years of operation.

Our assessment of the effects of artificial propagation on ESU extinction risk concluded that these hatchery programs collectively do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). The hatchery programs are reducing risks to ESU abundance by increasing total ESU abundance as well as the number of naturally spawning summer-run chum salmon. Several of the programs have likely prevented further population extirpations in the ESU. The contribution of ESU hatchery programs to the productivity of the ESU in-total is uncertain. The hatchery programs are benefiting ESU spatial structure by increasing the spawning area used in several watersheds and by increasing the geographic range of the ESU through reintroductions. These programs also provide benefits to ESU diversity. By bolstering total population sizes, the hatchery programs have likely stemmed adverse genetic effects for populations at critically low levels. Additionally, measures have been implemented to maintain current genetic diversity, including the use of native broodstock and the termination of the programs after 12 years of operation to guard against long-term domestication effects. Collectively, artificial propagation programs in the ESU presently provide a slight beneficial effect to ESU abundance, spatial structure, and diversity, but uncertain effects to ESU productivity. The long-term contribution of these programs after they are terminated is uncertain. Despite the current benefits provided by the comprehensive hatchery conservation efforts for Hood Canal summer-run chum, the ESU remains at low overall abundance with nearly half of historical populations extirpated. Informed by the BRT's findings (NMFS, 2003b) and our assessment of the effects of artificial propagation programs on the viability of the ESU (NMFS, 2005b), the Artificial Propagation Evaluation Workshop concluded that the Hood Canal summer-run chum ESU in-total is ''likely to become endangered in the foreseeable future'' (NMFS, 2004c).

**Summary of Factors Affecting the Species**

Section 4(a)(1) of the ESA and our implementing regulations (50 CFR part 424) set forth procedures for listing species. The Secretary of Commerce (Secretary) must determine, through the regulatory process, if a species is endangered or threatened because of any one or a combination of the following factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or human-made factors affecting its continued existence. We have previously detailed the impacts of various factors contributing to the decline of Pacific salmon and *O. mykiss* (*e.g.*, see summary of previous ESU listing determinations in the proposed rule, 69 FR 33102, June 14, 2004; NMFS 1998c, ''Factors Contributing to the Decline of Chinook Salmon—An Addendum to the 1996 West Coast Steelhead Factors for Decline Report;'' NMFS 1996a, ''Factors for Decline—A Supplement to the Notice of Determination for West Coast Steelhead Under the Endangered Species Act''). These **Federal Register** notices and technical reports conclude that all of the factors identified in section 4(a)(1) of the ESA have played a role in the decline of West Coast salmon and *O. mykiss* ESUs. The reader is referred the summary of factors affecting the species provided in the proposed rule (69 FR at 33141 through 33142; June 14, 2004), and references therein, for a more detailed treatment of the species' factors for decline.

*Efforts Being Made to Protect West Coast Salmonids*

Section 4(b)(1)(A) of the ESA requires the Secretary to make listing determinations solely on the basis of the best scientific and commercial data available after taking into account efforts being made to protect a species. Therefore, in making ESA listing determinations, we first assess an ESU's level of extinction risk and identify factors that have led to its decline. We then assess existing efforts being made to protect the species to determine if those measures ameliorate the risks faced by the ESU.

In judging the efficacy of existing protective efforts, we rely on the joint NMFS–FWS ''Policy for Evaluation of Conservation Efforts When Making Listing Decisions'' (''PECE;'' 68 FR 15100; March 28, 2003). PECE provides direction for the consideration of protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, state and local governments, Tribal governments, businesses, organizations, and individuals) that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness. The policy articulates several criteria for evaluating the certainty of implementation and effectiveness of protective efforts to aid in determination of whether a species warrants listing as threatened or endangered.

During our update of the status for the 16 ESUs addressed in this final rule, we reviewed protective efforts ranging in scope from regional conservation strategies to local watershed initiatives. The principal protective efforts affecting these West Coast salmonid ESUs were summarized in the June 14, 2004, proposed rule (69 FR 33102). Informed by the public comments received and based on our review, we conclude that collectively protective efforts do not provide sufficient certainty of implementation and effectiveness to substantially ameliorate the level of assessed extinction risk for all of the 16 ESUs addressed in this notice. While we acknowledge that many of the ongoing protective efforts are likely to promote the conservation of listed salmonids, most efforts are relatively recent, have yet to indicate their effectiveness, and few address conservation needs at scales sufficient to conserve entire ESUs. We conclude that existing protective efforts lack the certainty of implementation and effectiveness to preclude listing the 16 ESUs addressed in this final rule. Nonetheless, we will continue to

encourage these and other future protective efforts, and we will continue to collaborate with tribal, federal, state, and local entities to promote and improve efforts being made to protect the species.

**Final Listing Determinations**

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and taking into account those efforts, if any, being made to protect such species.

We conclude that for the 16 West Coast salmon and *O. mykiss* ESUs addressed in this final rule, four ESUs are endangered, and 12 ESUs are threatened. Collectively, these 16 ESUs include 132 artificial propagation programs. Informed by the *Alsea* ruling and consistent with the final Hatchery Listing Policy, which appears elsewhere in this edition of the **Federal Register**, any artificial propagation programs considered to be part of an ESU will be included in the listing if it is determined that the ESU in-total is threatened or endangered. Table 2 at the end of this section provides a summary of these final listing determinations.

*Snake River Sockeye ESU*

The BRT unanimously concluded that the Snake River sockeye ESU is ''in danger of extinction.'' Our assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the Redfish Lake captive broodstock program does not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to PECE, do not provide sufficient certainty of implementation and effectiveness to alter the assessment that the ESU is ''in danger of extinction.'' We conclude that the ESU in-total is in danger of extinction throughout all or a significant portion of its range, and determine that the Snake River sockeye ESU continues to warrant listing under the ESA as an endangered species.

*Ozette Lake Sockeye ESU*

The BRT concluded that the naturally spawned component of the Ozette Lake sockeye ESU is ''likely to become endangered within the foreseeable future.'' Our assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to PECE, do not provide sufficient certainty of implementation and effectiveness to alter the assessment that the ESU is ''likely to become endangered within the foreseeable future.'' We conclude that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and determine that the Ozette Lake sockeye ESU continues to warrant listing under the ESA as a threatened species.

*Sacramento River Winter-Run Chinook ESU*

The BRT concluded that the naturally spawned component of the Sacramento winter-run Chinook ESU is ''in danger of extinction.'' Informed by the BRT's findings (NMFS, 2003b) and the assessment of artificial propagation programs on the viability of the ESU (NMFS, 2004b), the Artificial Propagation Evaluation Workshop concluded that the Sacramento River winter-run Chinook ESU in-total is presently ''in danger of extinction'' (NMFS, 2004c). Major efforts have been undertaken by NMFS and others over the past decade to assess the viability of, and conduct research on, the winter-run Chinook population; implement freshwater and ocean harvest management conservation efforts; and implement a wide range of habitat conservation measures. The State of California has listed winter-run Chinook under the California Endangered Species Act, implemented freshwater harvest management conservation measures, and increased monitoring and evaluation efforts in support of conserving this ESU. Harvest and habitat conservation efforts have improved the ESU's abundance and productivity over the past decade. These efforts include: Changes in Central Valley Project and State Water Project operations and other actions undertaken pursuant to implementation of the Central Valley Project biological opinions that have increased freshwater survival; changes in salmon ocean harvest pursuant to the ocean harvest biological opinion that have increased ocean survival and adult escapement; and implementation of habitat restoration efforts (*e.g.* Ecosystem Restoration Program) throughout the Central Valley as a result of the CVPIA and CALFED programs and other central valley habitat restoration projects. A key concern of the BRT was the lack of diversity within this ESU and the fact that it is represented by a single extant population at present. Although significant efforts are underway through the CALFED ecosystem restoration program to restore habitat and anadromous fish access to Battle Creek which would provide an opportunity for this ESU to establish a second population, it is uncertain whether this program will be fully implemented, funded or successful in achieving the goal of establishing a second population. Although many important efforts have been and continue to be implemented, we do not believe that the protective efforts being implemented for this ESU, as evaluated pursuant to PECE, provide sufficient certainty of implementation and effectiveness to alter the BRT's and Artificial Propagation Workshop's assessments that the ESU is ''in danger of extinction.'' We find, therefore, that the Sacramento River winter-run Chinook ESU in-total is in danger of extinction throughout all or a significant portion of its range and conclude that the ESU continues to warrant listing as an endangered species under the ESA.

*Central Valley Spring-Run Chinook ESU*

The BRT concluded that the Central Valley spring-run Chinook ESU is ''likely to become endangered within the foreseeable future'' (NMFS, 2003b). Because the Feather River Hatchery spring Chinook stock was not considered to be part of the ESU at the time, the Artificial Propagation Evaluation Workshop did not address this ESU. Although consideration of the naturally spawning spring-run Chinook in the Feather River and the hatchery stock would likely reduce ESU risk in terms of abundance, it is unlikely to benefit any other VSP factors such as productivity, spatial structure, or diversity. If ongoing efforts to further isolate the spring-run phenotype in the Feather River are successful, the risks to the ESU's spatial structure and diversity would likely be reduced. Substantial protective efforts have been implemented to benefit this ESU, but as evaluated pursuant to PECE, they do not provide sufficient certainty of implementation and effectiveness to alter the assessment that the ESU is ''likely to become endangered within the foreseeable future.'' We conclude that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and determine that the Central Valley spring-run Chinook ESU continues to warrant listing as threatened under the ESA.

*California Coastal Chinook ESU*

The BRT concluded that the naturally spawned component of the California Coastal Chinook ESU is ''likely to become endangered within the foreseeable future.'' Our assessment of artificial propagation programs on the viability of the ESU concluded that the California Coastal Chinook ESU in-total is ''likely to become endangered within the foreseeable future'' (NMFS, 2004c). Protective efforts, as evaluated pursuant to PECE, do not provide sufficient certainty of implementation and effectiveness to alter the assessment that the ESU is ''likely to become endangered within the foreseeable future.'' We conclude that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and determine that the California Coastal Chinook ESU continues to warrant listing as a threatened species under the ESA.

*Upper Willamette River Chinook ESU*

The BRT concluded that the naturally spawned component of the Upper Willamette River Chinook ESU is ''likely to become endangered within the foreseeable future.'' Our assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to PECE, do not provide sufficient certainty of implementation and effectiveness to alter the assessment that the ESU is ''likely to become endangered within the foreseeable future.'' We conclude that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and determine that the Upper Willamette River Chinook ESU continues to warrant listing under the ESA as a threatened species.

*Lower Columbia River Chinook ESU*

The BRT concluded that the naturally spawned component of the Lower Columbia River Chinook ESU is ''likely to become endangered within the foreseeable future.'' Our assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to PECE, do not provide sufficient certainty of implementation and effectiveness to alter the assessment that the ESU is ''likely to become endangered within the foreseeable future.'' We conclude that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and determine that the Lower Columbia River Chinook ESU continues to warrant listing under the ESA as a threatened species.

*Upper Columbia River Spring-Run Chinook ESU*

The BRT was divided on the extinction risk faced by the naturally spawned component of the Upper Columbia River spring-run Chinook ESU between ''in danger of extinction'' and ''likely to become endangered within the foreseeable future,'' with a slight majority finding that the ESU is ''in danger of extinction.'' Our assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to PECE, do not provide sufficient certainty of implementation and effectiveness to alter the assessment that the ESU is in danger of extinction or likely to become so in the foreseeable future. We conclude that the ESU in-total is in danger of extinction throughout all or a significant portion of its range, and determine that the Upper Columbia River spring-run Chinook ESU continues to warrant listing under the ESA as an endangered species.

*Puget Sound Chinook ESU*

The BRT concluded that the naturally spawned component of the Puget Sound Chinook ESU is ''likely to become endangered within the foreseeable future.'' Our assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to PECE, do not provide sufficient certainty of implementation and effectiveness to alter the assessment that the ESU is ''likely to become endangered within the foreseeable future.'' We conclude that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and determine that the Puget Sound Chinook ESU continues to warrant listing under the ESA as a threatened species.

*Snake River Fall-Run Chinook ESU*

The BRT concluded that the Snake River fall-run Chinook ESU is ''likely to become endangered within the foreseeable future.'' Our assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to PECE, do not provide sufficient certainty of implementation and effectiveness to alter the assessment that the ESU is ''likely to become endangered within the foreseeable future.'' We conclude that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and determine that the Snake River fall-run Chinook ESU continues to warrant listing under the ESA as a threatened species.

*Snake River Spring/Summer Chinook ESU*

The BRT concluded that the Snake River spring/summer-run Chinook ESU is ''likely to become endangered within the foreseeable future.'' Our assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to PECE, do not provide sufficient certainty of implementation and effectiveness to alter the assessment that the ESU is ''likely to become endangered within the foreseeable future.'' We conclude that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and determine that the Snake River spring/summer-run Chinook ESU continues to warrant listing under the ESA as a threatened species.

*Central California Coast Coho ESU*

The BRT concluded that the naturally spawned component of the Central California Coast coho ESU is ''in danger of extinction.'' Our assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to PECE, do not provide sufficient certainty of implementation and effectiveness to alter the assessment that the ESU is ''in danger of extinction.'' We conclude that the ESU in-total is in danger of extinction throughout all or a

significant portion of its range. We determine that the Central California Coast coho ESU, presently listed as a threatened species, warrants listing as an endangered species under the ESA.

*Southern Oregon/Northern California Coast Coho ESU*

The BRT concluded that the naturally spawned component of the Southern Oregon/Northern California Coast coho ESU is ''likely to become endangered within the foreseeable future.'' Our assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to PECE, do not provide sufficient certainty of implementation and effectiveness to alter the assessment that the ESU is ''likely to become endangered within the foreseeable future.'' We conclude that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and determine that the Southern Oregon/Northern California Coast coho ESU continues to warrant listing under the ESA as a threatened species.

*Lower Columbia River Coho ESU*

The BRT concluded that the naturally spawned component of the Lower Columbia River coho ESU is ''in danger of extinction.'' The BRT observed that although the scale of artificial propagation poses genetic and ecological threats to the two extant natural populations in the ESU, the within-ESU hatchery programs represent a substantial proportion of the genetic resources remaining in the ESU. However, the manner in which the majority of these hatchery fish are being produced does not adhere to best management practices, and may be compromising the integrity of these genetic resources. Our assessment of the effects of artificial propagation on the ESU's extinction risk concluded that hatchery programs collectively mitigate the immediacy of extinction risk for the Lower Columbia River coho ESU in-total in the short term, but that these programs do not substantially reduce the extinction risk of the ESU in the foreseeable future (NMFS, 2004c). Protective efforts, as evaluated pursuant to PECE, do not provide sufficient certainty of implementation and effectiveness to alter the assessment that the ESU is ''likely to become endangered within the foreseeable future.'' We conclude that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and determine that Lower Columbia River coho ESU warrants listing under the ESA as a threatened species.

*Columbia River Chum ESU*

The BRT concluded that the Columbia River chum ESU is ''likely to become endangered within the foreseeable future.'' Our assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to PECE, do not provide sufficient certainty of implementation and effectiveness to alter the assessment that the ESU is ''likely to become endangered within the foreseeable future.'' We conclude that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and determine that the Columbia River chum ESU continues to warrant listing under the ESA as a threatened species.

*Hood Canal Summer Chum ESU*

The BRT concluded that the naturally spawned component of the Hood Canal summer-run chum ESU is ''likely to become endangered within the foreseeable future.'' Our assessment of the effects of artificial propagation on the ESU's extinction risk concluded that the within-ESU hatchery programs do not substantially reduce the extinction risk of the ESU in-total (NMFS, 2004c). Protective efforts, as evaluated pursuant to PECE, do not provide sufficient certainty of implementation and effectiveness to alter the assessment that the ESU is ''likely to become endangered within the foreseeable future. We conclude that the ESU in-total is likely to become endangered within the foreseeable future throughout all or a significant portion of its range, and determine that the Hood Canal summer chum ESU continues to warrant listing under the ESA as a threatened species.

TABLE 2.—SUMMARY OF THE PREVIOUS ENDANGERED SPECIES ACT (ESA) STATUS AND THE FINAL LISTING DETERMINATIONS FOR 16 EVOLUTIONARY SIGNIFICANT UNITS (ESUS) OF WEST COAST SALMON

| Evolutionarily significant unit (ESU) | Previous ESA listing status | Final listing determination | Number of artificial propagation programs included in the ESU |
|---|---|---|---|
| Snake River sockeye ESU | Endangered | Endangered | 1 |
| Ozette Lake sockeye ESU | Threatened | Threatened | 2 |
| Sacramento River winter-run Chinook ESU | Endangered | Endangered | 2 |
| Central Valley spring-run Chinook ESU | Threatened | Threatened | 1 |
| California Coastal Chinook ESU | Threatened | Threatened | 7 |
| Upper Willamette River Chinook | Threatened | Threatened | 7 |
| Lower Columbia River Chinook ESU | Threatened | Threatened | 17 |
| Upper Columbia River spring-run Chinook ESU | Endangered | Endangered | 6 |
| Puget Sound Chinook ESU | Threatened | Threatened | 26 |
| Snake River fall-run Chinook ESU | Threatened | Threatened | 4 |
| Snake River spring/summer-run Chinook ESU | Threatened | Threatened | 15 |
| Central California Coast coho ESU | Threatened | Endangered | 4 |
| Southern Oregon/Northern California Coast coho ESU | Threatened | Threatened | 3 |
| Lower Columbia River coho ESU | Threatened | Threatened | 25 |
| Columbia River chum ESU | Threatened | Threatened | 3 |
| Hood Canal summer-run chum ESU | Threatened | Threatened | 8 |

**Prohibitions and Protective Regulations**

ESA section 9(a) take prohibitions (16 U.S.C. 1538(a)(1)(B)) apply to all species listed as endangered. Hatchery stocks determined to be part of endangered ESUs are afforded the full protections of the ESA. In the case of threatened species, ESA section 4(d) leaves it to the Secretary's discretion to determine whether and to what extent conservation measures may be appropriate, and directs the agency to issue regulations it considers necessary and advisable for the conservation of the species. NMFS has flexibility under section 4(d) to tailor protective regulations based on the contributions of available conservation measures. The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species.

**Previously Promulgated 4(d) Protective Regulations**

NMFS has already adopted ESA 4(d) rules that exempt or ''limit'' a range of activities from the take prohibitions for certain threatened salmon and *O. mykiss* ESUs (62 FR 38479, July 18, 1997; 65 FR 42422, July 10, 2000; 65 FR 42485, July 10, 2000; 67 FR 1116, January 9, 2002). Currently there are a total of 29 ''limits'' to ESA Section 9(a) ''take'' prohibitions for threatened salmonid ESUs (see the proposed rule, and references therein, for a more detailed description of the specific 4(d) limits; 69 FR at 33166; June 14, 2004). The previously promulgated limits do not apply to all threatened ESUs, and several of the limits are redundant, outdated, or are located disjunctly in the Code of Federal Regulations (CFR).

The first six of these limits (50 CFR 223.204(b)(1) through (b)(6)) were published as an interim rule in 1997 for the Southern Oregon/Northern California Coast coho ESU (62 FR 38479, July 18, 1997). These six limits allow for the take of coho salmon in Oregon and California, under certain circumstances, if the take is: Part of approved fisheries management plans; part of an approved hatchery program; part of approved fisheries research and monitoring activities; or part of approved habitat restoration activities.

In 2000, NMFS promulgated 13 limits affecting, in total, 14 ESUs in California, Oregon, and Washington (65 FR 42422, July 10, 2000; 50 CFR 223.203(b)(1) through (b)(13)). These ''limits'' include: Paragraph (b)(1) activities conducted in accordance with ESA section 10 take authorization; paragraph (b)(2) scientific or artificial propagation activities with pending applications at the time of rulemaking; paragraph (b)(3) emergency actions related to injured, stranded, or dead salmonids; paragraph (b)(4) fishery management activities; paragraph (b)(5) hatchery and genetic management plans; paragraph (b)(6) activities in compliance with joint tribal/state plans developed within *United States (U.S.)* v. *Washington* or *U.S.* v. *Oregon;* paragraph (b)(7) scientific research activities permitted or conducted by the states; paragraph (b)(8) state, local, and private habitat restoration activities; paragraph (b)(9) properly screened water diversion devices; paragraph (b)(10) routine road maintenance activities; paragraph (b)(11) certain park pest management activities in Portland, Oregon; paragraph (b)(12) certain municipal, residential, commercial, and industrial development and redevelopment activities; and paragraph (b)(13) forest management activities on state and private lands within the State of Washington. The Southern Oregon/Northern California Coasts coho ESU was included under two of these 13 limits (limits 50 CFR 223.203(b)(1) and (b)(3)). The limits published in 2000 that addressed fishery and harvest management, scientific research, and habitat restoration activities did not supersede the six limits for the Southern Oregon/Northern California Coast coho ESU promulgated in the 1997 interim rule, despite addressing the same types of activities (although for different ESUs). Also in 2000, NMFS issued a limit for all threatened ESUs exempting activities undertaken consistent with an approved tribal resource management plan (65 FR 42485, July 10, 2000; 50 CFR 223.209).

In 2002, NMFS added an additional nine limits (67 FR 1116, January 9, 2002; 50 CFR 223.203(b)(14) through (b)(22)) addressing four salmonid ESUs in California: the Central Valley spring-run Chinook, California Coastal Chinook, Central California Coast coho, and Northern California *O. mykiss* ESUs. These limits are essentially identical to limits previously promulgated in 2000. These additional nine limits similarly address emergency actions, fishery management activities, artificial propagation programs, scientific research, habitat restoration activities, properly screened water diversions, routine road maintenance activities, and development and redevelopment activities. Rather than including the four California ESUs under the limits promulgated in 2000, these ESUs were treated under separate limits.

*Final Amendments to the 4(d) Protective Regulations*

As part of this final rulemaking we are amending the existing 4(d) protective regulations for threatened salmon and *O. mykiss* ESUs to: (1) Provide needed flexibility in fisheries and hatchery management, and (2) simplify and clarify the existing regulations so that they may be more efficiently and effectively accessed and interpreted by all affected parties. The specific changes being made to the application of the take prohibitions and limits under 4(d) are described in the following two subsections (''Changes in the Application of the Take Prohibitions,'' and ''Clarifying Amendments to the 4(d) Protective Regulations'').

*Changes in the Application of the Take Prohibitions*—We are finalizing an amendment to the existing 4(d) protective regulations to provide the necessary flexibility to ensure that fisheries and artificial propagation programs are managed consistently with the conservation needs of ESA-listed ESUs. For threatened salmon and *O. mykiss* ESUs, we will apply section 4(d) protections to natural and hatchery fish with an intact adipose fin, but not to listed hatchery fish that have had their adipose fin removed prior to release into the wild. (The removal (''clipping'') of the adipose fin from hatchery fish prior to their release into the natural environment is a commonly employed method for the marking of hatchery production.) Many hatcheries produce fish that are not part of a listed ESU, while others produce fish that are part of a listed ESU (and thus also listed in this final rule) but are surplus to conservation and recovery needs, for the purpose of contributing to sustainable fisheries. With their adipose fin removed, these non-listed and surplus listed hatchery fish can be visually distinguished from listed fish requiring protection for conservation and/or recovery purposes. Exempted from take prohibitions, these adipose-fin-clipped hatchery fish can be harvested in fisheries, including but not limited to mark selective fisheries, that have appropriate ESA authorization. In addition to adipose-fin-clipped hatchery fish, other listed hatchery fish (with intact adipose fins) that are surplus to the recovery needs of an ESU and that are otherwise distinguishable from naturally spawned fish in the ESU (*e.g.*, by run timing, location, or other marking methods) may be exempted from the section 4(d) protections under the available limits. NMFS believes this approach provides needed flexibility to appropriately manage artificial

propagation and direct take of threatened salmon and *O. mykiss* for the conservation and recovery of these ESUs.

Not all hatchery stocks considered to be part of listed ESUs are of equal value for use in conservation and recovery. Certain ESU hatchery stocks may comprise a substantial portion of the genetic diversity remaining in a threatened ESU, and thus are essential assets for ongoing and future recovery efforts. If released with adipose fins intact, hatchery fish in these populations would be afforded protections under the amended 4(d) protective regulations. NMFS, however, may need to approve the take of listed hatchery stocks to manage the number of naturally spawning hatchery fish to limit potential adverse effects on the local natural population(s). Other hatchery stocks, although considered to be part of a threatened ESU, may be of limited or uncertain conservation value at the present time. Artificial propagation programs producing within-ESU hatchery populations could release adipose-fin-clipped fish, such that protections under 4(d) would not apply, and these hatchery fish could fulfill other purposes (*e.g.*, fulfilling Federal trust and tribal treaty obligations) while preserving all future recovery options. If it is later determined through ongoing recovery planning efforts that these hatchery stocks are essential for recovery, the relevant hatchery program(s) could discontinue removal of the adipose fin from all or a sufficient portion of its production as necessary to meet recovery needs.

This amendment also does not apply the take prohibitions to resident or residualized fish in salmonid ESUs, principally affecting *O. nerka* and *O. mykiss* ESUs. The kokanee (resident *O. nerka*) population that co-occurs with threatened Ozette Lake sockeye is not considered part of the ESU, and residualized sockeye are believed to be a minor components of the ESU. We believe that extending the take prohibitions to resident or residualized *O. nerka* is not necessary for the conservation and recovery of the Ozette Lake sockeye ESU. Furthermore, extending the take prohibitions to resident *O. nerka* would result in considerable confusion given the presence of a co-occurring resident kokanee population that is not listed under the ESA. We do not have sufficient information to suggest that extending the ESA take prohibitions to resident *O. mykiss* populations would confer any additional conservation benefits to listed *O. mykiss* ESUs. Rainbow trout stocks are presently being managed conservatively under state regulations in support of conserving listed steelhead, and additional conservation benefits would not be accrued by extending Federal take prohibitions to these resident populations.

*Clarifying Amendments to the 4(d) Protective Regulations*—Although the existing ESA section 4(d) regulations for threatened salmonids have proven effective at appropriately protecting threatened salmonid ESUs and authorizing certain activities, several of the limits described therein are redundant, outdated, or are located disjunctly in the Code of Federal Regulations (CFR). The resulting complexity of the existing 4(d) regulations unnecessarily increases the administrative and regulatory burden of managing protective regulations for threatened ESUs, and does not effectively convey to the public the specific ESUs for which certain activities may be exempted from the take prohibitions under 4(d). As part of this final rulemaking, we are clarifying the existing section 4(d) regulations for threatened salmonids so that they can be more efficiently and effectively accessed and interpreted by all affected parties. These clarifying amendments are: (1) To amend the expired 4(d) limit (§ 223.203(b)(2)), which provided a temporary exemption for ongoing research and enhancement activities with pending applications during the 2000 4(d) rulemaking, to temporarily exempt ongoing research and enhancement activities affected by the current rulemaking process; (2) to move the description of the limit for Tribal Resource Management Plans (§ 223.209) so that the text would appear next to the 4(d) rule in the CFR, improving the clarity of the 4(d) regulations; (3) to apply the amended 4(d) take prohibitions and the 14 limits promulgated in 2000 (as modified by these amendments) to the Lower Columbia River coho ESU which is newly being listed as threatened; and (4) to apply the amended 4(d) take prohibitions and the 14 limits promulgated in 2000 (as modified by these amendments) to all threatened salmon and *O. mykiss* ESUs, thus bringing them under the same 4(d) protective regulations.

*Other Protective Regulations*

Section 7(a)(4) of the ESA requires that Federal agencies confer with NMFS on any actions likely to jeopardize the continued existence of a species proposed for listing and on actions likely to result in the destruction or adverse modification of proposed critical habitat. For listed species, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS. Examples of Federal actions likely to affect salmon include authorized land management activities of the FS and the BLM, as well as operation of hydroelectric and storage projects of the BOR and the USACE. Such activities include timber sales and harvest, permitting livestock grazing, hydroelectric power generation, and flood control. Federal actions, including the USACE section 404 permitting activities under the Clean Water Act, USACE permitting activities under the River and Harbors Act, Federal Energy Regulatory Commission (FERC) licenses for non-Federal development and operation of hydropower, and Federal salmon hatcheries, may also require consultation.

Sections 10(a)(1)(A) and 10(a)(1)(B) of the ESA provide NMFS with authority to grant exceptions to the ESA's ''take'' prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) conducting research that involves a directed take of listed species. A directed take refers to the intentional take of listed species. NMFS has issued section 10(a)(1)(A) research/enhancement permits for currently listed ESUs for a number of activities, including trapping and tagging, electroshocking to determine population presence and abundance, removal of fish from irrigation ditches, and collection of adult fish for artificial propagation programs. Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities which may incidentally take listed species. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include the operation and release of artificially propagated fish by state or privately operated and funded hatcheries, state or academic research that may not incidentally take listed species and is receiving Federal authorization or funding, the implementation of state fishing regulations, logging, road building, grazing, and diverting water into private lands.

We are concerned about the potential for disruption of ongoing scientific

research, monitoring, and conservation activities, especially during the coming summer/fall field seasons. Consistent with the ''grace period for pending applications for 4(d) approval of research and enhancement activities,'' we are extending a similar grace period for pending permit applications under sections 10(a)(1)(a) and 10(a)(1)(B). The take prohibitions applicable to threatened species will not apply to activities specified in an application for a permit for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the NOAA Assistant Administrator for Fisheries no later than 60 days from the date of publication of this notice. This grace period for pending scientific research and enhancement applications will remain in effect until the issuance or denial of authorization, or 6 months from the date of publication of this notice, whichever occurs earliest.

**Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA**

NMFS and the FWS published in the **Federal Register** on July 1, 1994 (59 FR 34272), a policy that NMFS shall identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. At the time of the final rule, NMFS must identify to the extent known, specific activities that will not be considered likely to result in violation of section 9, as well as activities that will be considered likely to result in violation. We believe that, based on the best available information, the following actions will not result in a violation of section 9:

1. Possession of fish from any ESU listed as threatened or endangered that are acquired lawfully by permit issued by NMFS pursuant to section 10 of the ESA, or by the terms of an incidental take statement issued pursuant to section 7 of the ESA; or

2. Federally funded or approved projects that involve activities such as silviculture, grazing, mining, road construction, dam construction and operation, discharge of fill material, stream channelization or diversion for which section 7 consultation has been completed, and when activities are conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanying a biological opinion.

There are many activities that we believe could potentially ''harm'' salmon, which is defined by our regulations as ''an act which actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation which actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including, breeding, spawning, rearing, migrating, feeding or sheltering'' (50 CFR 222.102 [harm]). Activities that may harm the listed ESUs, resulting in a violation of the section 9 take prohibition, include, but are not limited to:

1. Land-use activities that adversely affect habitats for any listed ESU (*e.g.*, logging, grazing, farming, urban development, road construction in riparian areas and areas susceptible to mass wasting and surface erosion);

2. Destruction/alteration of the habitats for any listed ESU, such as removal of large woody debris and ''sinker logs'' or riparian shade canopy, dredging, discharge of fill material, draining, ditching, diverting, blocking, or altering stream channels or surface or ground water flow;

3. Discharges or dumping of toxic chemicals or other pollutants (*e.g.*, sewage, oil, gasoline) into waters or riparian areas supporting listed ESUs;

4. Violation of discharge permits;

5. Application of pesticides affecting water quality or riparian areas for listed ESUs;

6. Interstate and foreign commerce of fish from any of the listed ESUs and import/export of fish from any listed ESU without a threatened or endangered species permit;

7. Collecting or handling of fish from any of the listed ESUs. Permits to conduct these activities are available for purposes of scientific research or to enhance the conservation or survival of the species; or

8. Introduction of non-native species likely to prey on fish from any listed ESU or displace them from their habitat.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of fish in any of the listed ESUs under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of the section 9 take prohibition, and general inquiries regarding prohibitions and permits, should be directed to NMFS (see **ADDRESSES**).

**Effective Date of the Final Listing Determinations and Protective Regulations**

Given the cultural, scientific, and recreational importance of West Coast salmon, and the broad geographic range of these ESUs, we recognize that numerous parties may be affected by these listing determinations and by the final amendments to the 4(d) protective regulations. Therefore, to permit an orderly implementation of the consultation requirements and take prohibitions associated with these actions, the final listings and protective regulations will take effect on August 29, 2005. The take prohibitions applicable to threatened species do not apply to activities specified in an application for a permit or 4(d) approval for scientific purposes or to enhance the conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than August 29, 2005. This ''grace period'' for pending research and enhancement applications will remain in effect until the issuance or denial of authorization, or December 28, 2005, whichever occurs earliest.

**Critical Habitat**

Critical habitat is either designated or proposed for designation for all but one of the ESUs (the Lower Columbia River coho ESU) addressed in this **Federal Register** notice. Final critical habitat designations exist for: the Sacramento River winter-run Chinook ESU (58 FR 33212, June 16, 1993); the Snake River sockeye, spring/summer Chinook, and fall-run Chinook ESUs (58 FR 68543, December 28, 1993); and the Southern Oregon/Northern California Coasts and Central California Coast coho ESUs (64 FR 24049, May 5, 1999). Critical habitat was recently proposed for the following 20 ESUs (69 FR 71880, December 10, 2004; 69 FR 74572, December 14, 2004): Puget Sound Chinook; Lower Columbia River Chinook; Upper Willamette River Chinook ; Upper Columbia River spring-run Chinook; California Coastal Chinook; Central Valley spring-run Chinook; Oregon Coast coho; Hood Canal summer-run chum; Columbia River chum; Ozette Lake sockeye; Upper Columbia River *O. mykiss*; Snake River Basin *O. mykiss*; Middle Columbia River *O. mykiss*'; Lower Columbia River *O. mykiss*; Upper Willamette River *O. mykiss*; Northern California *O. mykiss*; Central California Coast *O. mykiss*; South-Central California Coast *O. mykiss*; Southern California *O. mykiss*; and Central Valley *O. mykiss*. In keeping with a Consent Decree and

Stipulated Order of Dismissal approved by the D.C. District Court (*Pacific Coast Federation of Fishermen's Associations, Institute for Fisheries Resources, Center for Biological Diversity, Oregon Natural Resources Council, Pacific Rivers Council and the Environmental Protection Information Center* v. *NMFS*, Civ. No. 031833), on or before August 15, 2005, we will submit to the **Federal Register** for publication the final rules designating critical habitat for those of the 20 ESUs identified above that are included on the lists of threatened and endangered species as of that date.

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Section 4(b)(6)(C)(ii) provides that, where critical habitat is not determinable at the time of final listing, we may extend the period for designating critical habitat by not more than one additional year. In keeping with agency regulations at 50 CFR 424.12, we conclude that critical habitat is not presently determinable for the Lower Columbia River coho ESU. Specifically, we lack biological and mapping information sufficient to perform required analyses of the impacts of critical habitat designation to determine which areas may qualify as critical habitat for this ESU. Therefore, we have decided to proceed with the final listing determination now and propose critical habitat in a separate rulemaking. In this notice we are soliciting information necessary to inform the designation of critical habitat for this ESU (see Information Solicited and **ADDRESSES**) and will consider such information in support of a future proposed designation.

## Information Solicited

As noted previously, we are soliciting biological and economic information relevant to making critical habitat designations for the Lower Columbia River coho ESU. Data reviewed may include, but are not limited to, scientific or commercial publications, administrative reports, maps or other graphic materials, information received from experts, and comments from interested parties. Comments and data particularly are sought concerning:

(1) Maps and specific information describing the amount, distribution, and use type (*e.g.,* spawning, rearing, or migration) of coho salmon habitat in the lower Columbia River; as well as any additional information on occupied and unoccupied habitat areas;

(2) The reasons why any habitat should or should not be determined to be critical habitat as provided by sections 3(5)(A) and 4(b)(2) of the ESA;

(3) Information regarding the benefits of excluding lands covered by Habitat Conservation Plans (ESA section 10(a)(1)(B) permits), including the regulatory burden designation may impose on landowners and the likelihood that exclusion of areas covered by existing plans will serve as an incentive for other landowners to develop plans covering their lands;

(4) Information regarding the benefits of excluding Federal and other lands covered by habitat conservation strategies and plans (*e.g.* Northwest Forest Plan, Washington's Forest and Fish Plan, and the Oregon Plan), including the regulatory burden designation may impose on land managers and the likelihood that exclusion of areas covered by existing plans will serve as an incentive for land users to implement the conservation measures covering the lands subject to these plans;

(5) Information regarding the benefits of designating particular areas as critical habitat;

(6) Current or planned activities in the areas proposed for designation and their possible impacts on proposed critical habitat;

(7) Any foreseeable economic or other potential impacts resulting from the proposed designations, in particular, any impacts on small entities;

(8) Whether specific unoccupied areas (*e.g.*, areas behind dikes or dams) not presently proposed for designation may be essential for conservation of this ESU; and

(9) Potential peer reviewers for a proposed critical habitat designation, including persons with biological and economic expertise relevant to the designations.

NMFS seeks information regarding critical habitat for the Lower Columbia River coho ESU as soon as possible, but by no later than August 29, 2005 (see **ADDRESSES**, above).

## Classification

### *National Environmental Policy Act*

ESA listing decisions are exempt from the requirement to prepare an environmental assessment or environmental impact statement under the NEPA. See NOAA Administrative Order 216–6.03(e)(1) and *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir. 1981). Thus, we have determined that the final listing determinations for 16 ESUs of Pacific salmonids described in this notice are exempt from the requirements of the NEPA of 1969. We conducted an Environmental Assessment (EA) under the NEPA analyzing the proposed amendments to the 4(d) protective regulations for Pacific salmonids. We solicited comment on the EA as part of the proposed rule, as well as during a subsequent comment period following formal notice in the **Federal Register** of the availability of the draft EA for review. Informed by the comments received, we have finalized the EA, and issued a Finding of No Significant Impact for the amended 4(d) protective regulations.

### *Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule issued under authority of ESA section 4, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule, and is not repeated here. No comments were received regarding that certification. As a result, no final regulatory flexibility analysis for the listing determinations or 4(d) protective regulations contained in this final rule has been prepared.

### *Paperwork Reduction Act (PRA)*

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This final rule does not contain a collection-of-information requirement for purposes of the PRA of 1980.

### *Executive Order (E.O.) 12866*

The final listing determinations and amendments to the ESA 4(d) protective regulations addressed in this rule have been determined to be significant for the purposes of E.O. 12866. We prepared a Regulatory Impact Review which was provided to the OMB with the publication of the proposed rule.

### *E.O. 13084—Consultation and Coordination With Indian Tribal Governments*

E.O. 13084 requires that if NMFS issues a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, NMFS must consult with those governments or the Federal government must provide the funds

necessary to pay the direct compliance costs incurred by the tribal governments. This final rule does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this proposed rule. Nonetheless, we intend to inform potentially affected tribal governments and to solicit their input and coordinate on future management actions.

*E.O. 13132—Federalism*

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this final rule. In fact, this notice provides mechanisms by which NMFS, in the form of 4(d) limits to take prohibitions, may defer to state and local governments where they provided necessary protections for threatened salmonids.

**References**

A complete list of all references cited herein is available upon request (see **ADDRESSES**), or can be obtained from the Internet at: *http://www.nwr.noaa.gov*.

**List of Subjects**

*50 CFR Part 223*

Enumeration of threatened marine and anadromous species, restrictions applicable to threatened marine and anadromous species.

*50 CFR Part 224*

Enumeration of endangered marine and anadromous species.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: June 16, 2005.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

■ For the reasons set out in the preamble, 50 CFR parts 223 and 224 are amended as follows:

## PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

■ 2. In § 223.102, paragraph (a) is revised to read as follows:

**§ 223.102 Enumeration of threatened marine and anadromous species.**

* * * * *

(a) *Marine and anadromous fish.* The following table lists the common and scientific names of threatened species, the locations where they are listed, and the citations for the listings and critical habitat designations.

| Species [1] | | Where Listed | Citation(s) for listing determination(s) | Citation for critical habitat designation |
|---|---|---|---|---|
| Common name | Scientific name | | | |
| (1) Gulf sturgeon | *Acipenser oxyrinchus desotoi.* | Everywhere | 56 FR 49653, Sep. 30, 1991. | 68 FR 13370, Mar. 19, 2003. |
| (2) Ozette Lake sockeye | *Oncorhynchus nerka* | U.S.A., WA, including all naturally spawned populations of sockeye salmon in Ozette Lake and streams and tributaries flowing into Ozette Lake, Washington, as well as two artificial propagation programs: the Umbrella Creek and Big River sockeye hatchery programs. | 64 FR 14528, Mar. 25, 1999. June 28, 2005. | NA [vacated 9/29/03, 68 FR 55900]. |
| (3) Central Valley spring-run Chinook. | *Oncorhynchus tshawytscha.* | U.S.A., CA, including all naturally spawned populations of spring-run Chinook salmon in the Sacramento River and its tributaries in California, including the Feather River, as well as the Feather River Hatchery spring-run Chinook program. | 64 FR 50394, Sep. 16, 1999. June 28, 2005. | NA [vacated 9/29/03, 68 FR 55900]. |
| (4) California Coastal Chinook. | *Oncorhynchus tshawytscha.* | U.S.A., CA, including all naturally spawned populations of Chinook salmon from rivers and streams south of the Klamath River to the Russian River, California, as well as seven artificial propagation programs: the Humboldt Fish Action Council (Freshwater Creek), Yager Creek, Redwood Creek, Hollow Tree, Van Arsdale Fish Station, Mattole Salmon Group, and Mad River Hatchery fall-run Chinook hatchery programs. | 64 FR 50394, Sep. 16, 1999. June 28, 2005. | NA [vacated 9/29/03, 68 FR 55900]. |

| Species [1] | | Where Listed | Citation(s) for listing determination(s) | Citation for critical habitat designation |
|---|---|---|---|---|
| Common name | Scientific name | | | |
| (5) Upper Willamette River Chinook. | *Oncorhynchus tshawytscha*. | U.S.A., OR, including all naturally spawned populations of spring-run Chinook salmon in the Clackamas River and in the Willamette River, and its tributaries, above Willamette Falls, Oregon, as well as seven artificial propagation programs: the McKenzie River Hatchery (Oregon Department of Fish and Wildlife (ODFW) stock #24), Marion Forks/North Fork Santiam River (ODFW stock #21), South Santiam Hatchery (ODFW stock #23) in the South Fork Santiam River, South Santiam Hatchery in the Calapooia River, South Santiam Hatchery in the Mollala River, Willamette Hatchery (ODFW stock #22), and Clackamas hatchery (ODFW stock #19) spring-run Chinook hatchery programs. | 64 FR 14308, Mar. 24, 1999.<br>June 28, 2005. | NA<br>[vacated 9/29/03, 68 FR 55900]. |
| (6) Lower Columbia River Chinook. | *Oncorhynchus tshawytscha*. | U.S.A., OR, WA, including all naturally spawned populations of Chinook salmon from the Columbia River and its tributaries from its mouth at the Pacific Ocean upstream to a transitional point between Washington and Oregon east of the Hood River and the White Salmon River, and includes the Willamette River to Willamette Falls, Oregon, exclusive of spring-run Chinook salmon in the Clackamas River, as well as seventeen artificial propagation programs: the Sea Resources Tule Chinook Program, Big Creek Tule Chinook Program, Astoria High School (STEP) Tule Chinook Program, Warrenton High School (STEP) Tule Chinook Program, Elochoman River Tule Chinook Program, Cowlitz Tule Chinook Program, North Fork Toutle Tule Chinook Program, Kalama Tule Chinook Program, Washougal River Tule Chinook Program, Spring Creek NFH Tule Chinook Program, Cowlitz spring Chinook Program in the Upper Cowlitz River and the Cispus River, Friends of the Cowlitz spring Chinook Program, Kalama River spring Chinook Program, Lewis River spring Chinook Program, Fish First spring Chinook Program, and the Sandy River Hatchery (ODFW stock #11) Chinook hatchery programs. | 64 FR 14308, Mar. 24, 1999.<br>June 28, 2005. | NA<br>[vacated 9/29/03, 68 FR 55900]. |

| Species [1] | | Where Listed | Citation(s) for listing determination(s) | Citation for critical habitat designation |
|---|---|---|---|---|
| Common name | Scientific name | | | |
| (7) Puget Sound Chinook | *Oncorhynchus tshawytscha*. | U.S.A., WA, including all naturally spawned populations of Chinook salmon from rivers and streams flowing into Puget Sound including the Straits of Juan De Fuca from the Elwha River, eastward, including rivers and streams flowing into Hood Canal, South Sound, North Sound and the Strait of Georgia in Washington, as well as twenty-six artificial propagation programs: the Kendal Creek Hatchery, Marblemount Hatchery (fall, spring yearlings, spring subyearlings, and summer run), Harvey Creek Hatchery, Whitehorse Springs Pond, Wallace River Hatchery (yearlings and subyearlings), Tulalip Bay, Issaquah Hatchery, Soos Creek Hatchery, Icy Creek Hatchery, Keta Creek Hatchery, White River Hatchery, White Acclimation Pond, Hupp Springs Hatchery, Voights Creek Hatchery, Diru Creek, Clear Creek, Kalama Creek, George Adams Hatchery, Rick's Pond Hatchery, Hamma Hamma Hatchery, Dungeness/Hurd Creek Hatchery, Elwha Channel Hatchery Chinook hatchery programs. | 64 FR 14308, Mar. 24, 1999.<br>June 28, 2005. | NA<br>[vacated 9/29/03, 68 FR 55900]. |
| (8) Snake River fall-run Chinook. | *Oncorhynchus tshawytscha*. | U.S.A., OR, WA, ID, including all naturally spawned populations of fall-run Chinook salmon in the mainstem Snake River below Hells Canyon Dam, and in the Tucannon River, Grande Ronde River, Imnaha River, Salmon River, and Clearwater River, as well as four artificial propagation programs: the Lyons Ferry Hatchery, Fall Chinook Acclimation Ponds Program, Nez Perce Tribal Hatchery, and Oxbow Hatchery fall-run Chinook hatchery programs. | 57 FR 14653, Apr. 22, 1992, 57 FR 23458, Jun. 3, 1992.<br>June 28, 2005. | 58 FR 68543, Dec. 28, 1993. |
| (9) Snake River spring/summer-run Chinook. | *Oncorhynchus tshawytscha*. | U.S.A., OR, WA, ID, including all naturally spawned populations of spring/summer-run Chinook salmon in the mainstem Snake River and the Tucannon River, Grande Ronde River, Imnaha River, and Salmon River subbasins, as well as fifteen artificial propagation programs: the Tucannon River conventional Hatchery, Tucannon River Captive Broodstock Program, Lostine River, Catherine Creek, Lookingglass Hatchery, Upper Grande Ronde, Imnaha River, Big Sheep Creek, McCall Hatchery, Johnson Creek Artificial Propagation Enhancement, Lemhi River Captive Rearing Experiment, Pahsimeroi Hatchery, East Fork Captive Rearing Experiment, West Fork Yankee Fork Captive Rearing Experiment, and the Sawtooth Hatchery spring/summer-run Chinook hatchery programs. | 57 FR 14653, Apr. 22, 1992, 57 FR 23458, Jun. 3, 1992.<br>June 28, 2005 | 58 FR 68543, Dec. 28, 1993. 64 FR 57399, Oct. 25, 1999. |
| (10) Southern Oregon/Northern California Coast coho. | *Oncorhynchus kisutch* ... | U.S.A., CA, OR, including all naturally spawned populations of coho salmon in coastal streams between Cape Blanco, Oregon, and Punta Gorda, California, as well three artificial propagation programs: the Cole Rivers Hatchery (ODFW stock #52), Trinity River Hatchery, and Iron Gate Hatchery coho hatchery programs. | 62 FR 24588, May 6, 1997.<br>June 28, 2005. | 64 FR 24049, May 5, 1999. |

| Species [1] | | Where Listed | Citation(s) for listing determination(s) | Citation for critical habitat designation |
|---|---|---|---|---|
| Common name | Scientific name | | | |
| (11) Lower Columbia River coho. | *Oncorhynchus kisutch* ... | U.S.A., OR, WA, including all naturally spawned populations of coho salmon in the Columbia River and its tributaries in Washington and Oregon, from the mouth of the Columbia up to and including the Big White Salmon and Hood Rivers, and includes the Willamette River to Willamette Falls, Oregon, as well as twenty-five artificial propagation programs: the Grays River, Sea Resources Hatchery, Peterson Coho Project, Big Creek Hatchery, Astoria High School (STEP) Coho Program, Warrenton High School (STEP) Coho Program, Elochoman Type-S Coho Program, Elochoman Type-N Coho Program, Cathlamet High School FFA Type-N Coho Program, Cowlitz Type-N Coho Program in the Upper and Lower Cowlitz Rivers, Cowlitz Game and Anglers Coho Program, Friends of the Cowlitz Coho Program, North Fork Toutle River Hatchery, Kalama River Type-N Coho Program, Kalama River Type-S Coho Program, Lewis River Type-N Coho Program, Lewis River Type-S Coho Program, Fish First Wild Coho Program, Fish First Type-N Coho Program, Syverson Project Type-N Coho Program, Eagle Creek National Fish Hatchery, Sandy Hatchery, and the Bonneville/Cascade/Oxbow complex coho hatchery programs. | June 28, 2005. ..... | NA |
| (12) Columbia River chum. | *Oncorhynchus keta* ..... | U.S.A., OR, WA, including all naturally spawned populations of chum salmon in the Columbia River and its tributaries in Washington and Oregon, as well as three artificial propagation programs: the Chinook River (Sea Resources Hatchery), Grays River, and Washougal River/Duncan Creek chum hatchery programs. | 64 FR 14508, Mar. 25, 1999.<br>June 28, 2005. | NA<br>[vacated 9/29/03, 68 FR 55900]. |
| (13) Hood Canal summer-run chum. | *Oncorhynchus keta* ..... | U.S.A., WA, including all naturally spawned populations of summer-run chum salmon in Hood Canal and its tributaries as well as populations in Olympic Peninsula rivers between Hood Canal and Dungeness Bay, Washington, as well as eight artificial propagation programs: the Quilcene NFH, Hamma Hamma Fish Hatchery, Lilliwaup Creek Fish Hatchery, Union River/Tahuya, Big Beef Creek Fish Hatchery, Salmon Creek Fish Hatchery, Chimacum Creek Fish Hatchery, and the Jimmycomelately Creek Fish Hatchery summer-run chum hatchery programs. | 64 FR 14508, Mar. 25, 1999.<br>June 28, 2005. | NA<br>[vacated 9/29/03, 68 FR 55900]. |
| (14) South-Central California Coast Steelhead. | *Oncorhynchus mykiss* .... | U.S.A., CA, including all naturally spawned populations of steelhead (and their progeny) in streams from the Pajaro River (inclusive), located in Santa Cruz County, California, to (but not including) the Santa Maria River. | 62 FR 49397, Aug. 18, 1997. | NA<br>[vacated 9/29/03, 68 FR 55900]. |

| Species [1] | | Where Listed | Citation(s) for listing determination(s) | Citation for critical habitat designation |
|---|---|---|---|---|
| Common name | Scientific name | | | |
| (15) Central California Coast Steelhead. | *Oncorhynchus mykiss* .... | U.S.A., CA, including all naturally spawned populations of steelhead (and their progeny) in streams from the Russian River to Aptos Creek, Santa Cruz County, Californian (inclusive), and the drainages of San Francisco and San Pablo Bays eastward to the Napa River (inclusive), Napa County, California. Excludes the Sacramento- San Joaquin River Basin of the Central Valley of California. | 62 FR 43937, Aug. 18, 1997. | NA [vacated 9/29/03, 68 FR 55900]. |
| (16) California Central Valley Steelhead. | *Oncorhynchus mykiss* .... | U.S.A., CA, including all naturally spawned populations of steelhead (and their progeny) in the Sacramento and San Joaquin Rivers and their tributaries, excluding steelhead from San Francisco and San Pablo Bays and their tributaries. | 63 FR 13347; Mar. 19, 1998. | NA [vacated 9/29/03, 68 FR 55900]. |
| (17) Northern California Steelhead. | *Oncorhynchus mykiss* .... | U.S.A., CA, including all naturally spawned populations of steelhead (and their progeny) in California coastal river basins from Redwood Creek in Humboldt County, California, to the Gualala River, inclusive, in Mendocino County, California. | 65 FR 36074, June 7, 2000. | NA |
| (18) Upper Willamette River Steelhead. | *Oncorhynchus mykiss* .... | U.S.A., OR, including all naturally spawned populations of winter-run steelhead in the Willamette River, Oregon, and its tributaries upstream from Willamette Falls to the Calapooia River, inclusive. | 62 FR 43937, Aug. 18, 1997. | NA [vacated 9/29/03, 68 FR 55900]. |
| (19) Lower Columbia River Steelhead. | *Oncorhynchus mykiss* .... | U.S.A., OR, WA, including all naturally spawned populations of steelhead (and their progeny) in streams and tributaries to the Columbia River between the Cowlitz and Wind Rivers, Washington, inclusive, and the Willamette and Hood Rivers, Oregon, inclusive. Excluded are steelhead in the upper Willamette River Basin above Willamette Falls, Oregon, and from the Little and Big White Salmon Rivers, Washington. | 62 FR 13347, Mar. 19, 1998. | NA [vacated 9/29/03, 68 FR 55900]. |
| (20) Middle Columbia River Steelhead. | *Oncorhynchus mykiss* .... | U.S.A., OR, WA, including all naturally spawned populations of steelhead in streams from above the Wind River, Washington, and the Hood River, Oregon (exclusive), upstream to, and including, the Yakima River, Washington. Excluded are steelhead from the Snake River Basin. | 57 FR 14517, Mar. 25, 1999. | NA [vacated 9/29/03, 68 FR 55900]. |
| (21) Snake River Basin Steelhead. | *Oncorhynchus mykiss* .... | U.S.A., OR, WA, ID, including all naturally spawned populations of steelhead (and their progeny) in streams in the Snake River Basin of southeast Washington, northeast Oregon, and Idaho. | 62 FR 43937, Aug. 18, 1997. | NA [vacated 9/29/03, 68 FR 55900]. |

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

■ 3. In § 223.203, paragraphs (a), (b) introductory text, and (b)(2) are revised and paragraphs (b)(14) through (22) are removed.

The revisions read as follows:

**§ 223.203 Anadromous fish.**

(a) *Prohibitions.* The prohibitions of section 9(a)(1) of the ESA (16 U.S.C. 1538(a)(1)) relating to endangered species apply to anadromous fish with an intact adipose fin that are part of the threatened species of salmonids listed in § 223.102(a)(2) through (a)(21).

* * * * *

(b) *Limits on the prohibitions.* The limits to the prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a) are described in the following paragraphs (b)(1) through (b)(13):

* * * * *

(2) The prohibitions of paragraph (a) of this section relating to threatened species of salmonids listed in § 223.102(a)(2) through (a)(21) do not apply to activities specified in an application for 4(d) authorization for scientific purposes or to enhance the

conservation or survival of the species, provided that the application has been received by the Assistant Administrator for Fisheries, NOAA (AA), no later than August 29, 2005. The prohibitions of this section apply to these activities upon the AA's rejection of the application as insufficient, upon issuance or denial of authorization, or December 28, 2005, whichever occurs earliest.

* * * * *

**§ 223.203 [Amended]**

■ 4. In § 223.203, paragraphs (b)(1) through (b)(13), and (c), the references in the sections listed in the first column below are revised according to the directions in the second and third columns.

| Section | Remove | Add |
|---|---|---|
| § 223.203(b)(1) | § 223.102(a)(1) through (a)(10), and (a)(12) through (a)(22) | § 223.102(a)(2) through (a)(21). |
| § 223.203(b)(3) | § 223.102(a)(4) through (a)(10), and (a)(12) through (a)(19) | § 223.102(a)(2) through (a)(21). |
| § 223.203(b)(4) | § 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19) | § 223.102(a)(2) through (a)(21). |
| § 223.203(b)(5) | § 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19) | § 223.102(a)(2) through (a)(21). |
| § 223.203(b)(6) | § 223.102(a)(7), (a)(8), (a)(10), and (a)(12) through (a)(19) | § 223.102(a)(2) through (a)(21). |
| § 223.203(b)(7) | § 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19) | § 223.102(a)(2) through (a)(21). |
| § 223.203(b)(8) | § 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19) | § 223.102(a)(2) through (a)(21). |
| § 223.203(b)(9) | § 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19) | § 223.102(a)(2) through (a)(21). |
| § 223.203(b)(10) | § 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19) | § 223.102(a)(2) through (a)(21). |
| § 223.203(b)(11) | § 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19) | § 223.102(a)(2) through (a)(21). |
| § 223.203(b)(12) | § 223.102(a)(5) through (a)(10), and (a)(12) through (a)(19) | § 223.102(a)(2) through (a)(21). |
| § 223.203(b)(13) | § 223.102(a)(12), (a)(13), (a)(16), (a)(17), and (a)(19) | § 223.102(a)(2) through (a)(22). |
| § 223.203(c) | § 223.102(a)(3), (a)(5) through (a)(10), and (a)(12) through (a)(22) | § 223.102(a)(2) through (a)(21). |
| § 223.203(c) | § 223.209(a) | § 223.204(a). |

**§ 223.204 [Removed]**

■ 5. Remove § 223.204.

**§ 223.209 [Redesignated as § 223.204]**

■ 6. Redesignate § 223.209 as § 223.204, and add and reserve new § 223.209.

## PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 7. The authority citation for part 224 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 8. Revise § 224.101(a) to read as follows:

**§ 224.101 Enumeration of endangered marine and anadromous species.**

* * * * *

(a) *Marine and anadromous fish.* The following table lists the common and scientific names of endangered species, the locations where they are listed, and the citations for the listings and critical habitat designations.

| Species [1] | | Where listed | Citation(s) for listing determination(s) | Citation for critical habitat designation |
|---|---|---|---|---|
| Common name | Scientific name | | | |
| Shortnose sturgeon | *Acipenser brevirostrum* | Everywhere | 32 FR 4001, Mar. 11, 1967. | NA. |
| Smalltooth sawfish | *Pristis pectinata* | U.S.A. | 68 FR 15674, Apr. 1, 2003. | NA. |
| Totoaba | *Cynoscion macdonaldi* | Everywhere | 44 FR 29480, May 21, 1979. | NA. |
| Atlantic salmon | *Salmon salar* | U.S.A., ME, Gulf of Maine population, which includes all naturally reproducing populations and those river-specific hatchery populations cultured from them. | 65 FR 69459, Nov. 17, 2000. | NA. |
| Snake River sockeye | *Oncorhynchus nerka* | U.S.A., ID, including all anadromous and residual sockeye salmon from the Snake River Basin, Idaho, as well as artificially propagated sockeye salmon from the Redfish Lake captive propagation program. | 56 FR 58619, Nov. 20, 1991. June 28, 2005. | 58 FR 68543, Dec. 28, 1993. |
| Sacramento River winter-run Chinook. | *Oncorhynchus tshawytscha.* | U.S.A., CA, including all naturally spawned populations of winter-run Chinook salmon in the Sacramento River and its tributaries in California, as well as two artificial propagation programs: winter-run Chinook from the Livingston Stone National Fish Hatchery (NFH), and winter run Chinook in a captive broodstock program maintained at Livingston Stone NFH and the University of California Bodega Marine Laboratory. | 52 FR 6041; Feb. 27, 1987, 55 FR 49623; Nov. 30, 1990. 59 FR 440; Jan. 1, 1994. June 28, 2005. | 58 FR 33212, June 16, 1993. |

| Species [1] | | Where listed | Citation(s) for listing determination(s) | Citation for critical habitat designation |
|---|---|---|---|---|
| Common name | Scientific name | | | |
| Upper Columbia spring-run Chinook. | *Oncorhynchus tshawytscha*. | U.S.A., WA, including all naturally spawned populations of Chinook salmon in all river reaches accessible to Chinook salmon in Columbia River tributaries upstream of the Rock Island Dam and downstream of Chief Joseph Dam in Washington (excluding the Okanogan River), the Columbia River from a straight line connecting the west end of the Clatsop jetty (south jetty, Oregon side) and the west end of the Peacock jetty (north jetty, Washington side) upstream to Chief Joseph Dam in Washington, as well as six artificial propagation programs: the Twisp River, Chewuch River, Methow Composite, Winthrop NFH, Chiwawa River, and White River spring-run Chinook hatchery programs. | 64 FR 14308, Mar. 24, 1999. June 28, 2005. | NA. [vacated 9/29/03; 68 FR 55900]. |
| Central California Coast coho. | *Oncorhynchus kisutch* ... | U.S.A., CA, including all naturally spawned populations of coho salmon from Punta Gorda in northern California south to and including the San Lorenzo River in central California, as well as populations in tributaries to San Francisco Bay, excluding the Sacramento-San Joaquin River system, as well four artificial propagation programs: the Don Clausen Fish Hatchery Captive Broodstock Program, Scott Creek/King Fisher Flats Conservation Program, Scott Creek Captive Broodstock Program, and the Noyo River Fish Station egg-take Program coho hatchery programs. | 61 FR 56138, Oct. 31, 1996. June 28, 2005. | 64 FR 24049, May 5, 1999. |
| Southern California Steelhead. | *Oncorhynchus mykiss* .... | U.S.A., CA, including all naturally spawned populations of steelhead (and their progeny), in streams from the Santa Maria River, San Luis Obispo County, California, (inclusive) to the United States—Mexico Border. | 62 FR 43937, Aug. 18, 1997. 67 FR 21586, May 1, 2002. | NA. [vacated 9/29/03; 68 FR 55900]. |
| Upper Columbia River Steelhead. | *Oncorhynchus mykiss* .... | U.S.A., WA, including the Wells Hatchery stock all naturally spawned populations of steelhead (and their progeny) in streams in the Columbia River Basin upstream from the Yakima River, Washington, to the United States-Canada border. | 62 FR 43937, Aug. 18, 1997. | NA. [vacated 9/29/03, 68 FR 55900]. |

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

[FR Doc. 05–12351 Filed 6–27–05; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 223 and 224

**[Docket No. 040511148–5151–02; I.D. 050304B]**

## Policy on the Consideration of Hatchery-Origin Fish in Endangered Species Act Listing Determinations for Pacific Salmon and Steelhead

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

**ACTION:** Final policy.

**SUMMARY:** We, the National Marine Fisheries Service (NMFS), announce a final policy addressing the role of artificially propagated (hatchery produced) Pacific salmon (*Oncorhynchus gorbuscha*, *O. keta*, *O. kisutch*, *O. nerka*, *O. tshawytscha*) and steelhead (*O. mykiss*) in listing determinations under the Endangered Species Act of 1973 (ESA), as amended. This final policy supersedes the Interim Policy on Artificial Propagation of Pacific Salmon under the Endangered

Species Act, published in the **Federal Register** on April 5, 1993. The Interim Policy is being revised in light of a 2001 United States District Court ruling that NMFS improperly listed only the naturally spawning component of Oregon Coast coho salmon under the ESA, excluding hatchery stocks that the agency had determined were part of the same ''distinct population segment'' (DPS) as the listed natural populations. The Court's ruling invalidated the practice described in the Interim Policy of generally excluding hatchery stocks in a DPS from listing unless it was determined that they contained a substantial proportion of the DPS's remaining genetic diversity and were ''essential for recovery.'' Under this new policy, hatchery stocks determined to be part of a DPS will be considered in determining whether a DPS is threatened or endangered under the ESA, and will be included in any listing of the DPS. This policy applies only to Pacific salmon and steelhead and only in the context of making ESA listing determinations.

**DATES:** This policy is effective immediately, June 28, 2005.

**ADDRESSES:** Chief, NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232, Facsimile (503) 230–5441.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding this notice please contact Garth Griffin, NMFS, Northwest Region,(503) 231–2005, Craig Wingert, NMFS, Southwest Region, (562) 980–4021, or Marta Nammack, NMFS, Office of Protected Resources (301) 713–1401.

**SUPPLEMENTARY INFORMATION:**

## Background

### *Statutory Provisions*

NMFS is responsible for determining whether species, subspecies, or DPSs of Pacific salmon and steelhead are threatened or endangered under the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*) Section 3 of the ESA defines (i) an endangered species as ''any species that is in danger of extinction throughout all or a significant portion of its range'' and (ii) a threatened species as one ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' To be considered for listing as threatened or endangered under the ESA, a group of organisms must constitute a species, which is defined in section 3 of the ESA to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' Since 1991, we have used the term ''evolutionarily significant unit'' (ESU) to refer to a DPS of Pacific salmon and steelhead, and have defined an ESU as a Pacific salmon or steelhead population or group of populations that (i) is substantially reproductively isolated from other conspecific populations, and (ii) represents an important component in the evolutionary legacy of the biological species (56 FR 58612; November 20, 1991). Section 4(b)(1)(A) of the ESA requires us to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account efforts being made to protect the species.

### *Past Pacific Salmon and Steelhead ESA Listings and the Alsea Decision*

Since 1991, we have conducted ESA status reviews of six species of Pacific salmonids in California, Oregon, Washington, and Idaho, identifying 52 ESUs, with 25 ESUs currently listed as threatened or endangered. Hatchery stocks are associated with many ESUs, and the number of hatchery fish often exceeds the abundance of natural-origin fish. The relationship of hatchery stocks to populations of natural-origin fish, and the manner in which within-ESU hatchery stocks are considered in assessing an ESU's level of extinction risk, can significantly affect the scope and outcome of a listing determination.

In past status reviews, we based our extinction risk assessments on whether the natural-origin fish in an ESU are, by themselves, self-sustaining in their natural ecosystem over the long term. We listed as ''endangered'' those ESUs whose natural-origin populations were found to have a present high risk of extinction, and listed as ''threatened'' those ESUs whose natural-origin populations were found likely to become endangered in the foreseeable future. Although we recognized that artificial propagation can be used as a conservation tool and has the potential to help speed recovery of natural populations, we did not explicitly consider the contribution of hatchery fish to the current overall viability of the ESU, or whether the presence of hatchery fish within the ESU might have the potential for reducing the risk of extinction of the ESU or the likelihood that the ESU would become endangered in the foreseeable future. (The listing of Snake River fall Chinook, however, is an exception. See 57 FR 14653; April 22, 1992.) We also recognized that artificial propagation can pose a variety of threats to the long-term persistence of the natural-origin populations within an ESU.

Under a 1993 Interim Policy on the consideration of artificially propagated Pacific salmon and steelhead under the ESA (April 5, 1993; 58 FR 17573), if it was determined that an ESU warranted listing, we then reviewed the associated hatchery stocks to determine if they were part of the ESU. We did not include hatchery stocks in an ESU if: (1) information indicated that the hatchery stock was of a different genetic lineage than the listed natural populations; (2) information indicated that hatchery practices had produced appreciable changes in the ecological and life-history characteristics of the hatchery stock and these traits were believed to have a genetic basis; or (3) there was substantial uncertainty regarding the relationship between hatchery fish and the existing natural population(s). The Interim Policy provided that hatchery salmon and steelhead found to be part of an ESU would not be listed under the ESA unless they were found to be essential for the ESU's recovery (i.e., if we determined that the hatchery stock contained a substantial portion of the genetic diversity remaining in the ESU). The result of the Interim Policy was that a listing determination for an ESU depended solely upon the relative health of the natural populations in an ESU, and that most hatchery stocks determined to be part of an ESU were excluded from any listing of the ESU.

Subsequently, in *Alsea Valley Alliance* v. *Evans*, 161 F. Supp.2d 1154 (D. Or. 2001), appeal dismissed, (*Alsea* decision), the United States District Court for the District of Oregon, set aside our 1998 ESA listing of Oregon Coast coho salmon (*O. kisutch*) because it impermissibly excluded hatchery fish within the ESU from listing. The court ruled that the ESA does not allow listing a subset of an ESU or DPS, and that we had improperly excluded stocks from the listing that we had determined were part of the ESU. Although the court's ruling affected only one ESU, the interpretive issue raised by the ruling called into question the validity of the Interim Policy implemented in nearly all of our Pacific salmon and steelhead listing determinations.

Accordingly, we announced that we would revise the 1993 Interim Policy (67 FR 6215; February 11, 2002), and on June 3, 2004, published in the **Federal Register** a proposed policy for the consideration of hatchery-origin fish in ESA listing determinations (proposed hatchery listing policy; 69 FR 31354).

*Summary of Proposed Hatchery Listing Policy*

The intent of the proposed policy is to provide guidance to NMFS personnel for considering hatchery-origin fish in making ESA listing determinations for Pacific salmon and steelhead. Specifically, the policy proposed: criteria for including hatchery stocks in ESUs; guidance for considering hatchery fish in extinction risk assessments of ESUs; and a decision that hatchery fish determined to be part of an ESU will be included in any listing of the ESU, consistent with the *Alsea* ruling. The proposed policy reaffirmed application of the ESU policy in delineating DPSs eligible for ESA listing. We proposed that hatchery stocks be considered part of an ESU if they exhibit a level of genetic divergence relative to local natural populations that is no more than what would be expected between closely related populations within the ESU. We proposed that status determinations be based on the status of the entire ESU, including both natural populations and hatchery stocks in the ESU. We emphasized that the policy would be applied in support of a stated purpose of the ESA to conserve species and the ecosystems upon which they depend. We further emphasized that natural populations are the best indicator of a species' health. Status determinations would be based on the risks to the abundance, productivity, spatial structure, and diversity of an ESU, and how the hatchery-origin fish within the ESU affect each of these attributes. In the proposed policy we also reaffirmed our commitment to fulfilling trust and treaty obligations with regard to the tribal harvest of some Pacific salmon and steelhead populations. Tribal harvest, non-tribal harvest, and other beneficial uses of surplus listed hatchery fish may be allowed provided they are managed consistent with the conservation and recovery needs of listed salmon and steelhead ESUs. Specifically, NMFS proposed to allow for the harvest of hatchery fish listed as threatened that are surplus to the conservation and recovery needs of the ESU, in accordance with fishery management plans approved under section 4(d) of the ESA.

**Public Comment Periods, Public Hearings, and Peer Review**

With the publication of the proposed hatchery listing policy we announced a 90–day public comment period extending through September 1, 2004. In **Federal Register** notices published on August 31, 2004 (69 FR 53093), September 9, 2004 (69 FR 54637), and October 8, 2004, (69 FR 61347), we extended the public comment period for the proposed policy through November 12, 2004. The public comment period for the proposed hatchery listing policy was open for 162 days. Additionally, we held 14 public hearings (at eight locations in the Pacific Northwest, and six locations in California) to provide additional opportunities and formats to receive public input (69 FR 53039, August 31, 2004; 69 FR 54620, September 9, 2004; 69 FR 61347, October 8, 2004). In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure, and opportunities for public input. The OMB Peer Review Bulletin, implemented under the Information Quality Act (Public Law 106–554), is intended to provide public oversight on the quality of agency information, analyses, and regulatory activities, and applies to information disseminated on or after June 16, 2005. We solicited technical review of the proposed hatchery listing policy from over 50 independent experts selected from the academic and scientific community, Native American tribal groups, Federal and state agencies, and the private sector. We have determined that the independent expert review conducted for the science involved in this policy, and the comments received from several academic societies and expert advisory panels, constitute adequate prior review under section II.2 of the OMB Peer Review Bulletin (NMFS, 2005).

**Summary of Comments and Recommendations**

In response to the request for information and comments on the proposed hatchery listing policy, we received over 27,000 comments by fax, standard mail, and e-mail. The majority of the comments received were from interested individuals who submitted form letters or form e-mails. Comments were also submitted by state and tribal natural resource agencies, fishing groups, environmental organizations, home builder associations, academic and professional societies, expert advisory panels (including NMFS' Recovery Science Review Panel, the Independent Science Advisory Board, and the State of Oregon's Independent Multidisciplinary Science Team), farming groups, irrigation groups, and individuals with expertise in Pacific salmon and steelhead, and artificial propagation. The public comments expressed a wide range of views about how hatchery-origin fish should be considered in ESA listing decisions for Pacific salmon and steelhead.

We also received comments from four of the independent experts from whom we had requested technical review of the proposed policy. The independent expert reviewers noted several concerns with the proposed Hatchery Listing Policy including: vague and imprecise policy language; an apparent de-emphasis of the importance of naturally spawned self-sustaining populations for the conservation and recovery of salmon and steelhead ESUs, and the goal of the ESA to conserve the ecosystems upon which they depend; accumulation of long-term adverse impacts of artificial propagation due to unavoidable artificial selection and domestication in the hatchery environment; and the lack of scientific evidence that artificial propagation can contribute to the productivity and conservation of viable natural populations over the long term. Two of the reviewers felt that hatchery fish are inherently different from wild fish and should not be included in ESUs, and were concerned that the inclusion of hatchery fish in ESUs would jeopardize the conservation and recovery of native salmon and steelhead populations in their natural ecosystems. The other two reviewers were supportive of the scientific basis for including hatchery fish in ESUs, but felt that the policy did not appropriately emphasize that the conservation and recovery of listed ESUs depends upon the viability of wild populations and natural ecosystems over the long term.

There was substantial overlap between the comments from the independent expert reviewers, the independent scientific panels and academic societies, and the substantive public comments. Some of the comments received were not pertinent to the Hatchery Listing Policy and are not addressed below. We will consider and address comments relating to other determinations (for example, the proposed listing determinations for 27 West Coast salmon and steelhead ESUs (69 FR 33102; June 14, 2004), the proposed critical habitat designations for 20 West Coast salmon and steelhead ESUs (69 FR 74572, December 14, 2004; 69 FR 71880, December 10, 2004), and the biological opinion on the Federal Columbia River Power System (see *http://www.salmonrecovery.gov/R__biop__final.shtml*)) in the context of those determinations. The summary of comments and the responses below are organized into four categories: (1) comments regarding the scope of the proposed policy; (2) comments

regarding the composition of ESUs; (3) comments regarding the assessment of extinction risk of ESUs; and (4) comments of an editorial nature.

*Scope of Policy*

*Issue 1:* Several commenters felt that the proposed policy would have significant implications beyond making ESA listing determinations of threatened or endangered under section 4(b) of the ESA. These commenters faulted the proposed policy for not elaborating on how hatchery-origin fish will be considered in: determining whether Federal agency actions are ''likely to jeopardize the continued existence of endangered species or threatened species'' under section 7(a)(2) of the ESA; and developing recovery plans and delisting goals that establish ''objective, measurable criteria which, when met, would result in the determination ... that the species be removed from the list'' under section 4(f)(1)(B)(ii) of the ESA.

*Response:* As emphasized in the notice of proposed policy, this new hatchery listing policy applies only to ESA listing determinations for Pacific salmon and steelhead. In the proposed policy, we stated that separate guidance will be provided on how artificial propagation programs may contribute to salmon and steelhead conservation and recovery, in the context of ESA consultations, permitting, and recovery planning. In collaboration with regional state and tribal co-managers, we are developing draft guidance. Once completed we will make this draft guidance available for public review and comment. Additionally, we are developing draft recovery plans for listed Pacific salmon and steelhead ESUs. These recovery plans will establish biological and threats criteria that if satisfied would result in a proposal to remove the ESU from ESA protections, and will be informed by ESU-specific factors including artificial propagation.

The final hatchery listing policy described in this notice applies only to determinations of what constitutes a species for ESA listing consideration, and to determinations of whether the defined species warrants listing as threatened or endangered.

*Issue 2:* One commenter felt that we had not fulfilled our requirements under the National Environmental Policy Act (NEPA) by not evaluating a range of alternative actions to the proposed hatchery listing policy. The commenter argued that the proposed policy constitutes a major Federal action significantly affecting human health and the environment such that it requires the preparation of an environmental impact statement (EIS).

*Response:* We do not agree with the commenter that the proposed hatchery listing policy or this final policy is subject to the requirements of NEPA. The hatchery listing policy represents our interpretation of statutory terms, including ''species,'' ''endangered,'' and ''threatened.'' Agency interpretations of statutory terms are not major Federal actions under NEPA. Moreover, ESA listing decisions are non-discretionary actions by the agency which are exempt from the requirement to prepare an environmental assessment or EIS under NEPA. See NOAA Administrative Order 216 6.03(e)(1) and *Pacific Legal Foundation* v. *Andrus*, 675 F. 2d 825 (6th Cir. 1981).

*Issue 3:* Several commenters felt that the hatchery listing policy should require a mandatory periodic review of the best available scientific information regarding the benefits and risks of artificial propagation, as well as of the ESU relationships of hatchery fish being propagated within the geographic range of listed ESUs. Commenters were concerned that in many areas there are no programs in place to monitor the impacts of hatchery programs with respect to ESU status determinations.

*Response:* The commenters raise a valid concern that in many instances there are limited available information or monitoring programs in place to evaluate the impacts (positive or negative) of specific hatchery programs on local natural populations. Through the process of developing Hatchery and Genetic Management Plans (HGMPs), we are collaborating with co-managers and hatchery managers to ensure that hatchery programs are operated in a manner consistent with the conservation and recovery of listed salmon and steelhead ESUs. Through this process we expect that monitoring and evaluation protocols will be implemented consistently among hatchery programs, and that the availability of information to evaluate the contributions of artificial propagation will improve.

This policy interprets several statutory terms (such as ''species,'' ''endangered,'' and ''threatened'') as instructive guidance to NMFS staff in considering artificial propagation in ESA status reviews and listing determinations for Pacific salmon and steelhead. In developing this policy we found it unnecessary to build in a requirement for periodic review. Interpretive guidance, such as this policy, is subject to updating as new information becomes available. We intend to review the relationships of hatchery programs to listed ESUs as sufficient new information becomes available to indicate that such a review is warranted. Similarly, if substantial new scientific information becomes available regarding the benefits and risks of artificial propagation, we may reconsider the approach described in this policy to ensure that it is based upon the best available information.

*Composition of ESUs*

As reflected in the issues summarized below, the comments express the full range of opinion regarding the inclusion of hatchery-origin fish in ESUs for listing consideration. Some commenters felt that hatchery fish should not be included in ESUs under any circumstances, while others felt that hatchery-origin fish should be included in ESUs but disagreed with the threshold for inclusion presented in the proposed policy.

*Issue 4:* Several commenters felt that the ESA does not allow including hatchery-origin fish as part of a species for listing consideration. The commenters argued that protecting hatchery-origin fish that are dependent on active human intervention, and that are absent from the natural ecosystem for part of their life cycle, is contradictory to the stated purposes of the ESA which include ''to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved'' (ESA section 2(b)). The commenters noted that the ESA defines artificial propagation as a method of conserving threatened and endangered species (ESA section 3(3)), but contended that protecting recovery programs (in this case, hatchery programs and the hatchery stocks they produce) is not the intent of the ESA. The commenters argued that the ESA clearly separates the species to be listed (natural populations in their natural ecosystems) from the ''methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary'' (ESA section 3(3), definition of ''conserve,'' ''conserving,'' and ''conservation'').

*Response:* In arguing that the ESA precludes including hatchery-origin fish in ESUs, the commenters argue that non-biological criteria should factor into the delineation of species for listing consideration (such as interpretations of the ESA's intent, the aesthetic value of species, and their ecological significance). We agree that the intent of the ESA is to conserve natural self-sustaining populations and functioning

ecosystems. However, in developing and adopting the ESU policy the agency chose not to include inherently non-biological considerations in delineating DPSs. The ESU concept emphasizes the unique genetic diversity within a species and the importance of conserving distinct evolutionary lineages. We believe that attempting to preserve populations for their aesthetic, ecological, scientific, or recreational value without regard to the underlying genetic basis for diversity focuses on attributes that are not directly related to the long-term survival of the species. The ESU concept recognizes that, under certain circumstances, important genetic resources may reside in hatchery stocks. We believe that the ESU policy's interpretation of the statutory definition of ''species'' is consistent with the goal of the ESA to conserve genetic resources, both within and between species. If this goal is achieved, then other benefits of biodiversity and esthetic values will follow. NMFS' basis for not including the policy interpretations highlighted by the commenters in delineating ESUs is more thoroughly discussed in the response to comments in the final ESU policy (56 FR 58612; November 20, 1991). Further, under the *Alsea* decision, once we determine that an ESU includes a hatchery component, that component must be considered with the naturally spawning component in the listing decision (i.e., NMFS may not list only a portion of an ESU).

*Issue 5:* One commenter argued that the ESA does not allow identifying an entity as both a threat and part of the species considered for listing. The commenter cited a recent District Court ruling that invalidated USFWS' listing determination for Westslope cutthroat trout (*O. clarki lewisi*) (*American Wildlands* v. *Norton*, 193 F. Supp. 2d 244 (D.D.C., 2002)). USFWS identified hybridization as a threat, but included hybridized fish in its assessment that the subspecies did not warrant listing under the ESA because abundant populations remained well distributed. The court ruled that USFWS' stated rationale for the inclusion of hybrid stocks in the entity considered for listing in that case was arbitrary and capricious. The commenter argues that, consistent with the court's ruling, hatchery fish cannot be simultaneously regarded as a risk to natural populations of Pacific salmon and steelhead and included in an ESU for listing consideration.

*Response:* The issues raised in *American Wildlands* v. *Norton* are an important consideration in determining whether a hatchery stock is part of a salmon or steelhead ESU. It may be appropriate to consider the threats faced by an ESU (such as risks posed by artificial propagation) when determining what constitutes a species under the ESA. We recognize that artificial propagation under certain circumstances can pose threats to natural populations, such as when it results in genetic dilution or direct competition with native populations. We also recognize that hatchery stocks may exhibit differences in behavior, genetic composition, morphological traits, and reproductive fitness from natural populations. However, conservation hatchery stocks under certain circumstances may exhibit few selective differences from the local natural population(s), and they may reduce the immediacy of extinction risk for an ESU. We think it is inappropriate to make universal conclusions about all hatchery stocks, but think their relatedness to natural populations and the relative risks and benefits they pose need to be evaluated on a case-by-case basis. The presence of substantive differences between hatchery stocks and natural populations provides a valuable indicator of divergence for determining whether a particular hatchery stock reflects an ESU's ''reproductive isolation'' and ''evolutionary legacy'' such that the hatchery stock should be included in the ESU, and for determining whether a given hatchery stock represents a net threat to the local natural populations in the ESU.

The *American Wildlands* v. *Norton* ruling faulted USFWS' listing determination for: (1) not providing a scientifically based explanation for its decision to include hybridized fish in its assessment of the Westslope cutthroat trout's current distribution; and (2) for not explaining how hybridized fish might contribute to the viability of the species or that some degree of hybridization is benign. This final policy provides a framework for explicitly considering hatchery-origin fish in listing determinations. The final policy requires that the relationship, risks, benefits, and uncertainties of specific hatchery stocks to the local natural population(s) be documented. We believe that listing determinations under this final policy will not suffer from the shortcomings highlighted by the court's ruling in *American Wildllands* v. *Norton*, given the transparent consideration of within-ESU and out-of-ESU hatchery-origin fish required by the policy.

*Issue 6:* Many commenters presented biological and policy arguments in support of excluding all hatchery-origin fish from ESUs. Commenters contended that artificial selection is unavoidable in the hatchery environment, altering the evolutionary trajectory of hatchery-origin fish such that they no longer represent the evolutionary legacy of the ESU. Commenters discussed scientific studies demonstrating that hatchery-origin fish differ from naturally-spawned fish in physical, physiological, behavioral, reproductive and genetic traits, and cited additional scientific studies indicating that artificial selection in hatcheries can result in diminished reproductive fitness in hatchery-origin fish in only one generation. Commenters argued that hatchery-origin and natural-origin fish should not be included in the same ESU because of these differences. Commenters also noted scientific studies describing negative ecological, reproductive, and genetic effects of hatchery stocks on natural populations. The commenters were concerned that including hatchery fish in an ESU confounds the risk of extinction in the wild with the ease of producing fish in a hatchery and ignores important biological differences between wild and hatchery fish. These commenters argued that hatcheries pose significant threats to the viability of salmon and steelhead ESUs, and thus should not be included as part of the same species under consideration for ESA protections.

In addition to the above arguments presented, commenters also recommended alternative approaches that would allow for the exclusion of all hatchery-origin fish from ESUs. Some commenters recommended revising the ESU policy to explicitly exclude hatchery-origin fish from ESUs. Others recommended that interpreting the ''reproductive isolation'' criterion of the ESU policy in light of the DPS policy would result in hatchery-origin fish being excluded from ESUs. These commenters argued hatchery fish satisfy the ''discreteness'' test of the DPS policy because they are ''markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors,'' and thus would not merit inclusion in the same DPS as natural populations.

*Response:* The derivation of hatchery stocks from local natural populations, and the established practice of incorporating natural fish into hatchery broodstock, can result in hatchery stocks and natural populations that share, to a considerable degree, the same genetic and ecological evolutionary legacy. Under this final policy we will evaluate individual hatchery programs and describe the relationship of the hatchery stocks they produce to the

local natural population(s) on the basis of: stock origin and the degree of known or inferred genetic divergence between the hatchery stock and the local natural population(s); and the similarity of hatchery stocks to natural populations in ecological and life-history traits. Although certain hatchery programs will be determined to be reproductively isolated and not representative of the evolutionary legacy of an ESU, we do not believe that it is scientifically supportable to make such a conclusion universally for all hatchery stocks. Many hatchery stocks are reproductively integrated with natural populations in an ESU and exhibit the local adaptations composing the ESU's ecological and genetic diversity. The shared evolutionary legacy of these hatchery stocks and their regular integration with natural populations does not support the universal exclusion of hatchery stocks from ESUs containing natural fish. We recognize that artificial selection in the hatchery environment may be unavoidable, that a well-managed hatchery stock could eventually diverge from the evolutionary lineage of an ESU, and that a poorly managed hatchery stock could quickly diverge from the evolutionary lineage of an ESU. However, the potential for divergence is not adequate justification for the universal exclusion of hatchery fish from an ESU. The ESU policy recognizes that the genetic resources that represent the ecological and genetic diversity of a species can reside in fish spawned in a hatchery as well as in fish spawned in the wild. Consistent with the ESU policy, a hatchery program should be excluded from an ESU if it exhibits genetic, ecological or life-history traits indicating that it has diverged from the evolutionary legacy of the ESU.

*Issue 7:* Several commenters criticized the proposed threshold for including hatchery stocks in an ESU as being overly inclusive, saying that the threshold was arbitrary and that no scientific rationale was provided as to its appropriateness. These commenters felt that the threshold would result in the inclusion of hatchery programs with divergent behavioral and life-history traits that would pose threats to the local natural population(s). These commenters argued that hatchery stocks should be included in an ESU only if they exhibit minimal divergence from the local natural population(s), regularly incorporate a substantial portion of natural-origin fish as broodstock, represent a substantial portion of the remaining ecological and genetic resources, and if it is likely that without the hatchery program propagating the hatchery stock the natural populations in the ESU would go extinct.

Other commenters criticized the proposed threshold for including hatchery stocks in an ESU as being overly restrictive, saying that the threshold was arbitrary and that no scientific rationale was provided as to its appropriateness. These commenters argued that hatchery-origin fish are derived from natural fish, spawn naturally and interbreed with natural-origin fish, and in most cases are physically and genetically indistinguishable from natural-origin fish. These commenters further argued that the ESA defines a species as including any subspecies or vertebrate DPS which ''interbreeds when mature,'' and thus hatchery-origin fish should be included in ESUs in all circumstances where natural-origin fish are incorporated into the broodstock or hatchery-origin fish spawn naturally with natural-origin fish.

*Response:* A key feature of the ESU concept is the recognition of genetic resources that represent the ecological and genetic diversity of the species (Waples, 1991). Considering the relationship of hatchery populations in the initial considerations of ESU delineation properly recognizes that these genetic resources may reside in hatchery fish as well as in natural-origin fish.

In applying the ESU policy and identifying those hatchery stocks that are part of an ESU, we are mindful of two types of risks. An overly restrictive approach to determining whether a hatchery stock should be included in an ESU risks excluding potentially important genetic resources. If the ESU is listed, the protections of the ESA would not be available to conserve these resources, and biologically appropriate conservation options may be lost or limited. Conversely, an overly inclusive approach risks including hatchery stocks that are not genetically similar to the native natural population, and would reduce the fitness of the natural population if they or their progeny spawn naturally and interbreed with the natural population. Either type of error may adversely affect the long-term viability of a listed species.

We had essentially three choices of qualitative thresholds for including hatchery stocks in an ESU: (1) Minimal divergence of a hatchery stock from the local natural population(s); (2) moderate divergence from the local natural population(s) (characterized by genetic divergence relative to the local natural population(s) that is no greater than would be expected between closely related natural populations in the ESU); and (3) substantial divergence from the local natural population(s) (characterized by genetic divergence relative to the local natural population(s) that is comparable to the maximum amount of divergence to be expected among natural populations in the ESU). Mindful of the risk of being overly inclusive and overly restrictive, we proposed a threshold for including hatchery stocks that represents a balance of both types of risks. We recognize that in the majority of cases data will not be available to quantitatively assess relative levels of genetic divergence. Short of empirical genetic data, strong biological indicators of reproductive isolation and genetic divergence are: the length of time the hatchery stock has been isolated and the degree of domestication selection; the degree to which natural broodstock has been regularly incorporated into the hatchery population; the history of incorporating non-ESU fish or eggs into the hatchery population; the attention given to genetic considerations in selecting and mating broodstock; and the use of genetic engineering or cytological manipulation. Additional considerations include whether the hatchery stock exhibits traits (e.g., size and age at return, spawning time, etc.) that are substantially different from the natural-origin fish adapted to the area, and whether there is reason to believe that these traits have a genetic basis rather than simply being an artifact of the hatchery rearing environment. If there is evidence that a hatchery stock is reproductively isolated from the local natural population(s) in the ESU, and has diverged from the evolutionary lineage represented by the ESU, the hatchery stock will not be considered part of the ESU.

We recognize that there was considerable confusion generated by the genetic divergence standard in point (2) of the proposed policy (''Hatchery fish with a level of genetic divergence between the hatchery stocks and the local natural populations that is no more than what would be expected between closely related populations within the ESU: (a) are considered part of the ESU ...''). We have made changes in the final policy to clarify this threshold for the inclusion of hatchery stocks in an ESU (see ''Changes from the Proposed Policy'' section, below). The purpose of the genetic divergence standard in point (2) of the policy is to assure that hatchery stocks that can contribute to the survival or recovery of an ESU are taken into account at the time of a listing decision. In general

those will only be hatchery stocks that are related to the salmon or steelhead within the ESU, and that thus have a considerable degree of genetic similarity to the naturally-spawning fish. NMFS recognizes that there are a number of ways to compute and compare genetic divergence and that it is not possible to sample all fish within the ESU to precisely determine the range of genetic diversity within an ESU. For the purposes of the 2005 listing determinations, NMFS has included as part of each ESU those hatchery stocks with a level of genetic divergence relative to the local natural population(s) that is no more than what would be expected between the closely related natural populations within the ESU. Depending on the information available and the state of the science regarding determination of genetic relationships, NMFS may use other methods in future determinations.

*Issue 8:* Many commenters felt that the proposed threshold was overly focused on genetic characteristics, and failed to explicitly consider ecological and life-history traits that are known to impact reproductive fitness and likely are (at least in part) heritable. These commenters pointed out that in most circumstances quantitative information on the genetic differentiation of a specific hatchery stock relative to the local natural population(s) is not available. The commenters argued that, given the poor availability of genetic data, application of such a focus on genetics would make the decision of whether a hatchery stock is part of an ESU ambiguous, highly subjective, and arbitrary. Other commenters felt that the emphasis on genetic characteristics represented an incomplete treatment of the ESU policy's two criteria for defining an ESU: (1) that the populations be ''reproductively isolated'' and (2) that the populations represent an important component in the ''evolutionary legacy'' of the species. The commenters observed that the ESU policy notes that information on genetic differentiation is most useful in determining reproductive isolations. The commenters argued that the proposed threshold addresses the ''reproductive isolation'' component of the ESU policy, but fails to establish criteria for determining whether hatchery stocks are also representative of an ESU's ''evolutionary legacy.'' The commenters argue that a hatchery stock should not be included in an ESU unless it reflects: (1) the level of reproductive isolation characteristic of the natural populations in the ESU; and (2) the ecological, life-history, and genetic diversity that compose the ESU's evolutionary legacy.

*Response:* We agree with the commenters that in many cases empirical genetic data are not available to quantitatively assess the level of genetic differentiation and reproductive isolation of a hatchery stock relative to the local natural population(s). However, as stated in the preceding response to Issue 7, in lieu of empirical genetic data there are a number of proxies that can inform a qualitative assessment of the level of genetic divergence and reproductive isolation (such as stock isolation, selection of run timing, the magnitude and regularity of incorporating natural broodstock, the incorporation of out-of-basin or out-of-ESU eggs or fish, mating protocols, etc.). The ESA requires that we review the status of the species based upon the best available scientific and commercial information, and in many instances the agency must rely on surrogate information when quantitative genetic data are not available to assist in determining the ''species'' under consideration.

We disagree with the commenters that the threshold for including hatchery fish in an ESU, as articulated in the proposed policy, fails to address both the ''reproductive isolation'' and the ''evolutionary legacy'' criteria of the ESU policy. As the response to Issue 7 (above) described, considerations in determining the level of overall differentiation exhibited by a hatchery stock include the consideration of both ESU policy criteria. Information regarding the origin, isolation, and broodstock and mating protocols of a hatchery stock help determine its level of reproductive isolation from the local natural population(s). Information regarding the behavioral and life-history traits of a hatchery stock help inform evaluations of whether it is representative of an ESU's evolutionary legacy. A hatchery stock may also be representative of an ESU's evolutionary legacy if it supports introduced natural populations (outside the historic range of the species) in areas that are ecologically similar to and geographically near the source natural population(s) (Waples, 1991). If there is evidence that a hatchery stock is reproductively isolated from the local natural population(s) in an ESU, and has diverged from the evolutionary lineage represented by the ESU, the hatchery stock will not be considered part of the ESU.

*Issue 9:* Other commenters felt that the proposed threshold inappropriately compares genetic divergence in hatchery stocks with genetic variability among natural populations. These commenters contended that genetic differentiation of a hatchery stock relative to the local natural population(s) is attributable to domestication and artificial selection in the artificial hatchery environment, while genetic differentiation among closely related natural populations in an ESU is attributable to natural selection which uniquely adapts a group of natural-origin fish to local environmental conditions, habitat features, and ecological processes. The commenters argued that including genetic variability in an ESU caused by domestication and artificial selection (in the form of hatchery-origin fish considered part of an ESU) would erode the reproductive fitness and evolutionary legacy of the defined ESU. Other commenters similarly argued that hatchery-origin fish might not show appreciable genetic differentiation at neutral genetic markers, yet they are subjected to different selective pressures that would adversely affect their survival and reproductive success in the wild, and thus by definition are not part of an ESU's evolutionary legacy forged by natural selective pressures over thousands of years.

*Response:* The commenters raise a valid concern. A risk of applying an overly inclusive standard for hatchery membership in an ESU is that domesticated hatchery stocks might be regarded as part of an ESU but would erode the genetic diversity and reproductive fitness of the ESU if they spawned naturally and interbred with locally adapted natural populations. As described in the response to Issue 7 (above), the proposed standard for including hatchery stocks in an ESU balances this risk with the risk of being overly restrictive and excluding ecological, life history, and genetic resources from an ESU that may prove necessary for its conservation and recovery.

*Evaluating Extinction Risk*

As with the comments received regarding the composition of ESUs (summarized above), the comments received concerning the consideration of hatchery-origin fish in assessing an ESU's level of extinction risk express the full range of opinion. Some commenters felt that extinction risk assessments should be based entirely on the status of natural populations, while others felt that hatchery-origin fish could be factored into risk assessments in the context of their contributions to the performance of natural populations, and others felt that extinction risk assessments should be based on the

abundance of fish in an ESU without discrimination between the means (spawning in a hatchery versus in the natural environment) by which the fish are produced. Although individual opinions varied considerably, as did the rationale presented in support of a particular opinion, it is possible to summarize the major themes, which we have done below.

*Issue 10:* Many commenters criticized the policy for appearing to de-emphasize the importance of natural populations in evaluating extinction risk. Commenters argued that the purpose of the ESA to ''provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved'' (ESA section 2(b)) appropriately establishes the fundamental importance of self-sustaining natural populations in functioning ecosystems in evaluating an ESU's status. Commenters felt that statements in the proposed policy reduced the importance of natural populations to: an optional consideration in evaluating extinction risk (for example, ''the ESA does not preclude NMFS from giving special recognition to natural-origin fish as a measure of the sustainability of the natural ecosystem,'' 69 FR at 31357); and ''a point of comparison for the evaluation of the effects of hatchery fish on the likelihood of extinction of the ESU'' (69 FR at 31358)). Commenters stated that a reasonable interpretation of the proposed policy is that an ESU could be found to not warrant listing under the ESA even if it was permanently reliant on artificial propagation. Commenters noted that such an interpretation would contradict the Joint NMFS-USFWS Policy on the Controlled Propagation of Species Listed under the ESA (65 FR 56916; September 20, 2000) which unambiguously states that ''[c]ontrolled propagation is not a substitute for addressing factors responsible for a * * * species' decline,'' as well as the interpretation of the ESA's purpose articulated in the 1993 Interim Policy that the ESA ''mandates the restoration of threatened and endangered species in their natural habitats to a level at which they can sustain themselves * * *'' (58 FR 17573; April 5, 1993). Commenters criticized the proposed policy for failing to provide any explanation for the apparent change in emphasis on natural populations and functioning ecosystems. Commenters noted that they were aware of no empirical or theoretical scientific information that would justify such a policy change, nor of any legal findings that would explain the apparent shift in interpretation of the ESA's purpose.

*Response:* As stated in a May 14, 2004, letter to the U.S. Congress, the Undersecretary of Commerce for Oceans and Atmosphere emphasized that the ''central tenet of the hatchery policy is the conservation of naturally spawning salmon populations and the ecosystems upon which they depend,'' and that NOAA did not believe that the purposes of the ESA would be satisfied by having all the salmon in an ESU in a hatchery (Lautenbacher, 2004). This policy does not represent a shift in interpretation, but rather recognizes the contribution that properly managed hatchery programs may provide. We have made clarifying changes in the final policy affirming that it is consistent with section 2(b) of the ESA (see ''Changes from the Proposed Policy'' section, below).

*Issue 11:* Several commenters were critical of the proposed policy, not for considering hatchery-origin fish in determining an ESU's listing status, but for where in the status evaluation process artificial propagation was to be considered. These commenters argued that artificial propagation and hatchery-origin fish are more appropriately considered in the context of ''taking into account those efforts, if any, being made by any State or foreign nation, or any political subdivision of a State or foreign nation, to protect such species, whether by predator control, protection of habitat and food supply, or other conservation practices'' (ESA section 4(b)(1)(A)). Commenters contended that the ESA defines artificial propagation as a method of conservation (ESA section 3(3)), and that the ESA directs that such ''conservation practices'' be considered in the context of efforts being made to protect the species, not as part of the biological extinction risk assessment based on the demographic performance of natural populations. Commenters argued that the joint NMFS-USFWS Policy for Evaluating Conservation Efforts When Making Listing Decisions (PECE; 68 FR 15100; March 28, 2003) provides guidance for evaluating the certainty that specific artificial propagation efforts will be reliably implemented and effective in mitigating the level of an ESU's extinction risk. Commenters felt that, by integrating hatchery-origin fish into the scientific assessment of extinction risk for natural populations, the proposed policy makes unsubstantiated implicit assumptions regarding uncertainties of artificial propagation including that: societal priorities will remain unchanged such that current staffing, funding, and facility requirements for hatchery programs will be maintained; permitting and other state and Federal regulatory authorizations and requirements will remain unchanged; the relative risks and benefits associated with specific hatchery programs are fully known; there are no temporal trade-offs between short-term benefits and accumulated risks over the long term; hatchery supplementation contributes to sustainable increases in abundance and productivity of natural populations; and natural populations will persist at abundance levels sufficient to meet hatchery broodstock needs and production goals. The commenters contended that these and other implicit assumptions are unsubstantiated, and a more objective and transparent treatment of uncertainties associated with artificial propagation would be provided by evaluating specific hatchery programs in the context of other protective efforts being made to protect the ESU under PECE. Other commenters believe that hatcheries universally pose threats to the viability of salmon and steelhead ESUs, and should only be considered in the context of evaluating the factors for a species' decline (i.e., ESA section 4(a)(1)(A)–(E)).

*Response:* We agree that assessing the relative risks and benefits of individual hatchery stocks requires an evaluation of the certainty that a given hatchery program will be implemented and effective. The PECE provides a useful framework for evaluating conservation programs, that is also applicable to evaluating the contributions of artificial propagation to the viability or risk of extinction of an ESU. However, we do not believe that it is possible to extricate hatchery stocks from analyses of extinction risk, particularly in the many instances where there is appreciable gene flow between natural populations and hatchery stocks (for example, when natural-origin fish and hatchery fish are substantially mixed on the spawning grounds and together represent an interbreeding population). We will evaluate the likelihood of implementation and effectiveness of a hatchery program in assessing its contribution to the abundance, productivity, spatial structure, or diversity of an ESU.

*Issue 12:* A few commenters felt that extinction risk should be evaluated based on the total abundance of fish within the defined ESU without discriminating between fish of hatchery or natural origin. These commenters contended that the District Court in *Alsea* ruled that once an ESU is defined, risk determinations should not discriminate among its components.

The commenters described the risk of extinction as the chance that there will be no living representatives of the species, and that such a consideration must not be biased toward a specific means of production (artificial or natural).

*Response:* The *Alsea* court ruled that if it is determined that a DPS warrants listing, all members of the defined species must be included in the listing. The court did not rule on how the agency should determine whether the species is in danger of extinction or likely to become so in the foreseeable future. We also do not agree with the commenters' assertion that the viability of an ESU is determined by its total abundance. The risk of extinction of an ESU depends upon the number, productivity, geographic distribution, and diversity of its component populations (Viable Salmonid Populations (VSP) criteria; McElhany *et al.*, 2000; Ruckelshaus *et al.*, 2002). In addition to having sufficient abundance, viable ESUs and populations have sufficient productivity, diversity, and a spatial distribution to survive environmental variation and natural- and human-caused catastrophes.

*Issue 13:* Many commenters contended that the proposed hatchery listing policy either largely ignored the best available scientific information on risks associated with artificial propagation, overstated uncertainties associated with these risks, or was overly optimistic about unspecified future advances in artificial propagation. Commenters cited numerous studies indicating risks to natural populations posed by hatchery-origin fish including increased competition, increased predation, reduced reproductive success, reduced genetic diversity, and erosion of local adaptations. Commenters maintained that there are no empirical examples where hatchery supplementation has increased the effective population size and productivity of natural populations, particularly after supplementation has stopped. Commenters argued that the documented benefits of hatchery programs in conserving natural populations of Pacific salmon and steelhead are confined to short-term risk reduction for natural populations that are not self-sustaining, maintaining genetic diversity in the short-term for severely depressed natural populations, and re-introducing naturally spawning populations into extirpated habitats.

*Response:* We are fully aware of the substantial scientific literature that exists regarding the benefits and risks of artificial propagation in the short and long term. We also recognize that the use of hatchery programs specifically designed to conserve depressed Pacific salmon and steelhead populations is relatively new, and the role of artificial propagation in the conservation and recovery of salmon and steelhead populations continues to be the subject of vigorous and well funded scientific research. In this final policy, we do not intend to render a final appraisal of the many functions that hatchery stocks serve and their relative risks and benefits to the viability of salmon and steelhead ESUs. There are so many different ways in which hatchery-origin fish interact with natural populations and the environment that there can be no uniform conclusion about the potential contribution of hatchery-origin fish to the survival of an ESU. The aim of this policy is to provide conceptual guidance for the consideration of hatchery-origin fish in ESA listing determinations on a case-by-case basis, and to require that the relationship, risks, and benefits of specific hatchery stocks within the geographical area of an ESU be transparently documented. Such an approach will help ensure that status evaluations of salmon and steelhead ESUs are based upon the best scientific and commercial information available at the time of some future ESA status review, rather than upon an appraisal of the information available at the time this final policy was developed.

*Issue 14:* Many commenters felt that how hatchery-origin fish are factored into extinction risk assessments depends on the time frame under consideration. Commenters felt that in considering whether an ESU was likely to become endangered in the foreseeable future (that is, whether the ESU was ''threatened'' or listing was ''not warranted''), risk evaluations should be based largely or entirely on the status of natural populations. They contended that the only way to ensure the long-term persistence of an ESU with a high degree of certainty is with self-sustaining natural populations in functioning natural ecosystems. These commenters maintained that there is no direct empirical data regarding the question of whether hatchery programs can contribute to the long-term sustainability of an ESU. Rather, empirical and theoretical considerations indicate that over the long term, compounding adverse effects of domestication will erode the ability of extant natural populations to sustain themselves without continual supplementation of hatchery-origin fish. Such a reliance on human intervention over the long term, the commenters argued, is highly uncertain given the unpredictable nature of funding, societal priorities, facility malfunctions, disease outbreaks, and catastrophic events. A review of the current and historical longevity of Pacific Northwest hatchery stocks conducted by NMFS' Northwest and Southwest Fisheries Science Centers (NWFSC and SWFSC, respectively) indicates that few if any hatchery programs have been maintained in isolation for a longer period than several decades (NMFS, 2004). All hatchery programs reviewed had required at least occasional infusions of natural-origin fish to sustain the programs during periods when they could not meet their broodstock or production goals. The NWFSC-SWFSC review concluded: long-term dependence on hatcheries is likely to lead salmon and steelhead ESUs into an evolutionarily and ecological path that will make the chance of full recovery in the wild more and more difficult as time passes; and dependence upon hatcheries is intrinsically risky because it is a dependence upon human actions that could cease at any time. Commenters noted that many of the hatchery reform efforts underway require the existence of healthy natural populations to ensure that every year a substantial proportion of the hatchery broodstock consists of natural-origin fish, while concurrently limiting the proportion of naturally spawning hatchery-origin fish to low levels.

*Response:* We agree, given the current state of scientific knowledge, that the risks and benefits of artificial propagation to the survival of an ESU over the long term can often be highly uncertain. The presence of well distributed self-sustaining natural populations that are ecologically and genetically diverse provides the most certain basis to determine that an ESU is not likely to become endangered in the foreseeable future (i.e., whether a species is threatened or listing is not warranted). We must base our status determinations upon the best available scientific and commercial information. If substantial information becomes available to better inform the consideration of the relative benefits and risks of artificial propagation to the long-term persistence of salmon and steelhead populations, we will incorporate such information into our future evaluations of an ESU's ESA listing status, and this policy provides adequate ability to do so.

*Issue 15:* Several commenters agreed that artificial propagation can alleviate extinction risk in the short term, under certain circumstances. These

commenters felt that the consideration of short-term reductions in extinction risk could inform determinations of whether an ESU was in danger of extinction, or likely to become so in the foreseeable future (that is, whether the ESU should be listed as ''endangered'' or ''threatened''). The commenters cited evidence that certain supplementation programs using locally derived stocks can increase the number of natural spawners, at least in the short term. Commenters also noted that supplementation programs using natural-origin fish as broodstock have the potential to benefit ESU productivity by providing short-term increases in adult returns, above what would be observed in the absence of the hatchery program, provided that sufficient natural habitat is available to support this increase. The commenters cautioned that hatchery supplementation is unlikely to increase the abundance and productivity of natural populations that are at or near the habitat's carrying capacity, and that temporary increases in population abundance and productivity will only persist if the underlying threats to salmon and steelhead in their natural ecosystems are adequately addressed.

The commenters also acknowledged that hatchery programs have the potential to increase spatial structure and reduce an ESU's level of extinction risk in the short term by reducing an ESU's vulnerability to catastrophic events, and by (re)introducing natural production into extirpated habitats. The commenters cautioned that any benefits to spatial structure over the long term depend on the degree to which the hatchery stock(s) add to (rather than replace) natural populations.

The commenters also felt that under certain circumstances, hatchery programs could conserve the genetic diversity of depressed populations, reduce vulnerability to catastrophic events by increasing spatial structure, and boost numbers of naturally spawning fish while factors for decline are being addressed. These commenters cited examples of the genetic diversity of severely at risk natural populations being conserved in captive broodstock programs for at least several salmon or steelhead generations. The commenters noted that the types of hatchery programs that provide these benefits are carefully designed and managed to minimize the effects of artificial selection. The commenters cautioned that the mitigation of the immediacy of extinction risk must be informed by the trade-offs between the short-term benefits of certain hatchery programs and the erosion of an ESU's ecological and genetic diversity if hatchery supplementation is continued over the long term.

*Response:* We agree with the commenters that the presence of carefully designed and operated hatchery programs with sufficient natural habitat can, under certain circumstances, mitigate the risk of extirpation for severely depressed populations and thereby reduce an ESU's risk of extinction. Whether a hatchery program or group of hatchery programs will warrant an ESU being listed as ''threatened'' rather than ''endangered'' will depend upon the specific demographic risks facing natural populations within the ESU, the availability and condition of the surrounding natural habitat, as well as the factors that led to the ESU's decline and current threats limiting the ESU's recovery.

*Issue 16:* Many commenters felt that the language in the proposed hatchery listing policy was ambiguous as to the standard against which the contributions of hatchery-origin fish were being measured. Commenters felt that it was unclear whether the abundance of hatchery-origin fish and the production of hatchery programs were of equal standing to the abundance and productivity of natural-origin populations in determining ESA status.

Several commenters felt that, in light of uncertainties regarding the long-term benefits and risks of artificial propagation and the general lack of detailed information regarding the effects of specific hatchery programs on the local natural populations(s), a more prudent and precautionary approach is to assess the contributions of hatchery programs in terms of the performance of natural populations. Any contributions of hatchery-origin stocks to the viability of an ESU, the commenters noted, will be evident in the abundance, productivity, spatial distribution, and ecological, life-history, and genetic diversity of the natural-origin populations in the ESU.

*Response:* As stated in the response to Issue 14, above, we agree that the presence of well distributed self-sustaining natural populations that are ecologically and genetically diverse provides the most certain indicator that an ESU will persist over the long term. However, hatchery programs under certain circumstances can provide short-term benefits to the abundance, productivity, spatial structure, and diversity of an ESU. As several commenters noted (see summary of Issue 15, above), carefully designed and operated hatchery supplementation programs using locally derived stocks have the potential to contribute to short-term increases in the number of adult returns, thereby reducing short-term risks to an ESU's abundance and productivity. Certain hatchery programs also have the ability to increase the spatial structure of an ESU and thereby reduce the ESU's extinction risk in the short term. However, any benefits to spatial structure over the long term depend on the degree to which the hatchery stock(s) add to (rather than replace) natural populations. The long-term contributions of hatchery-origin fish being (re)introduced into vacant habitats depends upon the natural production of out-migrating juveniles and returning natural-origin spawners. With respect to hatchery contributions to the diversity of an ESU, many ''traditional'' harvest-oriented hatchery programs generally contributed to the loss of genetic diversity by altering run timing, transferring stocks from their natal watersheds, and using mating protocols that reduced effective population sizes. However, conservation hatchery programs have contributed to the short-term maintenance of an ESU's genetic diversity by preventing the extirpation of unique populations, thus potentially reducing the immediacy of extinction risk of the ESU and providing the opportunity for severely depleted populations of a particular genetic heritage to rebound.

*Issue 17:* Some commenters felt that the consideration of hatchery-origin fish in evaluating extinction risk inappropriately biases status assessments toward the adult stage of the life history. These commenters emphasized that extinction risk assessments must include an evaluation of all life-history stages in the natural environment. The commenters cautioned that the consideration of hatchery fish in extinction risk assessments must balance benefits to the adult life-history stage with attendant risks to other life-history stages such as exceeding habitat carrying capacity and increasing mortality rates in early life-history stages, and altering the duration and timing of outmigration.

*Response:* We agree with the commenters that extinction risk assessments must contemplate, to the extent possible, the performance of an ESU throughout its entire life cycle. In practice, however, data are often limited regarding less conspicuous life-history stages. We recognize that risk evaluations that focus on available data for the more conspicuous adult phase cannot necessarily resolve demographic threats to earlier life-history stages. The commenters' concern would be particularly worrisome if we focused

our risk assessments entirely on the abundance information. However, we evaluate information on the abundance, productivity, spatial structure, and diversity of an ESU as useful proxies for assessing demographic threats and the level of extinction risk integrated over an ESU's entire life-history.

*Editorial Comments*

*Issue 18:* Many commenters felt that certain terms used in the proposed hatchery listing policy were poorly defined. Commenters were concerned that the resulting ambiguity of key terms left the policy open to a wide range of interpretations. Specifically, commenters felt that the terms natural population, hatchery population, hatchery stock, and mixed populations were inadequately defined and although used to refer to distinct entities they appear to have overlapping biological meaning.

*Response:* We agree that the final hatchery listing policy would benefit by simplifying the terms used to refer to groups of hatchery-origin and natural-origin fish. We acknowledge that, as applied, the terms natural population, hatchery population, and mixed population have overlapping meanings and that this resulted in some ambiguity in interpreting the proposed policy. A given hatchery stock (a genetic lineage of hatchery fish propagated at one or more hatchery facilities) can have a wide range of genetic exchange with populations of natural-origin fish (natural populations), varying in the direction, magnitude and regularity of reproductive exchange. Accordingly, natural populations represent a spectrum of influence from artificial propagation, varying in the proportion and effectiveness of naturally spawning hatchery fish contributing to natural-origin offspring. In the context of this policy, individual hatchery stocks must be evaluated on a case-by-case basis in the context of the local natural population(s), and local habitat and ecological features. The terms ''hatchery population'' (a hatchery stock that is isolated from natural-origin populations) and ''mixed population'' (a population in which hatchery-origin and natural-origin fish spawn naturally and interbreed, and/or natural-origin fish are regularly incorporated into the hatchery broodstock) used in the proposed policy represent points in a continuum of gene flow between hatchery stocks and natural populations. In this final policy, we have simplified the terms used by referring to hatchery stocks and natural populations only, recognizing that these two terms encompass a wide range of circumstances (see the ''Changes from the Proposed Policy'' section, below).

*Issue 19:* Some commenters felt that the scope of the proposed policy was unclear, and that without a clear statement of the policy's purpose it could have unintended implications or be inappropriately applied. The commenters recommended that the final policy include a clear statement of purpose describing the scope of the guidance being provided and its intended application.

*Response:* We agree with the commenters that some of the confusion and concern regarding the proposed policy could be addressed by including an unambiguous statement of the scope of the guidance being provided. We recognize that the consideration of hatchery-origin fish in defining conservation units and in evaluating demographic threats and species' extinction risk is a challenge that is not limited to making ESA listing determinations. As stated in the proposed policy, this policy applies to the consideration of hatchery fish in ESA listing determinations for Pacific salmon and steelhead. Although we feel that the concepts upon which this policy is based have some general applicability, the agency did not develop this policy to be applied to species other than Pacific salmon and steelhead, nor for statutory and regulatory determinations other than whether a Pacific salmon or steelhead ESU warrants listing under the ESA. In this final policy we have included a brief statement of purpose that details the scope of specific guidance being provided (see the ''Changes from the Proposed Policy'' section, below).

**Changes From the Proposed Policy**

Substantive changes from the proposed hatchery listing policy based on the comments received are summarized below. We believe that these changes improve upon the proposed policy by clarifying its scope, intent, and implementation. We believe these changes address the points of confusion and concern highlighted by the many comments received regarding the proposed policy.

*Clarification of Policy's Purpose*

In response to the public comments received (see Issue 19 and Response, above), we have clarified the purpose of the direction being provided in this final policy. This policy applies to ESA listing determinations for only Pacific salmon and steelhead. Specifically, this final policy provides direction to NMFS personnel for considering hatchery-origin fish in: (1) determining what constitutes a species under the ESA; (2) evaluating the level of extinction risk for the defined species; (3) making listing determinations of ''threatened'' and ''endangered;'' (4) affirms our commitment to conserving natural salmon and steelhead populations and the ecosystems upon which they depend, consistent with the purposes of the ESA; and (5) affirms our commitment to fulfilling trust and treaty obligations with regard to the harvest of some Pacific salmon and steelhead populations, consistent with the conservation and recovery of listed salmon and steelhead ESUs.

*Clarification of Key Terms*

In response to the public comments received (see Issue 18 and Response, above), we are simplifying the terms used in this final policy in reference to groups of hatchery-origin and natural-origin fish. We use the term ''natural populations'' to refer to populations whose members are fish that originate from spawning in the wild, recognizing that these fish may be the progeny of naturally-spawned and hatchery-origin fish in varying proportions. We use the term ''hatchery stocks'' to refer to a genetic lineage of hatchery fish propagated at one or more hatchery facilities, recognizing that a hatchery stock can have a wide range of gene flow with populations of natural-origin fish varying in the direction, magnitude and regularity of reproductive exchange.

*Clarification of Genetic Divergence Standard*

In response to the public comments received (see Issue 7 and Response, above), we are clarifying the genetic divergence standard in point (3) of the proposed policy, ''Hatchery fish with a level of genetic divergence between the hatchery stocks and the local natural populations that is no more than what would be expected between closely related populations within the ESU: (a) are considered part of the ESU ...''. As noted in the response to Issue 7, above, the consideration of genetic divergence is complex, and this complexity was not accurately captured in the proposed language. In the final policy we have changed this sentence to read ''Hatchery fish with a level of genetic divergence that is no more than what occurs within the ESU: (a) are considered part of the ESU ...''

*Clarification of the Importance of Natural Populations*

In the final policy we are making clarifying changes to the sentence in point (3) of the proposed policy, ''Natural populations that are stable or

increasing, are spawning in the wild, and have adequate spawning and rearing habitat reduce the risk of extinction of the ESU.'' The wording in the proposed policy was misinterpreted by many commenters to mean that natural populations can reduce the extinction risk of an ESU, but that an ESU could otherwise be determined to be viable if all the salmon in an ESU resided in hatcheries. As noted in the response to Issue 10, above, we do not believe that the purposes of the ESA would be satisfied by having all the salmon in an ESU in a hatchery. To clarify the importance of natural populations in evaluating an ESU's status, we are changing this sentence in the final policy to read, ''Hatchery fish will be included in assessing an ESU's status in the context of their contributions to conserving natural self-sustaining populations.''

We are striking the sentence in point (3) from the proposed policy that read, ''Such natural populations, particularly those with minimal genetic contribution from hatchery fish, can provide a point of comparison for the evaluation of the effects of hatchery fish on the likelihood of extinction of the ESU.'' This sentence generated considerable public confusion, with many commenters interpreting it to mean that the value of natural populations is confined to that of a comparative reference for supplemented populations (see Issue 10 and Response, above).

NMFS is also clarifying, in point (4) of the final policy (see Policy Statement, below), that hatchery-origin fish can positively affect the status of an ESU ''by contributing to the abundance and productivity of the natural populations in the ESU'' [emphasis added] (see Issue 16 and Response, above). NMFS believes that this change appropriately underscores the importance of natural populations in evaluating the extinction risk of an ESU. The proposed policy failed to note that certain hatchery programs can conserve the genetic resources of depressed natural populations, reduce their risk of extirpation, and thereby mitigate the immediacy of an ESU's extinction risk (see Issue 15 and Response, above). This potential benefit of hatchery stocks has been included in point (4) in the final policy statement (see *Policy Statement*).

**Required Determinations**

This Policy on the Consideration of Hatchery-Origin Fish in Endangered Species Act Listing Determinations for Pacific Salmon and Steelhead is a general statement of policy, to which the requirement of notice and comment procedures under the Administrative Procedure Act does not apply, pursuant to 5 U.S.C. 553(b)(A). Because prior notice and opportunity for public comment are not required under 5 U.S.C. 553(b)(A) or any other law, the analytical requirements of the Regulatory Flexibility Act are not applicable to this action.

**Policy on the Consideration of Hatchery-Origin Fish in Endangered Species Act Listing Determinations for Pacific Salmon and Steelhead**

For the foregoing reasons, NMFS adopts the following policy on the consideration of hatchery fish in Endangered Species Act (ESA) listing determinations for Evolutionarily Significant Units (ESUs) of Pacific salmon and steelhead.

*Policy Purpose*

This policy provides direction to NMFS personnel for considering hatchery-origin fish in making ESA listing determinations for Pacific salmon and steelhead. Specifically, this policy: establishes criteria for including hatchery stocks in ESUs; provides direction for considering hatchery fish in extinction risk assessments of ESUs; requires that hatchery fish determined to be part of an ESU will be included in any listing of the ESU; affirms NMFS' commitment to conserving natural salmon and steelhead populations and the ecosystems upon which they depend; and affirms NMFS' commitment to fulfilling trust and treaty obligations with regard to the harvest of some Pacific salmon and steelhead populations, consistent with the conservation and recovery of listed salmon and steelhead ESUs.

*Policy Statement*

1. Under NMFS' ''Policy on Applying the Definition of Species under the Endangered Species Act to Pacific Salmon'' (ESU policy)(56 FR 58612; November 20, 1991), a distinct population segment (DPS) of a Pacific salmon or steelhead species is considered for listing if it meets two criteria: (a) it must be substantially reproductively isolated from other conspecific population units; and (b) it must represent an important component in the evolutionary legacy of the species. A key feature of the ESU concept is the recognition of genetic resources that represent the ecological and genetic diversity of the species. These genetic resources can reside in a fish spawned in a hatchery (hatchery fish) as well as in a fish spawned in the wild (natural fish).

2. In delineating an ESU to be considered for listing, NMFS will identify all components of the ESU, including populations of natural fish (natural populations) and hatchery stocks that are part of the ESU. Hatchery stocks with a level of genetic divergence relative to the local natural population(s) that is no more than what occurs within the ESU: (a) are considered part of the ESU; (b) will be considered in determining whether an ESU should be listed under the ESA; and (c) will be included in any listing of the ESU.

3. Status determinations for Pacific salmon and steelhead ESUs will be based on the status of the entire ESU. In assessing the status of an ESU, NMFS will apply this policy in support of the conservation of naturally-spawning salmon and the ecosystems upon which they depend, consistent with section 2 (b) of the ESA (16 U.S.C. 1531(b)). Hatchery fish will be included in assessing an ESU's status in the context of their contributions to conserving natural self-sustaining populations.

4. Status determinations for Pacific salmon and steelhead ESUs generally consider four key attributes: abundance; productivity; genetic diversity; and spatial distribution. The effects of hatchery fish on the status of an ESU will depend on which of the four key attributes are currently limiting the ESU, and how the hatchery fish within the ESU affect each of the attributes. The presence of hatchery fish within the ESU can positively affect the overall status of the ESU, and thereby affect a listing determination, by contributing to increasing abundance and productivity of the natural populations in the ESU, by improving spatial distribution, by serving as a source population for repopulating unoccupied habitat, and by conserving genetic resources of depressed natural populations in the ESU. Conversely, a hatchery program managed without adequate consideration of its conservation effects can affect a listing determination by reducing adaptive genetic diversity of the ESU, and by reducing the reproductive fitness and productivity of the ESU. In evaluating the effect of hatchery fish on the status of an ESU, the presence of a long-term hatchery monitoring and evaluation program is an important consideration.

5. Many hatchery programs are capable of producing more fish than are immediately useful in the conservation and recovery of an ESU and can play an important role in fulfilling trust and treaty obligations with regard to harvest of some Pacific salmon and steelhead populations. For ESUs listed as threatened, NMFS will, where appropriate, exercise its authority under

section 4(d) of the ESA to allow the harvest of listed hatchery fish that are surplus to the conservation and recovery needs of the ESU, in accordance with approved harvest plans.

## References

A complete list of all cited references is available on the Internet at *http://www.nwr.noaa.gov*, or upon request (see **ADDRESSES** section above).

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: June 16, 2005.

**John Oliver,**

*Deputy Assistant Administrator for Operations, National Marine Fisheries Service.*

[FR Doc. 05–12349 Filed 6–27–05; 8:45 am]

BILLING CODE 3510–22–S

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Parts 223 and 224**

**[Docket No. 040525161–5156–03; I.D. 020105C]**

## Endangered and Threatened Species: 6–month Extension of the Final Listing Determination for the Oregon Coast Evolutionarily Significant Unit of Coho Salmon

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

**ACTION:** Proposed rule; 6–month extension of the deadline for a final listing determination.

**SUMMARY:** In June 2004, we (NMFS) proposed that the Oregon Coast coho Evolutionarily Significant Unit (ESU) (*Oncorhynchus kisutch*) be listed as a threatened species under the Endangered Species Act (ESA). In March 2005, the State of Oregon released a draft Oregon Coastal Coho Assessment (draft assessment) of the viability of the Oregon Coast coho ESU and the contributions of the Oregon Plan for Salmon and Watersheds (OPSW) to conserving the Oregon Coast coho ESU. The draft assessment concluded that the Oregon Coast coho ESU is viable. On February 9, 2005, we announced in a **Federal Register** notice that we would consider the information presented by Oregon in determining the final listing status for the ESU, and we solicited public comment on the draft assessment. The comments received by NMFS and Oregon raised a number of concerns regarding the sufficiency and adequacy of the data and analyses used in the draft assessment. On May 6, 2005, Oregon released a final Oregon Coastal Coho Assessment (final assessment) that incorporates and responds to the comments received and includes several substantive changes in response, regarding the sufficiency and adequacy of the draft assessment.

We are extending the deadline for the final listing determination for the Oregon Coast coho ESU by 6 months to analyze Oregon's final assessment in light of the comments received on the draft assessment. This extension will enable NMFS to make a final listing determination based upon the best available scientific information. Additionally, we are soliciting additional information regarding the sufficiency and adequacy of the final assessment.

**DATES:** All comments must be received no later than 5 p.m. Pacific standard time on July 28, 2005.

**ADDRESSES:** Copies of the final Oregon Coastal Coho Assessment are available on the Internet at: http://www.oregon-plan.org, or upon request (see **FOR FURTHER INFORMATION CONTACT**, below).

You may submit comments, using a document identifier ''Oregon's Final Coastal Coho Assessment'' in the subject line or cover letter, on the final assessment and any other relevant information by any of the following methods:

- E-mail: *FinalCohoAssessment.nwr@noaa.gov*.
- Mail: You may submit written comments and information to Chief, NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.
- Hand Delivery/Courier: You may hand deliver written comments and information to NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. Business hours are 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 503–230–5441.

Copies of the **Federal Register** notices cited herein and additional salmon-related materials are available on the Internet at *http://www.nwr.noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Scott Rumsey, NMFS, Northwest Region, Protected Resources Division, by phone at (503) 872–2791.

**SUPPLEMENTARY INFORMATION:**

### Background

In 1995, we completed a comprehensive status review of West Coast coho salmon (Weitkamp *et al.*, 1995) that resulted in proposed listing determinations for three coho ESUs, including a proposal to list the Oregon Coast coho ESU as a threatened species (60 FR 38011; July 25, 1995). On October 31, 1996, we announced a 6–month extension of the final listing determination for the ESU pursuant to section 4(b)(6)(B)(i) of the ESA, noting substantial disagreement regarding the sufficiency and accuracy of the available data relevant to the assessment of extinction risk and the evaluation of protective efforts (61 FR 56211). On May 6, 1997 (62 FR 24588), we withdrew our proposal to list the Oregon Coast coho ESU as threatened, based in part on conservation measures contained in the Oregon Coastal Salmon Restoration Initiative (Oregon Plan) and an April 23, 1997, Memorandum of Agreement (MOA) between NMFS and the State of Oregon which further defined Oregon's commitment to salmon conservation. We concluded that the implementation of harvest and hatchery reforms, and habitat protection and restoration efforts under the Oregon Plan and the MOA substantially reduced the risk of extinction faced by the Oregon Coast coho ESU. On June 1, 1998, the Federal District Court for the District of Oregon issued an opinion finding that our May 6, 1997, determination to not list Oregon Coast coho was arbitrary and capricious (*Oregon Natural Resources Council et al.* v. *Daley*, 6 F. Supp. 2d 1139 (D. Or. 1998). The court vacated our determination to withdraw the July 25, 1995, proposed rule (60 FR 38011) to list the Oregon Coast coho ESU and remanded the case to us for further consideration. The court held that the ESA does not allow us to consider the biological effects of future or voluntary conservation measures, and that we could give no weight to such measures in making a listing determination. We appealed the decision, and the District Court and the Ninth Circuit Court of Appeals declined to stay the District Court's order, thus requiring us to make a new determination. On August 10, 1998, we issued a final rule (63 FR 42587) listing the Oregon Coast coho ESU as threatened, basing the determination solely on the information and data contained in the 1995 status review (Weitkamp *et al.*, 1995) and the May 6, 1997, proposed rule (62 FR 24588).

Section 3 of the ESA defines the term ''species'' to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' In our listing determinations for Pacific salmonids, we treat an ESU as constituting a distinct population segment (DPS), and hence a ''species,'' under the ESA (56 FR 58612; November 20, 1991). In previous listing determinations, hatchery fish considered to be part of an ESU were generally not included as part of a listing, unless it was determined that they were ''essential for recovery'' (58 FR 17573; April 5, 1993).

In 2001, the U.S. District Court in Eugene, Oregon, set aside the 1998 threatened listing of the Oregon Coast coho ESU (*Alsea Valley Alliance* v. *Evans*, 161 F. Supp. 2d 1154, D. Or. 2001) (*Alsea* decision). In the 1998 listing, we did not include in the listing ten hatchery stocks determined to be part of the Oregon Coast coho ESU. The court ruled that the ESA does not allow listing a subset of a DPS and that we had

improperly excluded hatchery stocks from listing that were otherwise determined to be part of the ESU. In response to the *Alsea* decision and several listing and delisting petitions, we announced that we would conduct an updated status review of 27 West Coast salmonid ESUs, including the Oregon Coast coho ESU (67 FR 6215, February 11, 2002; 67 FR 48601, July 25, 2002; 67 FR 79898, December 31, 2002).

On June 14, 2004, we proposed to list the Oregon Coast coho ESU as a threatened species (69 FR 33102). In the proposed rule, we noted that Oregon was initiating a comprehensive assessment of the viability of the Oregon Coast coho ESU and of the adequacy of actions under OPSW for conserving Oregon Coast coho. Following an initial public comment period of 90 days, the public comment period was extended twice for an additional 36 and 22 days (69 FR 53031, August 31, 2004; 69 FR 61348, October 18, 2004), respectively.

In January 2005, Oregon made publicly available its draft assessment of the ESU's viability. The draft assessment also evaluated the certainty of implementation and effectiveness of OPSW measures in mitigating the risk of extinction for the Oregon Coast coho ESU, consistent with the joint NMFS/U.S. Fish and Wildlife Service Policy on Evaluating Conservation Efforts (68 FR 15100; March 28, 2003). The draft assessment concluded that: the Oregon Coast coho ESU is biologically viable; conservation measures under the OPSW have stopped, if not reversed, the deterioration of Oregon Coast coho habitats; and it is highly likely that existing monitoring efforts will detect any significant future deterioration in ESU viability, or degradation of environmental conditions, allowing a timely and appropriate response to conserve the ESU. On February 9, 2005, we published a notice of availability of the draft assessment for public review and comment in the **Federal Register** (70 FR 6840) and noted that information presented in the draft and final assessments would be considered in developing the final listing determination for the Oregon Coast coho ESU. The public comment period on the draft assessment extended through March 11, 2005.

We received 15 comments on Oregon's draft assessment (copies of the comments are available on the Internet at: *http://www.nwr.noaa.gov/occd/DraftCohoReportComments/Comments_Index.html*). On March 18, 2005, we forwarded these comments, as well as NMFS' technical review, for Oregon's consideration in developing their final assessment (NMFS, 2005). The public comments and our review highlighted areas of uncertainty or disagreement regarding the sufficiency and accuracy of the draft assessment including: the assumption that Oregon Coast coho populations are inherently resilient at low abundance and that this compensatory response will prevent extinction during periods of low marine survival; the reduced importance of abundance as a useful indicator of extinction risk; uncertainty in abundance and hatchery fraction data that may result in an underestimation of extinction risk; assumptions regarding the duration and severity of future periods of unfavorable marine and freshwater conditions; the ability of monitoring and adaptive management efforts to detect population declines or habitat degradation and to identify and implement necessary protective measures; and the ability of OPSW measures to halt or reverse habitat degradation once detected.

On May 13, 2005, Oregon issued its final assessment. The final assessment includes a summary of, and response to, the comments received on the draft assessment, and includes several substantive changes intended to address concerns raised regarding the sufficiency and accuracy of the draft assessment. The final assessment concludes that: (1) the Oregon Coast coho ESU is viable under current conditions and should be sustainable through a future period of adverse environmental conditions; (2) given the assessed viability of the ESU, the quality and quantity of habitat is necessarily sufficient to support a viable ESU; and (3) the integration of laws, adaptive management programs, and monitoring efforts under the OPSW will conserve and improve environmental conditions and the viability of the ESU into the foreseeable future.

## Extension of Final Listing Determination

ESA section 4(b)(6) requires that we take one of three actions within 1 year of a proposed listing: (1) finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final determination by not more than 6 months. Section 4(b)(6)(B)(i) allows a 6–month extension of the 1–year deadline for a final listing determination if ''there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination ... for the purposes of soliciting additional data.'' In light of Oregon's draft assessment, the concerns raised by commenters and our own review regarding the sufficiency and accuracy of the draft assessment, and the substantive changes made in Oregon's final assessment to address these concerns, we conclude that a 6–month extension of the final listing determination for the Oregon Coast coho ESU is warranted. For the final listing determination to be made solely on the basis of the best available scientific and commercial information, it is essential to resolve the substantial disagreement regarding the data and analyses supporting Oregon's conclusion that the ESU is biologically viable. Furthermore, an evaluation of protective efforts under OPSW must be made in the context of risks to the Oregon Coast coho ESU, and would be premature given the substantial disagreement regarding the sufficiency or accuracy of Oregon's extinction risk assessment. The 6–month extension will afford us the opportunity to solicit public comment regarding the validity of Oregon's final assessment (see ''Information Solicited'' section, below), to fully analyze Oregon's final assessment in light of the concerns raised with respect to the draft assessment, and to seek peer review of Oregon's final assessment consistent with the 1994 NMFS/U.S. Fish and Wildlife Service joint policy on peer review (59 FR 34270, July 1, 1994) and the Office of Management and Budget's Final Information Quality Bulletin for Peer Review (70 FR 2664; January 14, 2005).

## Information Solicited

We are soliciting public comment on whether Oregon's final assessment adequately resolves the concerns raised regarding the sufficiency or accuracy of the data and analyses used in the draft assessment. The concerns raised are summarized in our review of the draft assessment, which is available on request (see **FOR FURTHER INFORMATION CONTACT**, above) or on the Internet at: *http://www.nwr.noaa.gov/occd/DraftCohoReportComments/Comments_Index.html*. Specifically, NMFS is soliciting public comment on whether Oregon's final assessment provides sufficient new information and analyses to alter our extinction risk assessment and proposed determination that the ESU is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (i.e., ''threatened''). Additionally, we are soliciting comment on whether the final assessment presents information and analyses demonstrating, consistent with the joint NMFS/U.S. Fish and Wildlife Service's Policy on Evaluating Conservation Efforts (68 FR 15100; March 28, 2003), that the OPSW provides sufficient certainty of

implementation and effectiveness to alter our proposed determination that efforts being made to protect the Oregon Coast coho ESU do not substantially mitigate the assessed level of extinction risk.

## References

A complete list of all references cited herein is available upon request (see **ADDRESSES**), or can be obtained from the Internet at: *http://www.nwr.noaa.gov*.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: June 14, 2005.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 05–12350 Filed 6–27–05; 8:45 am]

**BILLING CODE 3510–22–S**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 223 and 224

**[Docket No. 040525161–5159–04; I.D. 052104F]**

## Endangered and Threatened Species: 6–month Extension of the Final Listing Determinations for Ten Evolutionarily Significant Units of West Coast Oncorhynchus mykiss

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

**ACTION:** Proposed rule; 6–month extension of the deadline for final listing determinations.

**SUMMARY:** In June 2004, we (NMFS) proposed that ten Evolutionarily Significant Units (ESUs) of West Coast *Oncorhynchus mykiss* (*O. mykiss*, which includes anadromous steelhead and resident rainbow trout) be listed as endangered or threatened species under the Endangered Species Act (ESA). In April-May 2005, we received three independent scientific reports containing information on the relationship of anadromous and resident *O. mykiss* and on the viability of ESUs containing a diversity of types of populations. In June 2005, we received a letter from the U.S. Fish and Wildlife Service (FWS), stating its concerns about the basis for final listing determinations for the ten *O. mykiss* ESUs and specifying three issues regarding the relationship between anadromous and resident *O. mykiss*, over which there is substantial disagreement about the underlying data.

We are extending the deadline for final listing determinations for the ten *O. mykiss* ESUs for 6 months to analyze the three reports, to work with FWS to resolve the disagreements about the data relevant to its issues of concern, and to solicit additional information from scientific studies and other newly available data. Additionally, we are soliciting comments and information from the public regarding the reports, the issues raised by FWS, and about resident and anadromous *O. mykiss* generally. This extension will enable us to make a final listing determination based upon the best available scientific information.

**DATES:** All comments must be received no later than 5 p.m. Pacific standard time on July 28, 2005.

**ADDRESSES:** You may submit comments, using a document identifier ''*O. mykiss* Issues'' in the subject line or cover letter, on the *O. mykiss* reports and FWS' issues and any other relevant information by any of the following methods:

- E-mail: *OmykissIssues.nwr@noaa.gov*.
- Mail: You may submit written comments and information to Chief, NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232.
- Hand Delivery/Courier: You may hand deliver written comments and information to NMFS, Protected Resources Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. Business hours are 8 a.m. to 5 p.m., Monday through Friday, except Federal holidays.
- Fax: 503–230–5441.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*.

Copies of the **Federal Register** notices cited herein and additional salmon-related materials are available on the Internet at *http://www.nwr.noaa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Scott Rumsey, NMFS, Northwest Region, Protected Resources Division by phone at (503) 872–2791.

**SUPPLEMENTARY INFORMATION:**

## Background

In 1996, we completed a comprehensive status review of West Coast steelhead (Busby *et al.*, 1996) that resulted in proposed listing determinations for ten steelhead ESUs, five as endangered and five as threatened species (61 FR 41541; August 9, 1996). On August 18, 1997, we listed five of the ESUs, two as endangered and three as threatened (62 FR 43937) and announced a 6–month extension of final listing determinations for the other five ESUs, pursuant to section 4(b)(6)(B)(i) of the ESA (62 FR 43974). On March 10, 1998, we proposed to list two additional steelhead ESUs as threatened (63 FR 11798). On March 19, 1998, we listed as threatened two of the steelhead ESUs that were deferred in August 1997 and designated the other three proposed ESUs as candidate species (63 FR 13347). On March 25, 1999, we listed as threatened the two ESUs proposed in March 1998 (64 FR 14517). On February 11, 2000, we proposed to list the Northern California steelhead ESU as threatened (65 FR 6960) and listed that ESU as threatened on June 7, 2000 (65 FR 36074). Under these listing decisions, there are currently ten listed steelhead ESUs, two endangered and eight threatened.

In our initial steelhead listings, we noted uncertainties about the relationship of resident and anadromous *O. mykiss*, yet concluded that the two forms are part of a single ESU where the resident and anadromous *O. mykiss* have the opportunity to interbreed (62 FR at 43941). FWS disagreed that resident *O. mykiss* should be included in the steelhead ESUs and advised that the resident fish not be listed (62 FR at 43941). Accordingly, we decided to list only the anadromous *O. mykiss* at that time (62 FR at 43951). That decision was followed in each of the subsequent steelhead listings described in the preceding paragraph.

Section 3 of the ESA defines the term species to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' In our listing determinations for Pacific salmonids, we treat an ESU as constituting a distinct population segment (DPS), and hence a ''species,'' under the ESA (56 FR 58612; November 20, 1991). In past listing determinations, hatchery fish considered to be part of an ESU were generally not included as part of a listing, unless it was determined that they were ''essential for recovery'' (58 FR 17573; April 5, 1993).

In 2001, the U.S. District Court in Eugene, Oregon, set aside the 1998 threatened listing of the Oregon Coast coho ESU (*Alsea Valley Alliance* v. *Evans*, 161 F. Supp. 2d 1154, D. Or. 2001) (Alsea decision). In the Oregon Coast coho listing (63 FR 42587; August 10, 1998), we did not include in the listing ten hatchery stocks determined to be part of the Oregon Coast coho ESU. The court ruled that the ESA does not allow listing a subset of a DPS and that we had improperly excluded hatchery stocks from listing that were otherwise determined to be part of the ESU. In

response to the *Alsea* decision and several listing and delisting petitions, we announced that we would conduct an updated status review of 27 West Coast salmonid ESUs, including the ten listed steelhead ESUs (67 FR 6215, February 11, 2002; 67 FR 48601, July 25, 2002; 67 FR 79898, December 31, 2002).

On June 14, 2004, we proposed to list the ten *O. mykiss* ESUs (including the resident fish that co-occur with the anadromous form), one as endangered and nine as threatened (69 FR 33102). In the proposed rule, we noted that the *Alsea* decision required listing of an entire ESU, in contrast to our prior steelhead-only listings, and stated the scientific principles and working assumptions we used to determine whether particular resident groups were part of an *O. mykiss* ESU that included anadromous steelhead (69 FR at 33113). Following an initial public comment period of 90 days, the public comment period was extended twice for an additional 36 and 22 days(69 FR 53031, August 31, 2004; 69 FR 61348, October 18, 2004), respectively. During the comment period, we received numerous comments disagreeing with our proposals (generally and for specific resident populations) to include resident *O. mykiss* in various ESUs and criticizing how we considered resident *O. mykiss* in evaluating the risk to the continued existence of the whole ESU.

On June 7, 2005, FWS wrote to NMFS (FWS, 2005), stating its concerns about the factual and legal bases for our final listing determinations for the ten proposed *O. mykiss* ESU listings. FWS suggested that we invoke the ESA 4(b)(6)(B)(i) provision for extending the final *O. mykiss* listing determinations ''to allow for further scientific evaluation, data gathering, and debate among the scientific experts within FWS and NMFS ....''

The specific areas that FWS identified where there is substantial disagreement regarding the sufficiency or accuracy of available data on which to make final listing decisions are: (1) the determination of the *O. mykiss* ESUs, in particular whether resident and anadromous fish in a region are in a single ESU; (2) the relatedness of co-occurring resident and anadromous *O. mykiss*, including whether they form single, routinely interbreeding populations, and whether resident *O. mykiss* produce the anadromous life form and vice versa; and (3) assessment of the risk of extinction of ESUs containing both resident and anadromous *O. mykiss*, including the contributions of both types of populations to the stability of the ESU.

In the last two months, we have received three reports from independent scientific panels that bear directly on these areas of disagreement raised by FWS. (1) On April 8, 2005, the Independent Scientific Advisory Board hosted by the Northwest Power Planning Council issued a report, in response to five questions from NMFS' Northwest Fisheries Science Center, entitled ''Viability of ESUs Containing Multiple Types of Populations'' (ISAB, 2005). (The report is available at *http://www.nwppc.org/library/isab/isab2005–2.htm*). (2) On May 5, 2005, the Recovery Science Review Panel hosted by the Northwest Fisheries Science Center issued a report on its December 2004 meeting on the relation between anadromous and resident forms of *O. mykiss* and how life form diversity affects the viability of *O. mykiss* ESUs (RSRP, 2005). (The report is available at *http://www.nwfsc.noaa.gov/trt/rsrp__docs/rsrpreportdec04finalwbios.pdf*.) (3) On May 16, 2005, an independent scientific panel convened by the Northwest and Southwest Fisheries Science Centers issued a report entitled ''Considering Life History, Behavioral, and Ecological Complexity in Defining Conservation Units for Pacific Salmon'' (Hey *et al.*, 2005). We are considering the concepts and the scientific information presented in these reports, both of which bear on the relationship of anadromous and resident *O. mykiss*.

In addition, we are aware of ongoing genetic *O. mykiss* research by NMFS and state wildlife agencies in Washington, Oregon, California, and Alaska on the ability of resident fish to adopt an anadromous life history and the degree of reproductive isolation between resident and anadromous populations. This research specifically includes studies of the Snake River Basin and Middle Columbia River *O. mykiss* ESUs, and pertains generally to the issues of concern to FWS for all ten of the *O. mykiss* ESUs proposed for listing.

## Extension of Final Listing Determination

Section 4(b)(6) requires that we take one of three actions within one year of a proposed listing: (1) finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final determination by not more than 6 months. Section 4(b)(6)(B)(i) allows a 6–month extension of the 1–year deadline for a final listing determination if ''there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination ... for the purposes of soliciting additional data.'' In light of the concerns raised by FWS and commenters on the proposed listings regarding the sufficiency and accuracy of the data that will form the basis of our final O. mykiss listings, and of the three recent independent scientific reports related to these issues, we conclude that a 6–month extension of the final listing determination for the ten O. mykiss ESUs is warranted. The 6–month extension will afford us the opportunity to discuss these issues and exchange information with FWS, to review and assimilate the recent scientific panels' reports, to solicit an additional year's data from the ongoing genetic studies, and to consider additional information submitted by the public.

## Information Solicited

We solicit public comment on the issues of concern raised by FWS and seek information that may help resolve those issues. Specifically, we request information about: the relationship between co-occurring resident and anadromous *O. mykiss* populations; the range, distribution, and habitat-use patterns of resident populations; the abundance, density, and presence/absence of resident *O. mykiss*; genetic or other relevant data indicating the amount of exchange and the degree of historic and current relatedness between anadromous and resident *O. mykiss* life forms; the existence of natural and artificial barriers to anadromous populations; and the relationship of resident *O. mykiss* located above impassible barriers to anadromous and resident populations below such barriers.

## References

A complete list of all references cited herein is available upon request (see **ADDRESSES**), or can be obtained from the Internet at: *http://www.nwr.noaa.gov*.

**Authority:** 16 U.S.C. 1531 *et seq.*

Dated: June 14, 2005.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 05–12348 Filed 6–27–05; 8:45 am]

**BILLING CODE 3510–22–S**

Federal Register

Tuesday,
June 28, 2005

# Part IV

# Department of Agriculture

## Federal Crop Insurance Corporation

**7 CFR Part 457**

**Common Crop Insurance Regulations; Nursery Crop Insurance Provisions; Final Rule**

**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**7 CFR Part 457**

**RIN 0563–AB80**

## Common Crop Insurance Regulations; Nursery Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes the Nursery Crop Insurance Provisions to make container and field grown practices separate crops; provide coverage for plants in containers that are equal to or greater than 1 inch in diameter; provide separate basic units by share for all coverage levels and basic units by plant type when additional coverage is purchased; permit insureds to select one coverage level for each plant type basic unit when additional coverage is purchased; allow increases to the Plant Inventory Value Report (PIVR) up to 30 days before the end of the crop year; allow acceptance of an application for insurance for any current crop year up to 30 days before the end of the crop year; change the starting and ending dates for the crop year to June 1st and May 31st, respectively; and make other policy changes to improve coverage of nursery plants. FCIC also finalizes the Nursery Peak Inventory Endorsement to reflect changes made in the Nursery Crop Provisions and adds a new Rehabilitation Endorsement to provide a rehabilitation payment for field grown plants to compensate them for rehabilitation costs for plants that will recover from an insured cause of loss.

**DATES:** *Effective Date:* June 28, 2005.

**FOR FURTHER INFORMATION CONTACT:** For further information or a copy of the Cost-Benefit Analysis, contact Stephen Hoy, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Specialist, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO, 641–4676, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, it has been reviewed by the Office of Management and Budget (OMB).

### Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds the expected benefits associated with this proposed rule outweigh costs to the Government. The Nursery Policy changes will likely increase sales and encourage nursery growers to purchase higher levels of additional coverage.

Government outlays were calculated based on, what were considered to be, the four most significant changes: (1) Insurability of plants in containers between 1 inch and 3 inches in diameter; (2) extension of the date for acceptance of an application for insurance; (3) extension of the date for acceptance of a revised PIVR; and (4) addition of a Rehabilitation Endorsement. The Cost-Benefit Analysis estimated, under the most likely scenario, these proposed policy changes would increase Government outlays by approximately 11.2 million dollars and would result in approximately 505 million dollars of increased liability purchased by nursery growers.

Few problems are expected in servicing insurance policies and data reporting systems due to these policy changes.

### Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through November 30, 2007.

### Government Paperwork Elimination Act (GPEA) Compliance

In its effort to comply with GPEA, FCIC requires all reinsured companies delivering the crop insurance program to make all insurance documents available electronically and to permit producers to transact business electronically. Further, to the maximum extent practicable, FCIC transacts its business with reinsured companies electronically.

### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts, or a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

### Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

### Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

### Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988

on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule preempts State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 and 7 CFR part 400, subpart J for the informal administrative review process must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

**Environmental Evaluation**

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

**Background**

This rule finalizes changes to the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.162 (Nursery crop insurance provisions) and 7 CFR 457.163 (Nursery peak inventory endorsement) and adds a new Nursery rehabilitation endorsement at 7 CFR 457.164 as published by FCIC on August 9, 2004, at 69 FR 48166–48174.

*1. Current Program*

Multiple peril crop insurance (MPCI) is available to wholesale nursery growers to assist in the management of nursery plant production risks against losses from specific perils. MPCI coverage for nursery has been available since 1989 and covered wholesale nurseries that received 50 percent or more of their gross income from the wholesale marketing of plants.

The initial insurance program only covered container grown plants that were classified as woody, herbaceous, or foliage landscape plants. That program required nursery growers to provide a nursery plant inventory report with their application or prior to the start of the crop year that projected the amount of inventory in the nursery on a month-by-month basis. If an insured cause of loss occurred, the wholesale market value for the insurable plants in the unit immediately after the occurrence of a loss was subtracted from the lesser of: (1) Ninety percent of the wholesale market value for the insurable plants in the unit immediately prior to the occurrence of a loss; or (2) the highest monthly market value for the unit reported on the nursery plant inventory summary multiplied by 0.9.

Between 1989 and 1999, the nursery crop insurance program was not utilized by a large number of growers. Effective for the 1999 and subsequent crop years, a new insurance program was offered that greatly expanded and modified coverage under the nursery policy, including expanding coverage to field grown nursery crops. These changes have resulted in liabilities increasing from approximately $ 803 million in 1998 crop year to approximately $ 3.7 billion in the 2005 crop year.

The current FCIC nursery program covers field grown and containerized nursery plants. Structures, equipment, supplies, etc. are not covered under this program. In contrast to many crop insurance programs (e.g., wheat, corn, soybeans, cotton, etc), coverage is not based on a yield guarantee that is established using an historical average crop yield per acre. Likewise, the nursery program is not a form of revenue insurance coverage (e.g., Adjusted Gross Revenue and Crop Revenue Coverage). No minimum income guarantee is established. Loss of revenue due to plant price fluctuation is not a covered component under the nursery program.

The program functions as an asset-based form of insurance coverage. Each insured grower provides a plant inventory value report (PIVR) that establishes the plant inventory value for all plants in the basic unit. However, unlike the previous insurance program, nursery growers only report the plant inventory value for the plants in the unit once a year instead of projecting such values on a monthly basis. This significantly reduces the burden on growers to have to project the expected monthly values of their plants.

For the year of application, coverage begins 30 days after the reinsured company receives a signed application. However, no application is accepted after May 31st of the crop year. If an application is submitted after May 31st, coverage will begin on October 1st for the next crop year. Like other crop insurance policy, coverage is continuous from crop year to crop year, unless the coverage is cancelled or terminated, and coverage begins on October 1st.

Insurance ends at the earliest of: (1) The date of final adjustment of a loss when the total indemnities due equal the amount of insurance; (2) removal of bare root nursery plant material from the field; (3) removal of all other insured plant material from the nursery; or (4) 11:59 p.m. on September 30th. Therefore, the maximum time an insurance period can extend in a crop year is from October 1st of one calendar year to September 30th of the next calendar year. The crop year is designated by the calendar year in which it ends. Therefore, if the end of the insurance period is September 30, 2005, it is considered the 2005 crop year.

Both additional and catastrophic risk protection (CAT) coverage are available under the nursery program. Under additional coverage, the grower selects a coverage level percentage (50 percent to 75 percent in 5 percent increments) and a percentage of the insurable price. CAT coverage provides 50 percent coverage at 55 percent of the insurable price. A dollar amount of insurance coverage is calculated by multiplying the grower's plant inventory value times the selected coverage level, times the selected price election, and times ownership share. This amount determines the maximum amount of losses paid in a year and the premium. For example:

A nursery grower reports a plant inventory value on the PIVR of $1,000,000, selects the 75 percent coverage level, selects 100 percent of the insurable price, and has a 100 percent ownership share in the nursery. The amount of insurance provided would be $750,000 ($1,000,000 plant inventory value × 0.75 coverage × 1.00 price × 1.000 share), and the deductible would be $250,000 ($1,000,000 plant inventory value × (1 − .75)). Accumulated insurable losses would be paid up to a maximum of $750,000 over the insurance period.

To assist in valuing the plant inventory, FCIC publishes an Eligible Plant List and Plant Price Schedule (EPLPPS) that lists all insurable plants by genus, species, subspecies, variety, or cultivar. For the 2005 crop year, there are approximately 20,500 insurable plants on the EPLPPS. The insurable price for each plant is the lesser of the catalog or price list price or the maximum insurable price in the EPLPPS. Insurable plant prices are held constant over the crop year. The maximum insurable price is used to calculate the plant inventory value for the purposes of determining the amount of insurance and the amount of indemnity at time of loss.

A maximum insurable price is established for each insurable plant to avoid the potential for large variations in price for the same plant between insured growers thereby affecting the amount of insurance provided. Establishing a maximum price also avoids potential abuse of the program through inflated plant values. For price verification purposes, two copies of the nursery's most recent wholesale catalog or price list must be submitted to the insurance agent each crop year.

All plants on the EPLPPS are categorized into one of thirteen insurable plant types for insurance pricing purposes. For each type, plants are further categorized by container size (volumetric measurement) for containerized plants, caliper size for field grown plants; or high/wide size for field grown plants. Plants not listed on the EPLPPS may be insurable under a written agreement approved by FCIC. However, bulbs, cut flowers, aquatic plants, and air plants are not insurable and written agreements are not available for these plants.

Basic and optional unit are available under the policy, depending on the coverage level selected. Growers with additional coverage are provided basic units consisting of all insurable plants in the county for each practice (containerized or field grown). For additional premium, growers can divide basic units into separate optional units by plant type. The dollar amounts of loss on optional units are accumulated and applied against the amount of insurance on the insured's basic unit.

Under CAT coverage, the basic unit is established on ownership share and not by practice; *i.e.*, field grown and containerized plants are combined into one basic unit. The basic unit cannot be subdivided into optional units.

Basic units are larger in size and usually have a reduced potential for loss. Insureds with only basic units are provided a ten percent discount to the base premium rates. Optional units are smaller and usually have a greater potential for loss due to the fact that indemnity payable is calculated independently on each optional unit.

Growers with additional coverage may purchase up to two Peak Inventory Endorsements, although more than two endorsements may be purchased if one or more losses have occurred and the nursery is restocked. A Peak Inventory Endorsement allows growers to temporarily increase the dollar amount of inventory reported on their PIVR. The premium amount for the Peak Inventory Endorsement is prorated over the specified peak period, so a full year's premium is not paid on the Peak Inventory Endorsement amount. Growers declare the dollar amount of inventory value increase and the dates the Peak Inventory Endorsement is to begin and end. Peak Inventory Endorsements must be submitted on or before May 31st of the crop year.

The nursery policy covers similar causes of loss as other crop insurance policies. However, nursery is unique in that multiple indemnity payments may be made during a crop year if there are multiple losses. This is because the plants are valued individually and plants that are not damaged in one loss occurrence may be damaged in another. However, the total amount of indemnities that can be paid in any crop year cannot exceed the amount of insurance.

While trying to optimize coverage, there were several problems that had to be resolved. The first is fluctuating plant inventories during the crop year. This means that at time of loss, the total plant inventory values in the unit could be radically different than the amount of insurance. While the policy allows for increases to the plant inventory values if requested in writing by May 31st, insurance does not attach until 30 days after the request was received, and it did not totally solve the problem of fluctuating plant inventories.

To solve this problem, like the previous nursery policy, indemnities are not established based on the amount of insurance. Indemnities are established using the total of the plant inventory values of the insurable plants in the unit immediately prior to the loss and after the loss. This ensures that indemnities are based on the actual amount of loss suffered by the grower for the plants present at the time the insurable cause of loss occurs.

Another problem is that the premium is established based on the amount of insurance while losses are not. This means growers have an incentive to under-report their plant inventory values to pay less premium. FCIC solved this problem by including an under-report factor when calculating losses. This factor was determined by taking the lesser of 1.0 or the amount determined by taking the plant inventory value reported on the PIVR and subtracting any previous losses and dividing this total by the actual value of plants in the basic unit immediately prior to the loss occurrence. Use of the under-report factor provides an incentive for growers to avoid under-reporting their plant inventory values.

An additional problem is the amount of insurance contains a reduction for the coverage level but the amount of insurance is not used to calculate losses. To remedy this situation, FCIC developed the loss occurrence deductible, which is the smaller of the crop year deducible (deductible percent times the total plant inventory values for the basic unit) or an amount determined by multiplying the deductible percent (100 percent—the coverage level selected) times the value of plants in the unit immediately prior to the loss occurrence. This allows the application of the coverage level when calculating losses.

For example, a grower with 100 percent share reports a total plant inventory value of $100,000 and chooses a 75 percent coverage level and 100 percent price election. At time of loss, the plant inventory value immediately prior to the loss is $125,000, and the plant inventory value after the loss is $80,000. The crop year deductible is $25,000 ($100,000 × 0.25). The loss would be calculated as follows:

1. The under-report factor is 0.80 ($100,000/$125,000).
2. The occurrence deductible is $25,000 ($125,000 × 0.25 × 0.80).
3. The plant inventory value immediately prior to the loss—the plant inventory value after the loss is $45,000 ($125,000 − $80,000).
4. The result of (3) multiplied by the under-report-factor = $36,000 ($45,000 × .80).
5. The result of (3)—the occurrence deductible = $11,000 ($36,000 − $25,000).
6. Indemnity = $11,000 ($11,000 × 1.00 price election × 1.000 share).

*2. Major Changes*

*Section 1—Definitions.* A definition of ''liners'' is added to provide coverage for plants in containers that are equal to or greater than one inch in diameter. Also, the definition of ''standard nursery containers'' is amended to include containers equal to or greater than one inch in diameter.

Most nursery plants are started as liners; *i.e.*, small plants produced in nursery trays or flats. As a plant matures, it is usually repotted, or upgraded, into a larger container or placed into the ground. The current nursery program only insures plant in container that are three inches or greater at the widest point of the container interior. This limitation precludes a significant segment of the nursery industry from crop insurance coverage. Insuring plants in containers down to one inch in diameter will provide coverage to the majority of liner plants produced by the nursery industry.

*Section 2—Unit Division.* Basic units are provided by share which may be further divided into basic units by plant type when additional coverage is purchased. Optional units are eliminated.

Under the current Nursery Crop Provisions, a grower with additional coverage may elect optional units by plant types. However, it was discovered that it was possible for growers to receive coverage in excess of the coverage level selected because most calculations still occurred at the basic unit level even though optional units were selected. In some cases, growers

were able to obtain coverage that exceeded the amount permitted in the Act.

Instead of by optional units, the new Nursery Crop Provisions allow basic units to be split into additional basic units by type if the grower has elected additional coverage. The policy now lists 14 plant types for field grown material and 15 plant types for container grown material, including liners. The number of plant types produced in most small to medium sized nursery operations is limited. However, large nursery operations often produce a number of different plant types. In meetings with FCIC, nursery growers indicated a preference to selectively insure by type, since risk of loss varies to some degree between plant types. However, insufficient data on degree of risk by plant type precluded designating the types as separate crops. This change will enhance coverage provided to growers with additional coverage and permit growers to better structure their risk management options. It will also permit FCIC to gather experience data on both the inventory and loss sides of the program, and adjust premium rate by plant type.

*Section 3—Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.* Growers may select a separate coverage level for each basic unit. Under the current Nursery Crop Provisions, only one coverage level can be selected and this same coverage level is applicable to all basic and optional units. However, nursery growers have indicated a preference to selectively insure plants by type, including selecting different price elections and coverage levels by type. FCIC considered both options in the proposed rule and, as a result of comments stated below, FCIC has elected to offer only different coverage levels by type. This will still provide growers ability to select the coverage level that best meets their risk management needs for the unit.

*Section 6—Plant Inventory Value Report.* The provision that precludes revision of the PIVR after May 31st of the crop year is removed from these provisions, and premium will be prorated for a PIVR increase.

The starting and ending dates of the crop year are being changed in these provisions, and growers will be permitted to apply for coverage up to 31 days before the end of the insurance period. In light of these changes, FCIC believes growers should have the option of increasing the PIVR up to 30 days before the end of the crop. Unlike the current provisions, growers will be limited to two PIVR revisions to minimize any burden to reinsured companies. Additional premium for the amount of PIVR increase will be prorated based on the time period remaining in the crop year and the additional amount of inventory reported. FCIC believes allowing two PIVR increases throughout the crop year and prorating premium for the additional reported amounts over the remainder of the crop year will significantly enhance risk management options for nursery growers.

*Section 8—Insured crop and Plants.* The crop insured will be all insurable nursery plants in each practice; *i.e.*, container grown or field grown.

Wholesale nursery growers use specific management practices to grow container grown plants and field grown plants. Each practice is unique, requiring growers to use separate plant production methods to grow the plants to a marketable size. Because production methods vary between the two practices, risk of loss also varies accordingly. To reflect the separate and unique characteristics of each practice, FCIC has designated each practice as a separate nursery crop. This change structures the Nursery Crop Provisions to correspond with how the nursery industry views these practices. Nursery growers who utilize both practices in their operation will have the option of insuring one or both practices. Growers' risk management options will also be enhanced because of the ability to insure each practice at either the CAT level or an additional level of coverage.

*Section 9—Insurance Period.* The starting and ending dates for the crop year are changed from October 1st and September 31st to June 1st and May 31st, respectively. Also, the provision that precludes acceptance of an application after May 31st is removed.

The current crop year starting date of October 1st and ending date of September 30th of the next calendar year places the start and end of the crop year during the hurricane season. If a hurricane occurs in September, growers may not be able to provide an accurate PIVR for the next crop year by the October 1st due date. Since a PIVR can only be increased during the crop year, growers may be forced to under report inventory. Also, if plants are partially damaged, a grower must wait until the loss adjuster has valued these plants before reporting their value for the subsequent crop year. Changing the starting and ending dates to June 1st and May 31st, respectively, will eliminate a number of potential reporting problems for insured growers.

For these and other less significant changes, the public was initially afforded a 60-day period to submit written comments and opinions after the proposed rule was filed in the Office of the Federal Register. Based on specific requests to extend the comment period, FCIC published a notice in the **Federal Register** at 69 FR 60320 on October 8, 2004, extending the initial 60-day comment period for an additional 45 days to November 22, 2004. A total of 187 comments were received from 21 commenters. The commenters were nursery growers, reinsured companies, crop insurance agents, an insurance service organization, nursery trade associations, a State Department of Agriculture, and an interested party.

The specific comments received and FCIC's responses are as follows:

Section 1—Definitions

*Comment:* A nursery trade association stated the American Nursery and Landscape Association is identified by its old name, ''American Association of Nurserymen,'' in the definition of ''American Standards for Nursery Stock.''

*Response:* FCIC has revised the definition to reference the American Nursery and Landscape Association or a subsequent successor organization.

*Comment:* An insurance service organization recommended the sentences in the definition of ''container grown'' be combined to eliminate repetition.

*Response:* The sentences have been combined to make clear that container grown applies to both plants in standard nursery containers above ground or grown in such containers in the ground.

*Comment:* An insurance service organization recommended the word ''it'' in the definition of ''crop year'' be clarified.

*Response:* Although this provision was not included in the proposed changes, the requested change is insignificant and would provide greater clarity. Therefore, FCIC has replaced the word ''it'' with the phrase ''the insurance period'' to be consistent with other Crop Provisions.

*Comment:* An insurance service organization recommended the last sentence in the definition of ''eligible plant list'' that states, ''A paper copy of the eligible plant list is also available from your agent'' be deleted.

*Response:* Although this provision was not included in the proposed changes, the requested change is necessary because FCIC has not required agents to maintain a paper copy of the Eligible Plant List because, depending on location, the Eligible Plant List may contain from a few thousand to over

20,500 plants; therefore, size precludes use of a paper copy for distribution to insured growers. The provision is clarified to state that the Eligible Plant List is available on RMA's Web site and on compact disk from crop insurance agents.

*Comment:* An insurance service organization and a reinsured company stated that contradictions exist between the definitions of ''container grown,'' ''fabric grow bag,'' and ''field grown'' regarding use of a fabric grow bag.

*Response:* FCIC agrees a conflict exists between the definitions of ''fabric grow bag'' and ''field grown'' in the proposed provisions because the proposed definition of ''fabric grow bag'' indicates the bag is a ''root control bag.'' The term ''root control bag'' is not applicable when a bag is placed in-ground; therefore, FCIC has removed the term ''root control bag'' from the definition of ''fabric grow bag.'' FCIC does not believe a conflict exists between the definition of ''container grown'' and the definitions of ''fabric grow bag'' and ''field grown,'' because above ground fabric grow bags are considered standard nursery containers. It is only in-ground fabric grow bags that are excluded as standard nursery containers. The provisions have been clarified.

*Comment:* An insurance service organization asked if fabric grow bags must be porous.

*Response:* The definition of ''fabric grow bags'' requires there be adequate drainage. This can be accomplished through the use of porous bags or other appropriate means to permit such drainage, such as drainage holes.

*Comment:* An insurance service organization recommended the period following the term ''fabric grow bag'' (in that definition) be moved to follow the term ''(root control bag).'' The same commenter also recommended that the phrase ''including a woven or matted bag'' be set off in parentheses rather than commas.

*Response:* As stated above, FCIC has removed the phrase ''(root control bag)'' from the definition of ''fabric grown bag'' because it conflicts with the definition of ''field grown.'' FCIC has also added parentheses to set-off the phrase ''including a woven or matted bag with a plastic or fabric bottom'' in the definition of ''fabric grow bag.''

*Comment:* An insurance service organization and a reinsured company recommended the definitions of ''field market value A,'' ''field market value B,'' and ''field market value C'' be revised to indicate these values are based on the lesser of: 1) the prices contained in the Plant Price Schedule, or 2) the prices contained in your wholesale catalog or price list.

*Response:* Although this provision was not included in the proposed changes, section 6(e) of the Nursery Crop Provisions specifies that the plant values cannot be greater than those contained in the Plant Price Schedule. FCIC agrees that the policy needs to be revised to make it clearer that this means the plant values are based the lesser of the price in the Plant Price Schedule or the prices in the grower's wholesale catalog or price list and has revised the definitions accordingly.

*Comment:* An insurance service organization recommended the phrase ''optional or basic unit'' in the second sentence of the definition of ''field market value A'' in the proposed rule be changed to ''basic or optional unit,'' and the same phrase be changed in the definition of ''field market value B. The same commenter recommended the phrase ''for the purpose of determining'' in the last sentence of the definitions of ''field market value A'' and ''field market value C'' in the proposed rule be changed to ''to determine.''

*Response:* Although this provision was not included in the proposed changes, for the reasons stated more fully below, FCIC has elected to eliminate optional units to reduce the complexity of the policy and protect program integrity.

*Comment:* An insurance service organization recommended capitalizing the term ''plant price schedule'' in the definition of ''field market value B'' in the current provisions.

*Response:* Since ''plant price schedule'' is the title of a document, FCIC agrees and has capitalized this term throughout these provisions.

*Comment:* Two insurance service organizations and a reinsured company recommended the under report factor be determined on the basic unit instead of the crop and recommended the definition of ''field market value C'' be revised to reflect this determination. The commenters stated the amount of insurance and other calculations are at the basic unit level. They stated that determining ''field market value C'' at the crop level would be time consuming and burdensome for adjusters, because adjusters would be required to determine the value of all undamaged plants in all basic units, even if a loss is not widespread, to correctly calculate ''field market value C'' on a crop basis.

*Response:* Since losses are indemnified separately for each basic unit there is no need to determine the under report factor for basic units that may not involve a loss. FCIC has removed the definition of ''field market value C'' because, as stated above, optional units have been eliminated.

*Comment:* Three nursery trade associations recommended that the definition of ''good nursery practices'' be expanded to include ''best management practices'' for production nurseries.

*Response:* Use of the term ''best management practices'' would suggest there is a single management practice that is needed to be considered a good nursery practice. This is not the case; any practice that would meet the standards in the definition of ''good nursery practices'' is permitted. FCIC has changed the word ''county'' to ''area'' to correspond with language used in the definition of ''good farming practice'' in the Basic Provisions.

*Comment:* An insurance service organization asked if organic farming practices need to be referenced in the definition of ''good nursery practices.''

*Response:* FCIC has revised the definition of ''good nursery practices'' to include provisions for organic farming.

*Comment:* An interested party and an insurance service organization recommended the definition of ''liners'' be clarified by adding the phrase ''in diameter'' after the word ''inch'' and enclosing the phrase ''including trays containing 288 or fewer individual cells'' in parentheses.

*Response:* FCIC agrees and has revised the definition of ''liners'' to add the phrase ''in diameter'' after the word ''inch.'' With respect to the 288 or fewer individual cells, FCIC has discovered that the use of a one inch limitation on cell size corresponds more closely to 200 cells per tray, not 288 cells per tray. However, there may be some variability in nursery tray sizes so FCIC has revised the provisions to allow a different number of individual cells if permitted by the Special Provisions.

*Comment:* A nursery trade association asked if the definition of ''liners'' excluded rooted cuttings and seedlings grown in flats that have no individual cells.

*Response:* To be insurable, the liner must have a standard nursery container size that is greater than one inch but less than three inches in diameter. This could include individual cell in trays, pots or other appropriate containers. However, since flats or trays without individual cells are not, by definition, considered standard nursery containers, they cannot be considered liners.

*Comment:* A reinsured company asked if the definition of ''nursery crop'' will require the current crop code for nursery to be replaced by two crop codes.

*Response:* To maintain consistency in data processing and record keeping, FCIC has retained the 0073 crop code for nursery. The 007 field grown practice code and 008 container grown practice code are retained on the actuarial documents. However, now each of these practices will be treated as if it were a separate crop. To accomplish this, FCIC has: (1) Added a new section 8(a) to clarify the insured crop will be each practice in which the insured grower has a share that is insured and for which a premium rate is provided by the actuarial documents; and (2) removed the proposed definition of ''nursery crop.'' The term ''practice'' has been added back into the policy and specifies that plants grown in standard nursery containers and field grown are separate practices.

*Comment:* A reinsured company asked if growers will have the options of selecting insurance coverage on one or both nursery crops and choosing buy-up coverage on one crop and CAT coverage on the other crop. The commenter also asked if all plant types within the crop must be insured.

*Response:* As stated above, the term nursery crop is no longer used. The field grown practice and container grown practice are treated as separate crops, so the crop insured will be each practice the grower elects to insure. Because each practice is treated as a crop, a grower can select additional coverage on one practice and CAT coverage on the other practice. However, a grower that selects CAT for a practice must insure all plant types grown with that practice under such coverage. If a grower selects additional coverage for a practice, the growers must insure all plant types grown with that practice under additional coverage but the actual additional coverage level may vary by plant type.

*Comment:* An insurance service organization and a reinsured company stated that removal of the term ''practice'' and separation of field grown and container grown plants into separate crops could result in adverse selection. One commenter stated that container grown material will be insured at higher coverage levels, while field grown material will not be insured or insured under CAT.

*Response:* As stated above, the term practice has been added back to the policy but the separate practices are still considered separate crops and can be insured separately. However, the production methods and risks are considerably different between field grown and container grown plants. Because of these differences, producers must be given the option to select the coverage that best meets their risk management needs. To mitigate the potential for adverse selection, FCIC has adjusted premium rates considering the risks associated with field grown and container grown separately.

*Comment:* An insurance service organization asked if the phrase ''in electronic format'' in the definition of ''Plant Price Schedule'' could be removed. The same commenter suggested removal of the last sentence in this same definition.

*Response:* FCIC has revised the definition to eliminate the reference to electronic format but it does specify it is available on RMA's Web site and on compact disk from crop insurance agents. This provision is necessary because growers must be informed of where they can obtain the information. For clarity and consistency with the definition of ''Plant Price Schedule,'' the definition of ''Eligible Plant List'' is also revised to remove the reference to electronic format.

*Comment:* An insurance service organization asked if the phrase ''that is appropriate for the plant'' in the definition of ''standard nursery containers'' is intended to exclude different plant types together in one container.

*Response:* Nothing in this definition is intended to address the issue of insurability for containers with different types of plants. Insurability for this practice has previously been excluded in the underwriting guidelines. However, this provision is more appropriately contained in the policy and FCIC has revised section 8 to add this exclusion. The phrase ''that is appropriate for the plant'' was intended to refer to the drainage requirements and is not necessary because the term ''adequate'' is sufficient to address the drainage requirements. Therefore, the phrase has been removed.

*Comment:* An insurance service organization and a reinsured company recommended the term ''percentage'' in the definition of ''survival factor'' be defined in the Crop Provisions. One of the commenters asked if the survival factor will vary by region. The other commenter stated a grower may be unable to sell a flat if a certain percentage of the plants are destroyed, and a definition of ''percentage'' is needed to determine if an entire flat can be considered destroyed in order to accurately determine the survival factor.

*Response:* FCIC does not insure flats that do not contain individual cells. FCIC only insures liners grown in individual containers. FCIC does not agree with the recommendation to consider all liners destroyed if a certain percentage of the plants are destroyed. Such plants can still be sold and, therefore, have value. Failure to consider this value when determining losses would increase indemnity payments on liners, negatively impact premium rates, and adversely affect program integrity. Therefore, the term ''percentage'' is given its common usage meaning and a definition is not necessary. FCIC is currently evaluating information on survival factors for liners, and, if there are variations by region, they will be reflected on the Special Provisions. No change has been made in response to this comment.

*Comment:* An insurance service organization recommended inserting a hyphen between the words ''under'' and ''report'' or ''reporting'' or combining the two words into one word. The commenter recommended removal of the colon after the word ''of'' and removal of the semicolon after ''1.000'' for clarity.

*Response:* FCIC agrees the term ''under report'' should be hyphenated. FCIC agrees that the punctuation is not correct in the third sentence in the definition of ''under factor.'' However, FCIC has elected to designate the two provisions as (a) and (b) so there is a clear distinction.

*Comment:* A crop insurance agent recommended the definition of ''wholesale'' include growers selling large quantities of plants at a reduced price to government offices.

*Response:* FCIC agrees and has revised the definition of ''wholesale'' to include a plant sale to end-users, including government offices, if the sale is for a large quantity of plants at a reduced price. The purpose of the provisions is to ensure that insurance is only provided for producers of the plants. Therefore, as long as the grower produces the plants and otherwise qualifies as a wholesale marketer (*i.e.*, sells in large quantities at lower prices) there is no basis to deny insurance for such growers simply because they sell to end users.

*Comment:* An insurance service organization recommended the definition of ''wholesale'' be restructured so the wording is not separated into subparagraphs. If the subparagraphs are retained, the commenter recommended capitalizing the first word in subparagraphs (b) and (c).

*Response:* FCIC agrees and has revised the definition to eliminate the subparagraphs.

Section 2—Unit Division

*Comment:* An insurance service organization recommended the phrase

''if the plants are not liners'' in proposed section 2(a)(1) be changed to ''for plants that are not liners.''

*Response:* All references to liners are removed from section 2(a) because a type code for liners is required for reporting purposes. Instead, basic units may be established by plant type and FCIC has added liners as a plant type in section 2(c). Therefore, the recommended change is not necessary.

*Comment:* An insurance service organization stated the phrase ''the basic unit'' in section 2(b) reflects only one basic unit in a county. The same commenter asked if the phrase in proposed section 2(b) that states ''the basic unit will be used to establish the amount of insurance, crop year deductible, premium, and the total amount of indemnity payable under this policy'' means that all optional units within one of these basic units will have the same guarantee, rate, etc.

*Response:* There may be more than one basic unit in a county because basic units are now permitted by share and plant type. Section 2(b) specifies that each of these basic units may be divided into optional units as provided in section 2(d). However, FCIC agrees that it is difficult to ascertain how the amount of insurance, premium rates, deductibles determined at the basic unit level will apply to optional units. This level of complexity will make it difficult for agents to explain the policy to growers and reinsured companies to defend the policy provisions. For these reasons and those stated below, FCIC has elected to remove optional units from the policy and has redesignated the provisions in section 2 accordingly.

*Comment:* An insurance service organization stated that limiting optional units by location to field grown material may not preclude balled and burlapped plants from being shifted between locations.

*Response:* FCIC concurs that balled and burlapped plants could be shifted between locations. This would adversely affect program integrity. Because FCIC does not know of any reasonable means to eliminate this potential shifting of production, and for the other reasons stated above, FCIC has elected to eliminate optional unit.

*Comment:* An insurance service organization asked if the language in section 2(d) precluded insuring organic and conventional nurseries as optional units.

*Response:* For the reasons stated above, FCIC has elected to eliminate optional units. Therefore, this is no longer an issue.

*Comment:* Three nursery trade associations stated that optional units should be offered by location for plants in containers in a manner that significantly mitigates the potential for shifting of container grown plants between growing locations to facilitate losses.

*Response:* FCIC is not aware of any method or process that would significantly mitigate the potential for shifting plants between locations to facilitate a loss if optional units by location are offered for containerized plants. As stated above, since the risk associated with the shifting of production is so great and they add an increased level of complexity, FCIC cannot permit optional units at this time and has eliminated them from the policy. If the nursery trade associations have suggestions of how optional units may be offered without the risk of shifting production, they should provide them to their local Regional Office for future consideration.

*Comment:* An insurance service organization recommended the premium rates be adjusted to reflect division of basic units by share and plant type.

*Response:* FCIC contracted a study to evaluate the impact of these changes on the premium rates and will make appropriate adjustments. Also, as experience data are compiled for each crop, plant type, and coverage level, premium rates will be adjusted accordingly to maintain an actuarially sound program.

*Comment:* Two insurance service organizations and two reinsured companies expressed concern on allowing basic units by plant type and all liners. Two of the commenters stated collecting PIVRs on basic units by plant type would require more work by the reinsured company, be burdensome to administer, and could make the loss adjustment process impossible to complete. One commenter recommended plant values continue to be aggregated on all container grown plants and all field grown plants, and plant types should remain optional units. Two of the commenters stated premium rates should be adjusted to reflect these changes.

*Response:* Most nurseries have a limited number of plant types. Therefore, FCIC believes reporting the plant inventory value by plant type will, in most instances, not be overly burdensome to growers or reinsured companies to administer. It is true that more losses may have to be calculated. However, in some instances the amount of work required for loss adjustment will be reduced. If there are basic units by plant type, and not all types suffer a loss, field market value A and B and the under-report factors will only have to be calculated for the plant types with a loss. If there is a basic unit by container grown and field grown, field market values A and B would have to be calculated for all types in the unit, regardless of whether they had a loss. Further, reporting plant inventory values for each plant type will improve the accuracy of the PIVR, thereby increasing accuracy in determining the amount of insurance, premium owed, and indemnity payable. This will benefit growers and reinsured companies. To allow basic units by field grown and container plants and optional units by plant type would not significantly decrease the work load because field market value A and B would have done by type. As stated above, FCIC has contracted for a rate study, including units by plant type, and rates will be adjusted appropriately to reflect the risks. Section 2(a) is amended to specify that unless there is a premium rate for the type on the actuarial document, insurance is not provided. Further, as experience data are compiled for each plant type, premium rates will be adjusted to reflect the risks associated with insuring each type.

*Comment:* A nursery grower recommended that palms and cycads be placed in a separate plant type.

*Response:* FCIC agrees a separate plant type to include all plants classified as palms and cycads is appropriate because the morphological characteristics of these plants are unique and, therefore, they are more appropriately typed separately. Redesignated section 2(b) of these provisions is revised to reflect this additional plant type.

*Comment:* A reinsured company stated that liners are not a plant type but are listed as a type for basic unit division purposes. The commenter recommended that liners be added to the plant type list in section 2(c) (redesignated as section 2(b)).

*Response:* FCIC agrees that it is better to include liners as a plant type than to try to distinguish basic units by whether liners were present. Although liners may be a composite of a number of plant types, for insurance coverage and data processing purposes a single type code will be assigned for all liners. FCIC has added liners to the list of plant types in redesignated section 2(b).

*Comment:* An insurance service organization asked if removal of the ''other plant types listed in the Special Provisions'' from the list of plant types in section 2 would preclude using written agreements to insure plants not listed on the Eligible Plant List.

*Response:* Use of a written agreement to insure a plant not listed on the Eligible Plant List is not affected by the plant types listed in redesignated section 2(b) of these provisions. However, information provided to FCIC by the nursery industry, subsequent to publication of the proposed rule, suggests that FCIC may need to add one or more new plant types to redesignated section 2(b) to enhance plant pricing accuracy. To expedite possible inclusion of a new plant type, FCIC has not removed ''other plant types listed in the Special Provisions'' from redesignated section 2(b).

Section 3—Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

*Comment:* Two insurance service organizations, two reinsured companies, and a crop insurance agent questioned the proposed provision that allows different coverage level and price election percentage for each basic unit. These commenters stated the nursery policy should not allow a different coverage level and price election percentage for each basic unit because it would lead to adverse selection. One commenter stated allowing a separate price election percentage for each plant type would create a vast opportunity for moral hazard. One commenter stated different coverage levels and price elections would add complexity to the use of Peak Endorsements and to the loss adjustment process. One commenter indicated different coverage levels and price election percentages by plant type would create administrative burdens.

*Response:* FCIC agrees that different price election percentages should not be allowed by plant type. FCIC concurs with the commenter regarding the opportunity for moral hazard to increase significantly if the price election percentage is permitted to vary by plant type. Also, FCIC agrees that allowing price election to vary by plant type could increase the administrative burden on reinsured companies. Crop insurance experience data indicates insureds rarely elect less than 100 percent of the insurable plant price. During the 2004 crop year, less than one percent of insureds with additional coverage selected a price election percentage that was less than 100 percent of the insurable plant price. Therefore, to reduce administrative burden and to be consistent with the large majority of crop policies providing coverage on a dollar amount of insurance, FCIC has removed the option of selecting less than 100 percent of the insurable plant price on nursery plants. However, growers with additional coverage and basic units by plant type should be permitted to select different coverage levels for plant types. The risks with each type may be different and growers should be able to select the appropriate coverage level to meet their risk management needs. Premium rates will be established for each practice, plant type and coverage level shown on the actuarial document. As experience data are compiled for each practice, plant type, and coverage level, premium rates will be adjusted accordingly to maintain an actuarially sound program. FCIC agrees that some additional work will be required of the reinsured company and loss adjuster. However, allowing separate coverage levels is not what increases the burden. The burden is increased because separate types are considered separate basic units. Further, most growers do not produce many different types so the burden should not be substantially increased.

*Comment:* Three commenters stated clarification is needed to indicate whether each basic unit can have a separate coverage level and price election percentage or all basic units must have the same coverage level and price election percentage. Two commenters indicated clarity is needed regarding eligibility for the option of separate coverage level and price election percentage on an additional level of coverage and ability to vary coverage level and price election percentage on a basic unit level by share or plant type. One commenter recommended coverage level, if allowed by plant type, be identified on the application by crop or crop/type, since basic units are not identified on the application. One commenter stated establishing coverage level by plant type might be acceptable if premium rates are adequate. One commenter stated reinsured companies must be allowed to set fund designations by basic unit if insureds can select coverage level and price election by basic unit.

*Response:* FCIC agrees additional clarification is needed to avoid confusion on selecting coverage level on a basic unit and has revised sections 3(c) of the proposed provisions to specify that different coverage levels only apply to plant types, not other types of basic units. FCIC also agrees that coverage level must also be included on the application so FCIC has revised section 3 to require growers to list each plant type and the coverage level selected for each type on the application. The Standard Reinsurance Agreement does not permit reinsured companies to select fund designations on a basic unit level. Therefore, FCIC cannot include this provision in these Crop Provisions.

*Comment:* A reinsured company asked if the intent of the policy is to insure nursery crops similar to Idaho, Oregon, and Washington grapes. If this is the intent, the commenter indicated it should be stated more concisely.

*Response:* The Grape Crop Provisions permit insured growers in Idaho, Oregon, and Washington to select a price election and coverage level for each grape varietal group specified in the Special Provisions. As stated above, the language in proposed section 3(b) is revised to clarify that a coverage level can be selected for each plant type insured under a practice. Operationally the Nursery Crop Provisions are similar to the Grape Crop Provisions in that separate types/varieties have separate units. However, under the Grape Crop Provisions applicable to all states except California, basic units are divided into optional units by variety. Under the Nursery Crop Provisions, basic units are divided into other basic units by plant type. The provisions have been revised to clarify that the insured crop is determined by the practice and, at the election of the grower, basic units can be established by plant type if additional coverage is elected.

*Comment:* An insurance service organization recommended the word ''policy'' not be used in proposed section 3(b) because container and field grown plants are separate crops and the word ''policy'' could be misleading. The commenter stated FCIC needed to review the terms ''policy'' and ''crop'' in these provisions to make sure it fits the new definitions.

*Response:* FCIC is not sure what the issue is because each different practice is considered a different crop. This means each practice would also be considered a different policy since only one crop is insured per policy. However, references to ''policy'' have been removed from section 3(b). FCIC will review other provisions to ensure that the term ''policy'' is correctly used.

*Comment:* An insurance service organization and a reinsured company asked if administrative fees would be charged for each plant type.

*Response:* Pursuant to sections 508(b)(5) and 508(c)(10) of the Federal Crop Insurance Act, administrative fees are payable on a crop and county basis. Since different plant types are not considered different crops, separate administrative fees for each plant type would not be owed. However, each practice is considered a separate crop so section 3(b) of these provisions is revised to clarify an administrative fee

is owed for each practice (field grown and container grown) insured.

*Comment:* An insurance service organization stated coverage under CAT needs clarification, since the policy language appears to restrict a grower from purchasing additional coverage for the rest of the nursery if CAT coverage is chosen for one type.

*Response:* The policy is intended to restrict the grower from purchasing additional coverage for the rest of the practice if CAT coverage is chosen for one type. FCIC has revised proposed section 3(b) to state insureds may select either CAT or an additional level of coverage on each insured practice. This means a grower can select CAT coverage for field grown plants and additional coverage for containerized plants, or vice versa. However, growers who select CAT coverage on a practice must insure all plant types under that practice at the CAT coverage. An insured cannot select CAT for one or more plant types under a practice and select additional coverage on other plant types under the same practice.

*Comment:* An insurance service organization asked if any other multiple peril crop policies permit coverage level and price election percentage to vary besides those crops listed in section 4A(4) of the Crop Insurance Handbook. This commenter asked if allowing coverage level and price election percentage to vary by basic unit would establish a precedent for other crops, and recommended leaving plant types as optional units.

*Response:* As stated above, growers will no longer be able to select different price elections by plant type but growers will be permitted to select different coverage levels by plant type. Section 4A(4) of the Crop Insurance Handbook lists Crop Provisions with more than one insurable crop. The Grape Crop Provisions applicable to all states except California permit variation in coverage level and price election by varietal group with all insurable varieties being designated as one crop. Therefore, allowing coverage level to vary by basic units of the same crop in the Nursery Crop Provisions does not establish a precedent. Such precedent was already set.

*Comment:* An insurance service organization recommended language be considered to address what coverage level and price election percentage should be used for new plant types added on a revised PIVR.

*Response:* As stated above, price elections will not be permitted to differ between plant types but coverage levels will. Section 3(c) is revised to specify that if an insured with an additional level of coverage submits a revised PIVR or Peak Inventory Endorsement that includes a plant that is categorized under a plant type (basic unit) not on the initial PIVR, the insured must select the coverage level for insuring the new plant type. Language that precludes coverage level changes after the sales closing date is not applicable, because selecting a coverage level for a new plant type is not a change to an existing coverage level.

*Comment:* An insurance service organization recommended revising proposed section 3(c)(1) and (2) to read as follows:

(1)''For the initial crop year, after the date of application; and

(2) For subsequent crop years, after September 30th.''

*Response:* FCIC cannot accept the suggestions. Sections 3(c)(1) and (2) (now redesignated as sections 3(d)(1) and (2)) apply to the first crop year the provisions are in effect because at that time some producers will be new applicants and others will have carryover policies. Since the insurance period is changing, the first year there needs to be an interim date by which changes may be made. However, FCIC has revised redesignated section 3(d) to clarify that the September 30 date applies to the first crop year the provisions take effect and the sales closing date applies to all subsequent crop years.

*Comment:* An insurance service organization recommended that language in proposed section 3(f) be revised to clarify an increase to the insured's coverage level must be requested on or before September 30th prior to the start of the crop year. The commenter also recommended combining proposed sections (c) and (f) or moving section (f) to follow section (c). The commenter also recommended removing the phrase ''whichever is later,'' in proposed section 3(f) and adding the phrase ''the later of'' between the words ''on'' and ''October.''

*Response:* FCIC has removed proposed section 3(f) because, except for carryover policies for the 2006 crop year, all coverage level changes must be submitted by the sales closing date and section 3 has been revised to clarify the date by which the changes requested for the 2006 crop year take effect and the date by which the changes for all subsequent crop years date effect.

*Comment:* An insurance service organization and a reinsured company asked whether a coverage level increase could be denied if a loss occurs within the 30-day waiting period for the higher coverage level to attach but the reinsured company is not made aware of the loss until after the higher coverage level attached.

*Response:* A request for a higher coverage level can be denied if a loss occurs during the 30-day waiting period even if the reinsured company is not notified of the loss until after the 30-day waiting period has elapsed.

*Comment:* An insurance service organization stated that newly redesignated section 3(e) should reference ''section 6(g)'' and not ''section 6(f).''

*Response:* FCIC agrees and has revised newly redesignated section 3(e) accordingly.

*Comment:* A crop insurance agent stated the Eligible Plant List must use adequate (plant) pricing, as well as offer coverage on all items.

*Response:* It is not possible to cover all items at this time. Without adequate pricing information to ensure that the plants receive the proper amount of insurance and are not over or under insured, plants cannot be added to the Eligible Plant List. As such information is obtained, FCIC continues to update and expand the Eligible Plant List to provide additional plants and plant price data. Each crop year, the Eligible Plant List is expanded to include new plant varieties and cultivars, including plants covered by written agreements the previous crop year. No changes are made in response to this comment.

Section 6—PIVR

*Comments:* An insurance service organization asked if inventory revisions are required when liners are put in larger containers or planted in the field.

*Response:* When liner plants are repotted into larger containers or placed in the field, the insured should increase the PIVR to reflect the increased value of the larger plant. If the PIVR is not increased to reflect higher plant values and an insurable loss occurs, an under-report factor may be applied to reduce the payable indemnity.

*Comment:* An insurance service organization and a reinsured company suggested that cancellation of policies for the subsequent crop year due to failure to submit a PIVR by September 1st prior to the start of the crop year could lead to higher costs for companies and less coverage for growers. One commenter stated that growers may intentionally not provide a PIVR to get partial year coverage and prorated premiums. The commenter asked whether an insured grower will be treated as a new applicant if the grower is cancelled because of failure to timely submit a PIVR but then submits a report later in the crop year. The commenter

expressed concern that year after year of repeated cancellations and applications would result in added time and costs for the reinsured company.

*Response:* Since the crop year has been revised, the provisions regarding when PIVRs must be submitted must also be changed. To ease administration of the policy, section 6(b) has been revised to require the PIVR be submitted with the application or by the sales closing date for each subsequent crop year. However, there may be legitimate times when the grower cannot submit the PIVR, or the catalog or price lists, because the grower does not know the inventory, such as after a loss has occurred or the catalog has not been finalized by the crop year. RMA agrees that cancellation of the policy and reapplication may impose a burden on the reinsured company and grower. FCIC has revised the provisions to specify that if the grower does not submit the PIVR, or the catalog or price lists, by the sales closing date, insurance will not attach until 30 days after the grower submits the required information. This should mitigate the burden on reinsured companies and growers. While it may still be possible for growers to delay providing the necessary documentation in order to get partial insurance for the year and pay a partial premium, the legitimate inability of some growers to timely provide such documentation outweighs the likelihood that growers will risk suffering losses while insurance has not attached. However, the risk associated with such conduct is already included in the premium rates.

*Comment:* An insurance service organization recommended carrying over the plant inventory value from the previous year if the renewal plant inventory is signed less than 30 days prior to the sales closing date and an inspection is required. This commenter stated new values should attach 30 days after new inspection. If no inspection is required, the new values take effect on the sales closing date.

*Response:* For all years after the year of application, PIVRs must be submitted by the sales closing date, which is 30 days before the start of the insurance period. As stated above, if the grower fails to provide a PIVR by the sales closing date, insurance does not attach for such plants until 30 days after the PIVR is received by the agent. FCIC chose this revision instead of the recommendation to use the previous year's plant inventory value because plant inventory values for most nurseries are seldom, if ever, the same from one crop year to the next. Therefore, carrying-over plant inventory values from one crop year to the next could lead to misreporting penalties and introduce significant errors in amounts of insurance coverage provided and amount of premium owed, including the amount of imputed premium paid by the Federal government for polices with CAT coverage. FCIC also believes the 30-day waiting period between submission of a Plant Inventory Value Report and insurance attachment is an adequate time period for the reinsured company to complete an inspection. To delay until 30 days after the reinsured company has made an inspection will subject the grower to the additional risks that a loss may occur before insurance has attached. Further, reinsured companies have been operating under the 30 day deadline to complete their inspections since 1999. Therefore, this requirement does not impose any additional hardships on reinsured companies.

*Comment:* An insurance service organization asked if separate PIVRs are required if field grown and container grown are separate crops. The commenter asked if both nursery crops can be reported on one PIVR. The commenter stated that clarification is needed if a PIVR is provided timely for one nursery crop but not the other; *i.e.* would the entire policy be cancelled or coverage be cancelled on the applicable nursery crop.

*Response:* The format of the PIVR form will be revised to reflect Nursery Program changes contained in this rule. A PIVR will be required for each practice, because each is a separate crop covered under separate policies. If an insured fails to timely submit a PIVR on a practice, as stated above, insurance does not attach for all nursery plants insurable under that practice. Insurance is not affected for nursery plants insurable under the other practice if a report is submitted timely for that practice.

*Comment:* An insurance service organization asked if separate PIVRs will be required for additional coverage and CAT coverage. The commenter also asked if all basic units are reported on one PIVR.

*Response:* As stated above, PIVRs must be separately filed for each practice, regardless of whether the practices are both insured under additional coverage or one under CAT and the other under additional coverage. The policy has been revised to clarify that regardless of whether an insured has additional coverage or CAT coverage on a practice, an inventory value must be provided for each basic unit, including by plant type, insurable under the practice. This is necessary to calculate total premium for additional and CAT coverage and producer premium for additional coverage.

*Comment:* Three nursery trade associations recommended basing the insurable prices of plants on the insured's wholesale catalog or price list price when an additional level of coverage is purchased.

*Response:* FCIC does not currently have the experience to determine the effect of allowing such prices on coverage or premium rates. Therefore, the use of such prices cannot be allowed in this final rule. However, FCIC is developing a Pilot Nursery Grower's Price Endorsement that would permit growers with additional coverage to establish the insurable price of select plants on their catalog or price list prices. If approved, this pilot endorsement may be available for the 2006 crop year in select areas. The pilot would operate for several years and, if FCIC determines the pilot is successful, the endorsement will be codified in the **Federal Register** and could be made available to all growers with additional coverage. No changes are made in response to this comment.

*Comment:* An insurance service organization requested that the Plant Price Schedule be updated to provide an appropriate pricing reference for all sizes and types of plants, so coverage of larger plants is not limited.

*Response:* The Plant Price Schedule base price tables are established using plant price data available to FCIC from grower catalogs and price lists. If such data is not available for a plant size or type, they cannot be included on the Plant Price Schedule. FCIC will continue to expand the sizes listed on base price tables as price data becomes available. If the pilot endorsement discussed above is approved, growers in the pilot area with additional coverage who elect this endorsement will be able to price containerized and field grown plants on their catalog or price list prices even though they exceed the size limitations and prices contained in the Plant Price Schedule. No changes are made in response to this comment.

*Comment:* One reinsured company stated that clarification is needed on whether plant inventory value is reported on the inventory value at time of submission of the PIVR or is based on the expected plant inventory value for the crop year.

*Response:* Because inventory valuation can vary throughout the crop year, these provisions cannot stipulate the point in time on which the dollar amount reported on the PIVR must be based. Requiring the reported values be fixed in time would arbitrarily cause

growers to be in an under-reporting or over-reporting situation. Growers must be given some flexibility in determining how to report their inventory, considering the ramifications of under-reporting or over-reporting of inventory. To mitigate the problem of selecting a specific value when the inventory and values change, growers are permitted to increase their PIVR during the crop year. Language is added to section 6(g) to limit the number of inventory revisions during the crop year to two. This is to reduce the administrative burden on reinsured companies and growers to track an unlimited amount of changes during the crop year. FCIC believes the large majority of wholesale nurseries do not require more than two inventory revisions for a basic unit during the crop year to maintain an accurate amount of insurance. This should be sufficient to permit growers to more specifically tailor their reported values to the actual values present at the time. However, to allow changes more often would increase the complexity and burden on reinsured companies and growers. Insureds with additional coverage can also utilize a Peak Inventory Endorsement to increase their plant inventory valuation. No changes are made in response to this comment.

*Comment:* An insurance service organization and a nursery trade association asked for clarification regarding required documentation and proof of the PIVR. One commenter also asked if the type and value of coverage will be restricted for a grower who does not have three years of history on a new nursery or new plant varieties.

*Response:* The reinsured company has the option of requiring documentation in support of the plant inventory value, including a detailed listing of plants on the PIVR, sales and purchase records for the three previous crop years, and the grower's ability to obtain and maintain nursery stock. Such records are not required. However, if the reinsured company requests documentation and the grower fails to provide it, the provision is clarified to specify that insurance is denied for the crop year for any basic units for which such documentation was not provided. This means if the grower fails to provide documentation for any plants within a basic unit, insurance will be denied for the unit. Insurance will not be affected for other basic units for which applicable documentation have been provided. If the grower obtains a new nursery, insurance may be provided after an inspection of the facilities if the reinsured company determines a grower has the ability to properly obtain and maintain nursery stock, the insurance provider may bind coverage in the absence of records. Further, three years of records are not required to insure a new plant variety and no adjustment will be made or insurance denied.

*Comment:* An insurance service organization and a crop insurance agent stated that flexibility should be allowed when determining insurability of a plant that is partially damaged, because this cannot be accurately established at the time inventory is reported.

*Response:* Language in section 11 of these provisions permits a loss adjuster to defer the determination of amount of damage to a plant up to one year after the end of the insurance period for the crop year in which the damage occurred. A plant that is damaged but will recover to its pre-damaged stage of growth must be insured at a reduced value until fully recovered. Section 6(e) has been revised to clarify that if a loss adjuster is unable to determine whether a plant is damaged prior to the time the grower submits the PIVR for the subsequent crop year, the plant is insurable at full value based on the lesser of the Eligible Plant List price or the catalog/price list price. The reinsured company may, however, reduce the insurable value of a plant later in the crop year if the extent of damage can be determined. This should allow the maximum flexibility and avoid the potential for over-insurance.

*Comment:* Four nursery growers expressed opposition to the change that will require inventories to be updated six times each year. They indicated it would be a time consuming burden.

*Response:* There were no provisions in the proposed rule, nor are there provisions in this final rule, that require plant inventories to be updated six times each year. The grower must report inventory once with the application or by the sales closing date and the grower has the option to revise it twice during the crop year. Therefore, no change is required.

*Comment:* An insurance service organization recommended that ''a liner value be established for all policies and coverage levels.''

*Response:* Liners in standard nursery containers are classified as a plant type and will constitute a separate basic unit when insured under a policy with an additional level of coverage. This means that the liner value will be established for the basic unit, which can have only one coverage level. Liners are insurable under CAT coverage. However, CAT policies are limited to basic units by share, so liners are not a separate basic unit under CAT. This means the liners will receive the same CAT level of coverage as other plants in the practice. No changes are made in response to this comment.

*Comment:* A reinsured company asked how and in what manner plant prices in the Plant Price Schedule will be available since they are not published in the actuarial documents.

*Response:* The Eligible Plant List and Plant Price Schedule is part of the actuarial documents and is available on RMA's Web site at *http://www.rma.usda.gov*. The Eligible Plant List and Plant Price Schedule is also available on compact disk from the crop insurance agent.

*Comment:* An insurance service organization recommended replacing the phrase ''for the subsequent crop year'' in the second sentence of proposed section 6(b) with the phrase ''for that crop year.''

*Response:* The recommended change does not reflect the actual intent of the provision. For the year of application, the PIVR must be submitted with the application. For each crop year after the year of application, the PIVR must be submitted by the sales closing date. Section 6(b) has been revised to clarify this distinction.

*Comment:* An insurance service organization recommended the phrase ''of each basic unit'' in the first sentence of proposed section 6(c) is not necessary since basic unit value is defined.

*Response:* FCIC agrees and has removed the phrase ''of each basic unit'' from the sentence. The word ''value'' is made plural for clarity. However, the provision is revised to specify that all information, such as growing locations, share, etc., must be reported by basic unit. This will make it much simpler to identify the different basic units and eliminate potential errors that can result with information is not segregated.

*Comment:* An insurance service organization asked if the misreporting penalty addressed in proposed section 6(c) is to be applied for any inadvertent reporting omission. The commenter asked if ''any indemnity'' will be denied if an error is discovered on the PIVR, but the error does not affect the basic unit with a loss. This commenter asked if misreporting on one nursery crop would result in denial of coverage on the other nursery crop. Another insurance service organization and an insurance agent recommended the word ''Intentional'' be added to the beginning of the last sentence in section 6(c) that addresses misreporting on the PIVR and denial of an indemnity due to the misreporting.

*Response:* FCIC recognizes the dollar amount of plant inventory in many wholesale nurseries varies considerably during the crop year. Growers should

not be penalized because of this expected variability. Further, differentiating between intentional and unintentional misreporting on the PIVR would be very difficult for the reinsured company to determine. Therefore, FCIC has removed language from these provisions regarding misreporting of material information on the PIVR.

*Comment:* An insurance service organization recommended the last two sentences in proposed section 6(c) be moved to section 6(d) or section 6(c) and (d) be combined.

*Response:* As stated above, the provisions relating to misreporting have been removed from the policy. However, section 6(c) pertains to the contents and verifiability of the PIVR, which includes the requirement to provide documentation if requested. This is unrelated to section 6(d), which pertains to the use of the PIVR to determine premium and the amount of insurance. Because the requirement to provide documentation upon request is contained in section 6(c), the consequences for failure to provide such documentation should remain in section 6(c). No changes are made in response to this comment.

*Comment:* An insurance service organization recommended changing the sentence structure of proposed section 6(f) by removing the comma and word ''or'' after the word ''coverage'' and inserting a semicolon.

*Response:* FCIC agrees that redesignated section 6(h) need clarification and has revised them to specify that if insurable plants are damaged, the price may be reduced if the plants are accepted or the plants will be removed from the PIVR if they are not accepted.

*Comment:* An insurance service organization requested clarification of the term ''applicable price'' in section 6(f).

*Response:* FCIC has added the phrase '', as determined in accordance with section 6(e),'' after ''applicable price'' in redesignated section 6(h) of these provisions because section 6(e) contain the provisions regarding how the price for each plant is determined.

*Comment:* An insurance service organization recommended cutting-off acceptance of revisions to the PIVR no less than 2 months prior to the renewal date to allow time for inspections for increases in inventory.

*Response:* As stated above, FCIC believes the 30-day waiting period between submission of a revised PIVR and insurance attachment is an adequate time period for the reinsured company to complete an inspection. To extend this date would increase the risk for growers that a loss may occur before insurance attaches and could force the grower to purchase increased coverage before such a need arises. One of the intent of the changes to the policy has been to permit growers to have the flexibility to tailor their insurance to their needs. No change has been made in response to this comment.

*Comment:* An insurance service organization asked if the phrase ''increased 50 percent or more from the previous values on a policy basis'' in the third sentence in section 6(g) of the proposed provisions means an increase on both nursery crops together or separately.

*Response:* The term ''policy'' in section 6(g) actually refers to each nursery practice because each practice is insured under a separate policy. However, although increases can be reported for each basic unit, to determine whether there has been a 50 percent increase, the total value of all basic units in the practice is used. For clarity, FCIC has revised the language in section 6(g) to be more specific and state inspection requirements for increases on the PIVR apply when the total of all the basic unit values contained on the PIVR is increased 50 percent or more from the previous total of all the basic unit values. Specific reference to practice is not necessary because the provisions refer to a revised PIVR and section 6(b) has been revised to clarify that each practice is contained on a separate PIVR.

*Comment:* An insurance service organization requested clarification on the requirements in proposed section 6(g) if a grower decreases the PIVR.

*Response:* The purpose of the revision to the plant inventory value is to allow producer to adjust their inventory when they restock plants. Such plants would not be insured under the original inventory values because such plants did not exist at the time and coverage on the original plants that were sold or damaged was included in the original inventory value so when new plants are added to the nursery, there must be a mechanism to provide coverage for such plants. It was not the intent of the policy to permit decreased plant inventory values so section 6(g) has been revised to clarify that it applies only to increases and specify that the PIVR cannot be revised to decrease inventory values after the start of the crop year. As stated above, FCIC has also added language to clarify that inventory values cannot be increased more than twice during the crop year to reduce the potential administrative burden that could result from unlimited revisions during the crop year.

*Comment:* An insurance service organization recommended the term ''appropriate sized'' in the first sentence of proposed section 6(i) be hyphenated.

*Response:* FCIC agrees and has hyphenated the term in redesignated section 6(j) of these provisions.

*Comment:* One interested party requested the language in proposed section 6(j) be modified to require that a nursery grower's wholesale catalog or price list is ''machine generated'' and the issue date be shown on the catalog or price list.

*Response:* FCIC agrees that wholesale catalogs and price lists must be type-written and show an issue date. The issue date of the catalog or price list shows the time-period for which the catalog or price list was first issued (*e.g.* 2004, fall 2003, etc). The issue date can be handwritten on the front of the catalog. Further, FCIC has revised the provisions to require the catalog or price list be provided to customers and used in the sale of plants. Reinsured companies will be able to now verify the prices used in the sale of the plants because FCIC has revised the documentation provisions to require sales records contain the name and telephone number of purchasers.

*Comment:* A reinsured company stated that it is unclear whether the application and PIVR will be processed, resulting in premium earned, if the insured fails to submit a catalog or price list.

*Response:* FCIC has revised section 6(b) to make it clear that the PIVR and the catalog and price list must be submitted at the same time. Further, as stated above, FCIC determined that the proposed sanction of no indemnity being due or the denial of insurance was too harsh because there are legitimate reasons why such documents could not be timely provided. Further, it imposed too great a burden to require reapplication. Instead, failure to provide any one of these required documents with the application or by the sales closing date, as applicable, will result in insurance not attaching until 30 days after all the documents have been received by the crop insurance agent. In such case, premium would not be earned until insurance attached.

Section 7—Premium

*Comment:* An insurance service organization and a reinsured company asked if the reference to prorated premium in section 7 applies to new applicants, insureds with revised inventories, Peak Endorsements, or all of these.

*Response:* Under section 7(b), premium amounts are prorated the first

year of coverage for new insureds with partial year coverage and for coverage terms of Peak Inventory Endorsements. FCIC believes that premium amounts should also be prorated, based on the time remaining in the crop year, if the grower submits a PIVR or wholesale catalog or price list after the sales closing date or if the insured's PIVR is revised. Section 7(b) is revised to include proration of an insured's premium if the PIVR or wholesale catalog or price list is submitted after the sales closing date or a revised PIVR is submitted.

*Comment:* An insurance service organization and a reinsured company stated that section 7(b) should be revised to state premium will be prorated, rather than adjusted, for the partial crop year.

*Response:* FCIC agrees that the term ''prorated'' is more appropriate than the term ''adjusted,'' and section 7(b) of these provisions is revised to provide the conditions under which premium will be prorated.

*Comment:* A crop insurance agent stated that some factors currently used in determining premium are missing and clarification seems appropriate.

*Response:* The commenter is correct that FCIC has other premium adjustment factors on the actuarial document besides the monthly proration factor and FCIC will continue to use such factors under the new rule as appropriate. Therefore, FCIC has revised section 7(a) to add such factors.

*Comment:* An insurance service organization stated proposed language in section 7(c), as written, removes section 7(a) of the Basic Provisions; therefore, this section does not address when nursery premiums are earned and payable or when the premium and administrative fee will be billed when an application is made prior to July 1st.

*Response:* FCIC agrees that, as drafted, the provision eliminated all the requirements contained in section 7(a) of the Basic Provisions. However, it was only intended to be in lieu of section 7(a) of the Basic Provisions when new applications are submitted after July 1st (now April 1st as a result of a change to the insurance period explained more fully below under section 9) of the crop year. FCIC has revised section 7(c) to add the provisions found in section 7(a) of the Basic Provisions for applications submitted before April 1st. FCIC has also added a provision stating that if the PIVR or wholesale catalog or price list is submitted after April 1st the premium is owed and payable when such documents are submitted. This change was made because filing these documents after April 1st has the same effect as if application were made after April 1st. FCIC also clarified that if premium was not paid when the application or PIVR or wholesale catalog or price list is submitted, not only would there be no insurance or indemnity owed for the crop year, the grower could not apply again for insurance until the next crop year.

Section 8—Insured Crop and Plants

*Comment:* A reinsured company asked if growers will be required to insure their liners.

*Response:* As stated above, growers only have the option of insuring or not insuring their plants at the crop level, which means by practice. If a grower elects to insure a practice, such as container grown, growers will be required to insure all applicable plant types under that practice, including liners. However, the producer has the option to insure one practice and not the other. Therefore, section 8 needs to be clarified to specify that the insured crop is the practice the insured elects to insure and in which the insured has a share to be consistent with the Basic Provisions. Section 8 has been revised to make these changes.

*Comment:* An insurance service organization recommended the word ''section'' in the introductory paragraph of section 8 be changed to ''sections.''

*Response:* FCIC agrees and has revised redesignated section 8(b) accordingly.

*Comment:* An insurance service organization stated that proposed sections 8 and 8(j) appear to exclude from insurance any nursery plants that do not provide edible fruits/nuts. The commenter recommended revision of proposed section 8(j) to state ''Are intended for sale as plants (not just the edible fruits or nuts produced by the plant).''

*Response:* FCIC agrees that the provision could be read to require the plant produce edible fruit or nuts to be insurable but that is not the intent. Previously, plants that produced edible fruit or nuts were only insurable if they were not harvested while they were in the nursery. However, FCIC has determined that harvest of the edible fruit or nuts does not affect the quality or marketability of the trees. Therefore, the intent is to make it clear that plants that produce edible fruit and nuts may be insurable even if they are harvested while in the nursery as long as they are made available for sale. To accomplish this, FCIC has revised the provision to so specify.

*Comment:* A reinsured company requested clarification regarding whether growers can harvest and sell fruits and nuts from trees if the trees are intended for sale.

*Response:* As stated above, whether the fruits or nuts are harvested or not is no longer material. Insurability is determined by whether the plants producing the edible fruits or nuts are made available for sale during the crop year. The provision has been revised to make this clearer.

Section 9—Insurance Period

*Comment:* Two insurance service organizations, a reinsured company, and a crop insurance agent stated the crop year starting date of October 1st is a problem because that date is in the middle of the hurricane season. Two commenters recommended changing the date for areas susceptible to hurricanes.

*Response:* FCIC agrees and has moved the starting date for the crop year from October 1st to June 1st and has moved the ending date from September 30th to May 31st. This change will allow the crop year to start before the beginning of the hurricane season and allow the entire hurricane season to be covered in a single crop year. To initiate new crop year dates, the 2006 crop year ending date is May 31, 2006. The 2007 and subsequent crop years will begin on June 1st and end on May 31st of the calendar year following the starting date. The contract change date will be January 31 prior to the start of the crop year, the sales closing date will be May 1, and the cancellation date will be May 31 prior to the start of the crop year. The termination date will be May 31 of the crop year. The billing date will be April 1 of the crop year. The PIVR and catalogs must be submitted on or before the sales closing date for each crop year following the year of application. The actuarial documents for the 2006 crop year will show premium proration factors for calculating the premium amount for the shortened crop year.

*Comment:* A State Department of Agriculture and a crop insurance agent stated that some producers have no plants in their greenhouses during some months but are charged premium for 12 months of coverage. One commenter stated October through January is a period with high premium proration factors so premium paid during this time period may be substantial, unwarranted, and not needed. The commenters stated that coverage periods are being adjusted through cancellation and reapplication and use of Peak Inventory Endorsements. However, the peak amount of insurance is limited by the plant valuation of the basic unit. The commenters requested that nursery crop insurance provisions allow for changes in inventory values to address

the needs of growers who have limited inventory during certain time periods.

*Response:* As stated above, the crop year has been changed from October 1 through September 30 to June 1 through May 31. As a result of this change, the proration factors for October through January should also change. This should mitigate the complained of effect. FCIC also agrees that limitation of the amount of insurance under the Peak Inventory Endorsement may limit its benefit to growers who have high variability in their inventory and has increased the amount of insurance permitted to 200 percent of the basic unit value. However, complete removal of the liability limitation on the Peak Inventory Endorsement or revising the Nursery Crop Provisions to permit insureds to select coverage periods with starting and ending dates within the crop year would introduce adverse selection into the program. If coverage was permitted under shortened, select insurance periods or the peak liability limitation was completely removed, FCIC believes many insureds would either carry coverage only during high risk periods or would carry minimum year-round coverage and maximized Peak Inventory Endorsements during high risk periods. This could significantly affect indemnities paid and amount of premium that would have to be collected to maintain an actuarially sound program. Further, FCIC is unable to respond to the commenters' statement of how coverage periods are adjusted through cancellation and reapplication. Growers are permitted to cancel coverage prior to the cancellation date and submit a new application after the start of the crop year. Once coverage attaches, it cannot be cancelled for the current crop year. Therefore, insurance periods cannot be adjusted through cancellation and reapplication. No changes have been made in response to this comment.

*Comment:* An insurance service organization recommended combining sections 9(a)(1) and 9(a)(3) and adding a hyphen between ''30'' and ''day'' in section 9(a)(3).

*Response:* FCIC agrees that since both section 9(a)(1) and (3) involve the date coverage begins for the year of application, FCIC can combine the two sections into one and has done so. However, because FCIC also revised the crop year, FCIC has also included provisions specific for the 2006 crop year. FCIC has also inserted a hyphen between ''30'' and ''day'' in section 9(a)(3) as recommended.

*Comment:* An insurance service organization recommended fixing the two-minute coverage gap resulting from language in section 9(a)(2) that ends the insurance period on September 30th at 11:59 p.m. and starts the next insurance period on October 1st at 12:01 a.m.

*Response:* FCIC agrees that there is no need to reference a time for the start of the insurance period because it is clearly understood that a particular date starts at 12 a.m. However, the time is still needed for the end of the insurance period to make it clear that it ends at the end of the day. Sections 9(a) and (b) have been revised accordingly.

Section 10—Causes of Loss

*Comment:* Three nursery industry trade associations recommended insurance coverage be expanded to cover inability to market plants due to a Federal or State order prohibiting sale, including, but not limited to, a quarantine, stop sales order, or phytosanitary restriction. Another commenter stated the policy should be amended to cover plants order destroyed by a Government organization.

*Response:* Under section 508(a)(1) of the Federal Crop Insurance Act (Act), FCIC can only cover losses to the crop due to a ''drought, flood, or other natural disaster (as determined by the Secretary).'' Under a Federal or State quarantine, stop sales order, or phytosanitary restriction, some losses may be covered if the plant has been infected or exposed to a covered natural disaster, such as disease. However, quarantines, stop sales orders, and phytosanitary restrictions frequently affect plants that have not been infected or exposed to a pathogen. There is no authority under the Act to provide coverage for such plants.

*Comment:* A reinsured company stated that section 10(a)(2) should be revised to clarify that fire must be due to natural causes.

*Response:* According to sections 508(a)(1) and (b)(1) of the Act, all insurable causes of loss must be due to natural causes. This requirement is implemented in section 12 of the Basic Provisions, which states: ''All specified causes of loss, except where the Crop Provisions specifically cover loss of revenue due to a reduced price in the marketplace, must be due to a naturally occurring event.'' The causes of loss listed in the Nursery Crop Provisions specifically state they are in accordance with the Basic Provisions. Therefore, the requirement that fire be due to natural causes is already contained in the policy and to repeat the reference on for fire could create the mistaken impression that other causes of loss listed do not have to be from natural causes. No change is made in response to this comment.

*Comment:* An insurance service organization stated the reference to section 10(b) in section 10(a)(1) should be changed to 10(c).

*Response:* FCIC agrees and has revised the reference accordingly.

*Comment:* An insurance service organization recommended proposed section 10(b) be expanded to exclude losses due to failure of the irrigation water supply and failure of the power supply unless due to an insurable cause of loss in section 10(a). The commenter recommended the section start with the phrase ''Insurance is also provided against the following, if due to a cause of loss specified in section 10(a).'' The commenter recommended the phrase ''if such plants would have been marketed during the crop year'' in the first sentence of section 10(b) be enclosed in parentheses instead of commas. The commenter also recommended the last sentence of section 10(b) be revised by removing the phrase ''coverage is provided for reduced value, due to an insured cause of loss.''

*Response:* FCIC agrees and has revised section 10(b) to state that coverage is provided against inability to market nursery plants, failure of the irrigation water supply, and failure of the power supply if due to a cause of loss specified in section 10(a) and has reorganized the paragraph as suggested. Section 10(b) has been revised to remove the ''For example * * *'' and just include the example for poinsettias. This removes the redundancies in the provision, making it clearer and easier to read. As a result of these changes, FCIC does not believe enclosing the phrase ''if such plants would have been marketed during the crop year'' in parentheses is necessary. Therefore, this change is not made.

*Comment:* An insurance service organization stated the semicolon and word ''or'' at the end of section 10(a)(6) in the current provisions should be removed and a period added.

*Response:* As stated above, section 10(a)(6) of the current provisions has been moved into section 10(b) as section 10(b)(2).

*Comment:* An insurance service organization stated that proposed section 10(c) should be amended to: (1) Reference sections or subsections 12(a) and (c) through (f) of the Basic Provisions; (2) change the periods at the end of proposed sections 10(c)(3) and (6) to semicolons to be consistent with the other subsections in section 10 of the current Nursery Crop Provisions; (3) insert the word ''the'' before the word ''refusal'' in section 10(c)(3); (4) change

the commas to semicolons after the words ''production'' and ''boycott'' in section 10(c)(3); and (5) move the word ''or'' from the end of section 5 to section 6.

*Response:* FCIC has revised the language in section 10(c) of these provisions to reference sections 12(a) and (c) through (f) of the Basic Provisions; changed the periods to semicolons at the end of redesignated sections 10(c)(2) and (5); added the word ''the'' before the word ''refusal'' in redesignated section 10(c)(2); and removed the word ''or'' at the end of redesignated section 10(c)(4) and added the word ''or'' at the end of redesignated section 10(c)(5). FCIC has restructured redesignated section 10(c)(2) for clarity and readability. Therefore, the use of semicolons is no longer necessary.

*Comment:* An insurance service organization recommended the phrase ''In lieu of 12(b) of the Basic Provisions'' be added at the beginning of section 10(c)(6) of these provisions.

*Response:* FCIC agrees and has revised the provision accordingly.

Duties in Event of Damage or Loss—Section 11

*Comment:* An insurance service organization recommended changing the term ''11(a)(2)'' to the phrase ''this section'' in section 11(a)(2)(i).

*Response:* To avoid ambiguity, crop insurance policy provisions generally use the exact section identification when referring to a section. While it may appear to be redundant, there is no confusion over what term is being cross-referenced. No change is made in response to this comment.

*Comment:* An insurance service organization recommended inserting the word ''the'' or the word ''an'' between the words ''determine'' and ''amount'' in section 11(a)(2)(ii). The commenter also recommended replacing the numeral ''1'' with the word ''one'' in the same subsection.

*Response:* FCIC agrees and revised the provision accordingly.

Settlement of Claim—Section 12

*Comment:* An insurance service organization and a reinsured company asked if the new misreporting factor in the 2005 Basic Provisions applies in addition to or instead of the under-report factor.

*Response:* Section 6 of these provisions states that section 6 of the Basic Provisions is not applicable. Section 3(a) of these provisions states the production reporting requirements contained in section 3 of the Basic Provisions are also not applicable. However, to avoid any ambiguity because other provisions in section 3 of the Basic Provisions remain in effect, FCIC has revised section 3 to clarify that the provisions not applicable also include the misreporting provisions.

Written Agreement—Section 14

*Comment:* An insurance service organization stated the written agreement section needs to be revised to be consistent with the language in the 2005 Basic Provisions.

*Response:* While FCIC has not proposed any changes to the written agreement provisions, FCIC agrees that the provisions must be revised to conform to the 2005 Basic Provisions.

*Comment:* An insurance service organization recommended revising section 14(a) of these provisions as follows: ''In lieu of section 18(a) of the Basic Provisions, you must request (in writing) a written agreement with the application for the initial crop year, and not later than the cancellation date for each subsequent crop year.''

*Response:* While FCIC has not proposed any changes to the written agreement provisions, the requested change is technical in nature and would not change the meaning of the provision. Therefore, FCIC has revised section 14(a) to require requests in writing.

*Comment:* An insurance service organization recommended adding a comma after the word ''Provisions'' in section 14(b).

*Response:* FCIC agrees and has inserted a comma between the words ''Provisions'' and ''any'' in section 14(b) of these provisions. FCIC has also revised the provisions to clarify that section 14(b) is in lieu of section 18(d) of the Basic Provisions. Section 18(d) of the Basic Provisions permits multi-year written agreements and contains provisions applicable if multi-year agreements are provided. However, section 14(b) of the Nursery Crop Provisions restricts the written agreement to that portion of the crop year remaining after the request for written agreement is accepted.

*Comment:* An insurance service organization recommended changing the words ''initial year'' to ''initial crop year'' in section 14(c) of the current provisions. The commenter also recommended breaking section 14(c) of the current provisions into sections following the word ''if'' to read as follows:

''(1) You demonstrate your physical inability to have applied timely; and

(2) After physical examination of the nursery plant inventory''

*Response:* While FCIC has not proposed any changes to the written agreement provisions, the requested change is technical in nature and would not change the meaning of the provision. FCIC agrees with adding the word ''crop'' between the words ''initial'' and ''year'' in section 14(c). FCIC also agrees with the recommendation to restructure section 14(c) and has revised the provisions accordingly.

Examples—Section 15

*Comment:* An insurance service organization stated FCIC may need to consider changes to the settlement of claim examples based on proposed policy changes. The commenter also recommended enclosing the step numbers referenced in the examples in parentheses.

*Response:* FCIC agrees that revisions to the examples are necessary to remove the references to price election because, as stated above, amounts of insurance will not be provided on less than 100 percent of the insurable plant prices. FCIC agrees that since there are parentheses around the numbers in the steps, all references to such steps should also have the numbers in parentheses.

**Peak Inventory Endorsement**

*Comment:* An insurance service organization asked if separate Peak Inventory Endorsements would be written by basic unit (plant type) within each nursery crop.

*Response:* Peak Inventory Endorsements are considered separate for each plant type basic unit. However, if more than one Peak Inventory Endorsement is being sought at a time for a practice, separate Peak Inventory Value Reports for each plant type basic unit within that practice do not have to be submitted. A single Peak Inventory Value Report can be submitted for each practice that contains multiple plant type basic units and each such basic unit will be considered a separate Peak Inventory Endorsement. However, if the Peak Inventory Endorsements are sought at a different time, a new Peak Inventory Value Report containing the new plant type basic units must be submitted. The provisions are revised to clarify the operation of the Peak Inventory Endorsement and the Peak Inventory Value Report. The Peak Inventory Value Report form will also be structured to permit a grower to apply for peaks on more than one plant type under a practice using a single form.

*Comment:* An insurance service organization recommended the term ''7 CFR 457.162'' be removed from section 2(a), and the word ''that'' between the words ''year'' and ''this'' be removed

and the words ''for which'' or ''to which'' added in its place.

*Response:* While FCIC has not proposed any changes to section 2(a), the requested changes are technical in nature and would not change the meaning of the provision. Therefore, the term ''7 CFR 457.162'' is removed and the word ''this'' is removed, and the phrase ''for which'' is added in its place.

*Comment:* An insurance service organization recommended replacing the words ''and is'' between the words ''loss'' and ''limit'' in section 2(d) of the proposed provisions with a comma.

*Response:* As stated above, Peak Inventory Endorsements can be used to provide maximum flexibility in tailoring the policy to meet the grower's risk management needs because it can be used to increase plant inventory values to avoid under-reporting. However, the grower is limited to two Peak Inventory Endorsements per basic unit unless the basic unit has suffered a loss and the grower has restocked the nursery. In the proposed rule, the Peak Inventory Endorsement is limited to covering the amount of the restock. Under the current provisions of the Peak Inventory Endorsement, there is no limitation on what the endorsement may cover except that liability cannot exceed the practice value reported on the PIVR. To maximize the usefulness of the Peak Inventory Endorsement, FCIC believes the liability limitation should not be restricted to the amount of restock following a loss because it could result in a grower being under-reported if a subsequent loss occurs. Therefore, FCIC has revised section 2(d) to remove the phrase ''and is limited to the amount of restock.'' Therefore, the recommended word change is no longer applicable.

*Comment:* A reinsured company stated that allowing 28 Peak Inventory Endorsements on one policy would make loss adjustment extremely difficult.

*Response:* The commenter is correct that because the number of potential basic units has increased from two per crop to 14 for the field grown crop and 15 for the container grown crop, there could be up to 30 Peak Inventory Endorsements on one policy. FCIC agrees the sheer number of potential Peak Inventory Endorsements, coupled with the allowable changes to the PIVR, could significantly impact loss adjustment. Therefore, section 2(d) of the Nursery Peak Inventory Endorsement is revised to limit the number of Peak Inventory Endorsements that may be purchased for each plant type during the crop year to one unless a loss is suffered and the nursery is restocked. Flexibility is still maintained because, along with the permitted revisions to the PIVR, growers are permitted to change their inventory values at least three times during the crop year even if there has not been a loss.

*Comment:* Three crop insurance industry trade associations recommended that peak season adjustments be offered to embrace production expansion in addition to seasonal production increases.

*Response:* Section 3(c) of the proposed rule restricted the use of the Peak Inventory Endorsement to situations where there was a temporary increase in the values reported on the PIVR. FCIC agrees that such a limitation would be unduly restrictive, especially in light of the limitations on the number of changes in inventory that can not be made through the revised PIVR and the Peak Inventory Endorsement. Therefore, FCIC has removed section 3(c) from the Peak Inventory Endorsement.

*Comment:* An insurance service organization recommended inserting a comma after the term ''e.g.'' in section 3(c).

*Response:* As stated above, since this provision has been removed from the Peak Inventory Endorsement, the requested change is no longer applicable.

*Comment:* An insurance service organization recommended fixing the two minute coverage gap resulting from language in section 4 that begins coverage at 12:01 AM on the coverage commencement date and ends at 11:59 on the coverage termination date. The commenter also recommended the references to ''AM'' and ''PM'' be stated consistently between the Crop Provisions and the Peak Inventory Endorsement.

*Response:* FCIC agrees that the Crop Provisions and Peak Inventory Endorsement should be consistent in the manner that they state the beginning of the coverage period. As stated above, the hour and time is not necessary for the beginning of the insurance period. However, the date and time is still required for the end of the insurance period. Therefore, FCIC has revised section 4 accordingly.

*Comment:* An insurance service organization stated the third sentence of the example in section 5 of the Peak Endorsement is difficult to follow and recommended it be amended by inserting a comma between the words ''month'' and ''and'' and the phrase ''for the'' be inserted between the words ''and'' and ''month.''

*Response:* FCIC agrees that the example is difficult to follow and has revised it to make it more easily read and understandable. Further, because premium adjustment factor is already a term included in the Basic Provisions, and which, as stated above, has been added to the Nursery Crop Provisions, FCIC has revised name of the adjustment factor to the ''peak inventory premium adjustment factor.''

*Comment:* A crop insurance agent recommended the size of the Peak Inventory Endorsement (peak amount of insurance) not be limited to the amount of the basic unit value.

*Response:* FCIC agrees that there will be regular situations where the value of the inventory added exceeds the basic unit value and the current limitation would result in a situation where the grower has under-reported. However, to allow an unlimited increase could result in excessive risks under the policy. Therefore, FCIC has changed the limitation in section 7 to permit the peak amount of insurance to be 200 percent the basic unit value declared under the Nursery Crop Insurance Provisions.

**Nursery Rehabilitation Endorsement**

*Comment:* An insurance service organization stated the adjustment costs may be excessive in relation to the rehabilitation payment if the under-report factor is on a crop basis.

*Response:* FCIC agrees with the commenter. However, as stated above, the under-report factor is now calculated on a basic unit basis, not crop basis. Therefore, this should no longer be an issue.

*Commenter:* Three nursery trade associations and four nursery growers stated that a Rehabilitation Endorsement should be offered on containerized plants that will recover to their pre-damaged stage of growth.

*Response:* Since this is new coverage, FCIC determined this endorsement should initially cover rehabilitation costs for pruning and set-up of field grown plants because it has sufficient data to properly rate the coverage. FCIC may evaluate the feasibility of extending the Rehabilitation Endorsement to containerized material as it obtains information compiled on rehabilitation measures used and costs incurred for rehabilitation of containerized plants.

*Comment:* An insurance service organization and a reinsured company asked if a rehabilitation payment reduces the crop year deductible.

*Response:* As currently drafted, any deductibles paid under the Rehabilitation Endorsement would be included in the crop year deductible but this was not the intent of FCIC. Not all growers will have to pay a deductible under the Rehabilitation Endorsement

so it would be unfair to only include those that do against the crop year deductible. As a result, FCIC is revising the definition of ''crop year deductible'' to exclude any deductibles paid under the Rehabilitation Endorsement.

*Comment:* An insurance service organization recommended deleting ''Crop Insurance'' from the heading.

*Response:* FCIC believes the term ''Crop Insurance'' should be retained in the heading of the endorsement, so the heading format is consistent with other nursery crop endorsements. No change is made in response to this comment.

*Comment:* An insurance service organization recommended that sections 1(b) and (c) be reversed, so it is clearly stated the endorsement is only available for field grown plants. The commenter also recommended proposed section 1(b) be rearranged for clarity to specify: ''You must elect this endorsement:

(1) At the time of application for the initial crop year;

(2) By October 1st if your field grown plants are already insured * * *''

*Response:* FCIC agrees with both recommendations and has reversed proposed section 1(b) and 1(c) and separated new section 1(c) into two paragraphs. Because of the change in the crop year, language is added to clarify the endorsement must be elected by October 1, 2005, for the 2006 crop year and by the sales closing date for each subsequent crop year.

*Comment:* An insurance service organization asked who makes the determination of ''reasonable expectation of recovery'' addressed in section 2(a)(2). The commenter asked if ''reasonable expectation'' includes consideration of whether it is ''practical to rehabilitate'' according to section 2(b)(3). The commenter stated that some kind of definition or indication of the limitation might be helpful. The commenter cited an example of a tree that is 18 months of age but would take 24 months to recover.

*Response:* The loss adjuster will determine if damaged nursery plants covered by the Rehabilitation Endorsement have a reasonable expectation of recovery. The loss adjuster should first determine whether the plant will live or die. If it will live, the loss adjuster must determine whether it can recover to the point that it is a marketable plant. In some cases it may be easily determined based on the type and extent of damage of the plant. In other cases, loss adjusters will have to consult with agricultural experts. The policy is revised to provide some clarification and procedures will also be included in the loss adjustment handbook. FCIC also agrees the proposed rule does not clarify the relationship between expectation of recovery and the practicality of rehabilitation and had restructured section 2 to make it clear that there must be a reasonable expectation of recovery and it must be practical to rehabilitate the plant before any payment can be made and redesignated the sections. In the example cited by the commenter, the type and severity of damage would be considered and whether the cost of rehabilitation would exceed the value of the plant.

*Comment:* An insurance service organization recommended adding the word ''the'' before the phrase ''occurrence of damage'' and the word ''and'' after the phrase ''occurrence of damage'' in section 2(b)(2).

*Response:* FCIC agrees with adding the word ''the'' before the phrase ''occurrence of damage'' and the word ''and'' after the same phrase in redesignated section 2(c)(3).

*Comment:* An insurance service organization and a reinsured company stated that one rehabilitation payment (on insurable plants that are rehabilitated on each basic or optional unit during the crop year) is too limited. The commenters stated there should not be a minimum number of payments, just a maximum dollar amount that can be paid on the unit.

*Response:* As stated above, insurance is now only provided on a basic unit basis. FCIC agrees that there may be situations where multiple insurable causes of loss occur during the years and the other conditions for payment in the endorsement are still met. Proposed section 2(d) of the endorsement that limited the number of rehabilitation payments on an insurable plant during the crop year is removed. Instead of limiting the number of payments, a new section 2(d) is added to limit the total dollar amount of all rehabilitation payments for the basic unit for the crop year.

*Comment:* Four nursery growers expressed dissatisfaction with changes to a rehabilitation payment or time to recover payments for containerized material, because all nurseries can currently obtain a payment for damage without losing the plant. These same commenters stated that the 7.5 percent cap will greatly reduce the number of plants that are able to be rehabilitated, and it will be a disincentive to salvaging plants.

*Response:* The indemnity payment that growers currently receive is for the loss of value of damaged plants. Nothing in this endorsement changes or limits that indemnity payment. The Rehabilitation Endorsement is a new optional endorsement to the Nursery Crop Provisions for field grown material that would provide an additional payment to cover the costs associated with rehabilitating the plants. Since this payment was not previously available to growers, it should not provide a disincentive for growers to rehabilitate damaged plants.

*Comment:* An insurance service organization stated the two percent or $5,000 trigger to qualify for the first dollar of rehabilitation costs could have unintended consequences on growers' rehabilitation decisions.

*Response:* Rehabilitations costs covered by the endorsement are limited to labor and material for pruning and setup and growers are required to provide verifiable records of rehabilitation expenditures. To mitigate the possibility that growers will inflate their costs, or incur greater costs than are necessary to rehabilitate the plant, to qualify for a payment, loss adjusters will be required to determine if reported expenditures are reasonable and correspond with expected rehabilitation measures and their costs before any payments are made. Loss adjusters can consult with agricultural experts to determine reasonable costs. Redesignated section 2(c)(2) has been revised accordingly.

*Comment:* An insurance service organization recommended removing commas before and after the phrase ''contained in the Nursery Crop Provisions'' in section 3 of the proposed Rehabilitation Endorsement and enclosing the phrase in parentheses.

*Response:* FCIC believes commas are appropriate for setting off the nonrestrictive phrase ''contained in the Nursery Crop Provisions.'' No change is made in response to this comment.

*Comment:* An insurance service organization asked at what point a rehabilitation payment is no longer a rehabilitation payment and becomes an indemnity payment. The commenter asked if a rehabilitation payment ever reduced an indemnity payment.

*Response:* An indemnity pays for the loss of value of the plant. However, the rehabilitation payment pays for the costs associated with rehabilitation of the plant. These are two totally separate payments. A rehabilitation payment never becomes an indemnity payment, nor does it reduce an indemnity payment. Section 12(g) has been revised to clarify that the rehabilitation payment is not an indemnity payment and is not considered when totaling all indemnities for the purposes of determining whether such amounts exceed the amount of insurance.

*Comment:* An insurance service organization stated it was not clear if the Rehabilitation Endorsement will be available to growers with CAT coverage.

*Response:* Section 1(a) of the Rehabilitation Endorsement states an insured must purchase additional coverage for the Endorsement to attach. Therefore, it is not available to growers with CAT coverage.

Other Comments

*Comment:* A reinsured company stated that premium rates for liner coverage must be commensurate with the increased risk exposure.

*Response:* FCIC agrees and has contracted a study to evaluate the impact of the changes to the Nursery Crop Provisions, including liner coverage, and appropriate premium rate adjustments will be made.

*Comment:* Three nursery trade associations recommended that, prior to policy renewal, a nursery be inspected and improvements required when excess moisture is an insured cause of loss more than twice in a three-year period unless caused by a named tropical storm or disaster declaration.

*Response:* Interested parties affiliated with nursery industries and reinsured companies have reported that nursery crop insurance losses due to excess moisture or flood have been excessive and prevalent in certain areas, and recommended controls be implemented to minimize future losses. Under section 10(a)(1), coverage for adverse weather conditions can be limited in the Special Provisions. One such limitation can be to require growers in areas susceptible to large amounts of rainfall and flooding take adequate measures to minimized losses for these perils to be covered.

*Comment:* Three nursery trade associations recommended that vegetable and herb plants in standard containers be provided coverage.

*Response:* Many vegetable and herb plants are currently on the Eligible Plant List and are covered. A plant not on the Eligible Plant List can be covered by written agreement under an additional coverage policy.

*Comment:* Four nursery growers stated opposition to liner coverage because additional coverage and premium would be required, and coverage under the noninsured disaster assistance program (NAP) would not be available.

*Response:* An additional level of coverage is not required for liners to be provided insurance coverage. Growers have the option of purchasing CAT or additional coverage for a specific practice. If producers elect additional coverage for a practice, then the liners in that practice must also be insured under additional coverage and the grower can elect to have a separate basic unit for the plant types, including liners. If the grower elects to insure a practice under CAT, then the liners in that practice must also be insured under CAT and no additional premium would be owed. However, additional basic units by type are not available. The commenter is correct that the availability of CAT coverage for liners precludes coverage under the NAP program.

*Comment:* One nursery grower stated that the insurable prices for field grown English Boxwoods are low and should be raised to reflect actual market conditions.

*Response:* FCIC will review prices for English Boxwoods to determine if a higher maximum insurable price is appropriate.

*Comment:* An insurance service organization asked if a grower would be eligible for a container policy for liners if the liners are not for resale (*i.e.* the liners will be used for grow-out within the nursery), but there are established values for the liner plants.

*Response:* Liners used for grow-out in a nursery are insurable. However, the grower will be required to provide a catalog or price list that specifies wholesale values of the insurable liners.

*Comment:* Three nursery industry trade associations recommended the Nursery Crop Provisions be amended to offer a program based on adjusted gross income rather than the Plant Price Schedule.

*Response:* Nursery crops are covered under the Adjusted Gross Revenue (AGR) and AGR-Lite programs where such programs are offered. Since AGR is still in the pilot stage, AGR has not been offered in all states and counties. AGR-Lite was submitted by a private submitter for approval for reinsurance and subsidy under section 508(h) of the Act. As a private submission, the submitter determines the terms of insurance and where it will be offered. However, even where these programs are offered, there are liability limitations, coverage and payment rate limitations, reporting requirements, and claim submission timelines in the AGR program that may make coverage not suitable for nursery growers. Once the AGR pilot program is completed, it will be evaluated to determine whether the terms of insurance are appropriate and whether it should be expanded to all states and counties.

*Comment:* Three nursery industry trade associations recommended that FCIC should work to increase crop adjusters' familiarity and knowledge of nursery plants and trees by encouraging them to take an appropriate nursery professional certification program.

*Response:* Loss adjusters must complete specific training courses and take continuing education courses on adjusting crop losses. Reinsured companies, not FCIC, establish specific training requirements for adjusters in accordance with guidelines specified by FCIC. However, FCIC is evaluating the feasibility of sponsoring one or more training classes, taught by university extension service personnel, for loss adjusters, on identifying and evaluating damage on nursery plants.

*Comment:* One nursery industry trade association recommended that FCIC work directly with the University of Florida to establish realistic values for damaged Florida plants. Another nursery industry trade association made the same recommendation but suggested that FCIC work with the Texas A&M University system for damaged Texas plants.

*Response:* As stated above, FCIC has removed the proposed provisions regarding the establishment of values for damaged plants and will include such determinations in the loss adjustment manual. FCIC intends to work with nursery experts to refine the methodology for making such determinations. However, language currently in the loss adjustment manual recommends loss adjusters consult with such experts to assist them in valuing damaged plants.

In addition to the changes described above, FCIC has made the following changes:

1. Amend the definition of ''nursery'' to clarify the nursery must be engaged in both the growing and wholesale marketing of plants. This purpose of the definition was to specify that at least 50 percent of the gross income had to come from wholesale marketing but there was confusion regarding whether nurseries that only sell the plants but do not produce them are eligible for insurance. This change makes clear that to qualify as a nursery, the nursery must also produce the plants.

2. Remove the proposed definition of ''nursery plants.'' FCIC believes the definition is redundant and provides no useful information.

3. Amend the definition of ''plant inventory value report'' to change the defined term to the acronym ''PIVR.''

4. Revise the definition of ''plant price schedule'' to clarify that insurable plant prices published by FCIC establish the maximum insurable value of undamaged plants.

5. Amend the definition of ''practice'' in the current provisions to remove the

words ''Standard nursery.'' This change is made to because throughout the policy, FCIC uses the term ''container grown'' to identify the practice. Standard nursery containers do not specify the insurable practice, they specify the type of container necessary to qualify for a container grown practice.

6. Add a definition of ''sales closing date'' because FCIC has removed the previous May 31 sales closing date and now allows sales all year round. However, for subsequent crop years, certain documents must be filed by the sales closing date and there must be a means to identify that date.

7. Revise the proposed definition of ''survival factor'' to specify the factor is shown on the Special Provisions instead of the actuarial documents. The survival factor for liners may vary by region. Therefore, it should be specified accordingly in the Special Provisions.

8. Revise the definition of ''wholesale'' to require determinations be made on a county-by-county basis. Insurance is provided on a county basis and, under the proposed definition, it is possible for multiple nurseries comprising a single business enterprise to qualify as a wholesale marketer even though some individual nurseries insured in different counties would be considered retail nurseries. Because the determination is made at the enterprise level such retail nurseries would qualify for insurance. Therefore, to ensure that only wholesale nurseries are insured, such determinations must be made on a county-by-county basis.

9. Amend proposed section 2(a) to clarify that a basic unit, as defined in section 1 of the Basic Provisions, will be divided into additional basic units if additional coverage is elected for a practice to conform to the responses to other comments above. It was always the intent of FCIC to limit basic units for CAT coverage to shares and to only allow additional basic units by type if the grower elected additional coverage. This amendment is needed to clarify that intent.

10. Amend sections 3(c) and (d) by structuring the provisions so they are more readable and easily understood and redesignating the sections accordingly.

11. Amend section 5 to clarify the cancellation date is May 31 preceding the crop year and the termination date is May 31 of the crop year. This change is necessary to conform to the change to the beginning and end of the insurance period.

12. Amend proposed section 6(b) to clarify that an insured must submit two copies of the most recent wholesale catalog along with the PIVR at time of application and on or before the sales closing date for each crop year following year of application. Also, FCIC added language to clarify that an insured will be notified in writing if an application for insurance is refused because the inventory or the wholesale catalog or price list is not acceptable.

13. Amend section 6(c) by structuring the provisions so they are more readable and easily understood.

14. Add a new section 6(f), applicable to CAT policies only, that limits the total of the insured's basic unit values for each practice to 110 percent of the higher of the greatest amount of plant sales in any of the three previous years or the actual inventory value for the crop year at the time the PIVR is submitted. The insured must report on the PIVR for each practice the greatest amount of plant sales in any of the three previous years. The current Nursery Crop Insurance Provisions limit the PIVR of an insured with CAT coverage to 150 percent of the previous year's sales for container grown material and 250 percent of the previous year's sales for field grown material. Available information suggests these limitations are set too high, and plant inventory values of CAT polices are often over reported. FCIC believes limiting the PIVR of insureds with the CAT coverage to 110 percent of the higher of their greatest amount of plant sales in any of the previous three years or the inventory value at time the PIVR is submitted is fair and equitable, and the 110 percent limitation also coincides with the limitation in section 6(g) of the Basic Provisions that addresses misreporting of liability on other insurable crops.

15. Amend proposed section 6(f) (redesignated as section 6(h) to remove the last sentence, including sections (1) through (5) that address the methodology to determine the insurable value of plants that are damaged but will fully recover (partial damage). No comments were received on the last sentence of proposed sections 6(f) and 6(f)(1) through (5). However, RMA is currently working with nursery industry personnel and crop reinsured companies to evaluate if the calculation procedure to determine the insurable value of partial damage plants should be revised. This evaluation will not be completed prior to publication of this final rule. The procedure to determine the insurable value of partial damaged plants will be included in the Special Provisions.

16. Amend proposed section 6(g) to clarify an insured may increase their PIVR by submitting a revised report prior to 30 days before the end of the crop year. This will permit growers to have the maximum flexibility in insuring their nurseries and will correspond to the changes in the policy that eliminate the date by which applications must be submitted. Language is also added to clarify that an increase to the PIVR of 50 percent or more does not trigger an inspection if the increase is due to restocking subsequent to an insured loss. This change is made because reinsured companies should not have to go through the administrative burden of an inspection simply because a grower restocks after a loss.

17. Amend section 12(f) to clarify that fifty-five percent of the insurable plant price is used in the settlement of claims calculation if CAT coverage is elected.

18. Amend the title of the Nursery Crop Insurance Rehabilitation Endorsement as proposed to remove the word ''Optional.'' FCIC believes this word is redundant and unnecessary. For clarity, FCIC has removed the phrase ''In return for payment of'' in the introductory paragraph of the proposed provisions and added ''If you elect this endorsement and pay * * *.''

19. Amend section 2(b) of the Nursery Crop Insurance Rehabilitation Endorsement, as proposed, to remove the phrase ''under this endorsement.'' FCIC believes this phrase is redundant and provides no meaningful information.

20. Amend section 2(c)(2) of the Nursery Crop Insurance Rehabilitation Endorsement, as proposed, (redesignated as section 2(d)(2)) to remove the phrase ''based on the lower of the Plant Price Schedule price or the lowest wholesale price listed in your nursery catalog or price list'' and replace it with ''based on the insurable plant prices determined in accordance with section 6 of the Nursery Crop Insurance Provisions.'' This change is made to avoid any potential policy conflicts.

21. Amend section 2(b)(4) of the Nursery Crop Insurance Rehabilitation Endorsement, as proposed, (redesignated as section 2(c)(5)) to clarify the insured's total rehabilitation cost for each loss occurrence must be at least the lesser of 2.0 percent of field market value A or $5,000 to be eligible for a rehabilitation payment. Clarifying that rehabilitation costs are applicable to each loss occurrence on the basic unit avoids the potential for any confusion on eligibility for a rehabilitation payment.

22. Amend section 3 of the Nursery Crop Insurance Provisions Rehabilitation Endorsement, as proposed, to clarify that the

endorsement will continue in effect until cancelled or coverage under the Nursery Crop Insurance Provisions is cancelled or terminated.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. Good cause to make the rule effective upon filing at the Office of Federal Register exists when the 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

With respect to the provisions of this rule, it would be contrary to the public interest to delay implementation. To make implementation effective for the 2006 crop year, this rule must be published prior to the June 30, 2005, contract change date for the crop year. The public interest will be served by providing better insurance coverage to nursery growers. Changes to the Nursery Crop Insurance Provisions contained in this final rule include: (1) Making container and field grown separate crops; (2) providing coverage in plants in containers that are equal to or greater than one inch in diameter; (3) providing separate basic units by share for all coverage levels and basic units by plant type when additional coverage is purchased; (4) permitting insureds to select one coverage level for each plant type basic unit when additional coverage is purchased; (5) allowing increases to the Plant Inventory Value Report up to 30 days before the end of the crop year; (6) allowing acceptance of an application for insurance for any current crop year up to 30 days before the end of the crop year; and (7) changing the starting and ending dates for the crop year to June 1st and May 31st, respectively. These changes will allow nursery growers to better structure coverage to their individual risk management needs. In addition, it will give insurance providers adequate time to prepare necessary insurance documents, train personnel, and inform insureds of these policy changes.

If FCIC is required to delay implementation of this rule 30 days after the date it is published, publication would occur after the contract change date for the 2006 crop year; therefore, the provisions in this rule could not be implemented until the next crop year. This would mean nursery growers would be without the benefits to the nursery program for an additional year.

**List of Subjects in 7 CFR Part 457**

Crop insurance, Nursery, Reporting and recordkeeping requirements.

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 for the 2006 and succeeding crop years as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(l), 1506(p).

■ 2. Revise the introductory text of § 457.162 to read as follows:

### § 457.162 Nursery Crop Insurance Provisions.

The Nursery Crop Insurance Provisions for the 2006 and succeeding crop years are as follows:

* * * * *

■ 3. Amend section 1 of § 457.162 as follows:

■ a. Add definitions of ''American Standard for Nursery Stock,'' ''basic unit value,'' ''container grown,'' ''fabric grow bag,'' ''FCIC,'' ''good nursery practices,'' ''liners,'' ''monthly proration factors,'' ''PIVR,'' ''sales closing date,'' ''survival factor,'' and ''wholesale'';

■ b. Revise the definitions of ''amount of insurance,'' ''crop year,'' ''crop year deductible,'' ''Eligible Plant List,'' ''field grown,'' ''field value market A,'' ''field value market B,'' ''nursery,'' ''occurrence deductible,'' ''Plant Price Schedule,'' ''practice,'' ''standard nursery containers,'' and ''under report factor''; and

■ c. Remove the definition of ''field market value C,'' ''in-ground fabric bag,'' ''price election,'' ''plant inventory value report,'' and ''practice value.''

■ d. Amend the definition of ''irrigated practice'' to capitalize the phrase ''eligible plant list.''

The revised and added text reads as follows:

1. Definitions

* * * * *

*American Standard for Nursery Stock.* A publication of the American Nursery and Landscape Association, or a subsequent successor organization, issued in accordance with the rules of the American National Standards Institute, Inc. that provides common terminology and standards for nurseries.

*Amount of insurance.* For each basic unit, your basic unit value multiplied by the coverage level percentage you elect and multiplied by your share.

*Basic unit value.* The full value of all insurable plants in each basic unit as shown on your PIVR, including any revision that increases the value of your insurable plant inventory.

*Container grown.* Nursery plants planted and grown in standard nursery containers either above ground or that are placed in the ground, either directly or when placed in another pot in the ground (i.e., pot-in-pot).

*Crop year.* The period beginning the day insurance attaches and extending until the following May 31. Crop year is designated by the year in which the insurance period ends.

*Crop year deductible.* The deductible percentage multiplied by the sum of all plant inventory values for each basic unit. The crop year deductible will be increased for any increases in the inventory value on the PIVR or through the purchase of a Peak Inventory Endorsement, if in effect at the time of loss. The crop year deductible will be reduced by any previously incurred deductible, except any incurred under the Rehabilitation Endorsement, if you timely report each loss to us.

* * * * *

*Eligible Plant List.* A list that includes the botanical and common names of insurable plants, the winter protection requirements for container grown material and the areas in which they apply, the hardiness zone to which field grown material is insurable, the designated hardiness zone for each county, and the unit classification for each plant on the list, published by FCIC on RMA's Web site at *http://www.rma.usda.gov*. It is also available on compact disk from your crop insurance agent.

*Fabric grow bag.* A fabric bag (including a woven or matted bag with a plastic or fabric bottom) used for growing woody plants in-ground or as an above-ground nursery plant container that provides adequate drainage and is appropriate in size for the plant.

*FCIC.* The Federal Crop Insurance Corporation, a wholly owned corporation within the USDA, or a successor agency.

*Field grown.* Nursery plants planted and grown in the ground without the use of an artificial root containment device. Plants grown in in-ground fabric grow bags, plants that are balled and burlapped or plants grown in containers that allow the plants to root (excluding fibrous roots) into the ground (for example, a container without a bottom) are also considered field grown.

*Field market value A.* The value of undamaged insurable plants, based on the lesser of: (1) The prices contained in the Plant Price Schedule; or (2) the prices contained in your catalog or price list in the basic unit immediately prior to the occurrence of any loss, as

determined by our appraisal. This allows the amount of insurance under the policy to be divided among the individual units in accordance with the actual value of the plants in the unit at the time of loss to determine whether you are entitled to an indemnity for insured losses in the basic unit. This value is also used to calculate the actual value of the plants in the basic unit at the time of loss to ensure that you have not under-reported your plant values. For liners, the total value of undamaged liners is multiplied by the survival factor to determine the value of undamaged insurable plants.

*Field market value B.* The value of insurable plants, based on the lesser of: (1) The prices contained in the Plant Price Schedule; or (2) the prices contained in your catalog or price list in the basic unit following the occurrence of a loss, as determined by our appraisal, plus any reduction in value due to uninsured causes. This is used to determine the loss of value for each individual unit so that losses can be paid on an individual unit basis.

*Good nursery practices.* In lieu of the definition of ''good farming practices'' contained in section 1 of the Basic Provisions, the horticultural practices generally in use in the area for nursery plants to make normal progress toward the stage of growth at which marketing can occur and: (1) For conventional practices, generally recognized by agricultural experts for the area as compatible with the nursery plant production practices and weather conditions in the county; or (2) for organic practices, generally recognized by the organic agricultural industry for the area as compatible with the nursery plant production practices and weather conditions in the county or contained in the organic plan. We may, or you may request us to, contact FCIC to determine whether or not production methods will be considered to be ''good nursery practices.''

* * * * *

*Liners.* Plants produced in standard nursery containers that are equal to or greater than 1 inch in diameter (including trays containing 200 or fewer individual cells, unless specifically provided by the Special Provisions) but less than 3 inches in diameter at the widest point of the container or cell interior, have an established root system reaching the sides of the containers, are able to maintain a firm root ball when lifted from the containers, and meet all other conditions specified in the Special Provisions.

* * * * *

*Monthly proration factors.* Factors contained in the actuarial documents that are used to calculate premium when you do not insure the nursery plants for an entire crop year.

*Nursery.* A business enterprise that grows the nursery plants and derives at least 50 percent of its gross income from the wholesale marketing of such plants.

*Occurrence deductible.* This deductible allows a smaller deductible than the crop year deductible to be used when the inventory value is less than the reported basic unit value. The occurrence deductible is the lesser of: (1) The deductible percentage multiplied by field market value A multiplied by the under-report factor; or (2) the crop year deductible.

*PIVR.* The plant inventory value report, your report that declares the value of insurable plants in accordance with section 6.

*Plant Price Schedule.* A schedule of insurable plant prices that establishes the maximum insurable value of undamaged insurable plants, published by FCIC as an actuarial document available on RMA's Web site at *http://www.rma.usda.gov.* It is also available on compact disk from your crop insurance agent.

*Practice.* A cultural method of producing plants. Container grown and field grown are considered separate insurable practices.

*Sales closing date.* In lieu of the definition in section 1 of the Basic Provisions, the date shown in the Special Provisions. New-policy applications may be filed at any time. However, all applications, including those for new or amended coverage, are subject to a 30-day waiting period before commencement of coverage as specified in sections 3(d) and 9(a).

Standard nursery containers. Rigid containers not less than 1 inch in diameter at the widest point of the container interior (including trays that contain 200 or fewer individual cells, unless specifically provided by the Special Provisions), above-ground fabric grow bags, and other types of containers specified in the Special Provisions that are appropriate in size and provide adequate drainage for the plant. In-ground fabric grow bags, balled and burlapped, and trays (flats) without individual cells are not considered standard nursery containers.

* * * * *

*Survival factor.* A factor shown on the Special Provisions that specifies the expected percentage of liners that normally survive the period from insurance attachment to market.

*Under-report factor.* The factor that adjusts your indemnity for under-reporting of inventory values. The factor is always used in determining indemnities. For each basic unit, the under-report factor is the lesser of: (1) 1.000; or (2) the basic unit value, including a Peak Inventory Value Report during the coverage term of a Peak Inventory Endorsement, minus the total of all previous losses, as adjusted by any previous under-report factor, divided by field market value A. Payments made under the Rehabilitation Endorsement will not be considered a previous loss when calculating the under-report factor.

*Wholesale.* To sell nursery plants in large quantities at a price below that offered on low-quantity sales to retailers, commercial users, governmental end-users, or other end-users for business purposes (*e.g.* sales to landscape contractors and commercial fruit producers). This determination will be based on a county-by-county basis.

■ 4. Revise section 2 of § 457.162 to read as follows:

2. Unit Division

(a) If you elect additional coverage for a practice, a basic unit, as defined in section 1 of the Basic Provisions, may be divided into additional basic units by each insurable plant type designated in section 2(b) for which a premium rate is provided by the actuarial documents.

(b) Only the following plant types contained on the Eligible Plant List are insurable:

(1) Deciduous Trees (Shade and Flower);
(2) Broad-leaf Evergreen Trees;
(3) Coniferous Evergreen Trees;
(4) Fruit and Nut Trees;
(5) Deciduous Shrubs;
(6) Broad-leaf Evergreen Shrubs;
(7) Coniferous Evergreen Shrubs;
(8) Small Fruits;
(9) Herbaceous Perennials;
(10) Roses;
(11) Ground Cover and Vines;
(12) Annuals;
(13) Foliage;
(14) Palms and Cycads;
(15) Liners (container grown only and inclusive of all insurable plant types); and
(16) Other plant types listed in the Special Provisions.

■ 5. Amend section 3 of § 457.162 as follows:

■ a. Amend paragraph (a) by adding the phrase '', including the misreporting provisions,'' between the words ''requirements'' and ''contained'';

■ b. Redesignate paragraphs (b), (c) and (d) as paragraphs (c), (e) and (f), respectively, and add new paragraphs (b) and (d);

■ c. Revise redesignated paragraph (c); and

■ d. Amend redesignated paragraph (f) by removing the term ''6(f)'' and adding ''6(g)'' in its place.

The revised and added text reads as follows:

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

* * * * *

(b) In addition to the requirements of section 3 of the Basic Provisions, you may select either catastrophic risk protection or additional coverage for each insured practice. An administrative fee established in accordance with section 7(e) of the Basic Provisions will be owed for each practice insured.

(c) In lieu of section 3(b) of the Basic Provisions:

(1) If you select additional coverage for a practice:

(i) You may select one coverage level for each plant type insured in that practice if you elect basic units by plant type;

(ii) You will receive 100 percent of the price election for all plant types in that practice;

(iii) You must provide on the application a coverage level percentage for each plant type that will be insured; and

(iv) You must select a coverage level if:

(A) A new plant is added under a revised PIVR or Peak Inventory Endorsement; and

(B) The plant is not categorized under a plant type reported on the initial PIVR.

(2) If you select catastrophic risk protection for a practice, all plant types under the practice must be insured at the catastrophic risk protection level.

(d) In lieu of section 3(d) of the Basic Provisions, you may request changes to the coverage level for a plant type by submitting them in writing to us as follows:

(1) For new policies, changes cannot be made for the crop year after the date of the application; and

(2) For carryover policies:

(i) For the 2006 crop year only, changes must be requested on or before September 30th prior to the start of the crop year;

(ii) For all subsequent crop years, changes must be requested on or before the sales closing date; and

(iii) Unless we reject the proposed increase because a loss occurs within 30 days of the date the request is made (Rejection can occur at any time we discover such loss has occurred), requested changes will take effect:

(A) For the 2006 crop year, 30 days after the date you submitted your request; and

(B) For all subsequent crop years, on the date of the start of the crop year.

* * * * *

■ 6. Amend section 4 of § 457.162 by removing the phrase ''June 30'' and adding ''January 31'' in its place and adding the word ''crop'' between the words ''each'' and ''year.''

■ 7. Amend section 5 of § 457.162 by removing the phrase ''September 30'' and adding ''May 31'' in its place.

■ 8. Amend section 6 of § 457.162 as follows:

■ a. Revise the heading of section 6;

■ b. Revise paragraph (b);

■ c. Revise paragraph (c);

■ d. Amend paragraph (d) by removing the phrase ''plant inventory value report'' and adding ''PIVR'' in its place and capitalizing the phrase ''peak inventory value report'';

■ e. Revise paragraph (e);

■ f. Remove paragraph (h), and redesignating paragraphs (f) and (g) as paragraphs (g) and (i), respectively;

■ g. Add new paragraphs (f) and (h);

■ h. Revise redesignated paragraph (g);

■ i. Amend redesignated paragraph (i) by removing the word ''practice'' wherever it apears and adding the phrase ''basic unit'' in its place and removing the word ''your'' wherever it appears and adding the word ''each'' in its place; and

■ j. Add new paragraphs (j) and (k).

The revised and added text reads as follows:

6. PIVR

* * * * *

(b) You must submit a PIVR for each insured practice, as applicable, and two copies of your most recent wholesale catalogs or price lists in accordance with subsection (k) to us with your application on or before the sales closing date for each crop year following the year of application.

(1) You will be notified in writing if an application for insurance is refused because the inventory or wholesale catalog or price list is not acceptable.

(2) If you fail to provide a PIVR or applicable catalog or price list on or before the sales closing date for any crop year, insurance will not attach until 30 days after all such documents have been received by your crop insurance agent and we will not be liable for any losses that occur before insurance has attached.

(c) The PIVR must include, by basic unit, all growing locations, basic unit value, coverage level selected, as applicable, and your share.

(1) If you do not elect additional basic units by plant type or you elect CAT coverage, the plant inventory values for each plant type in the basic unit must be separately reported on the PIVR and totaled to determine the basic unit value.

(2) At our option, you will be required to provide documentation in support of your PIVR, including, but not limited to, a detailed plant inventory listing that includes the name, the number, and the size of each plant; acceptable records of sales and purchases of plants for the three previous crop years in the amount of detail we require; and your ability to properly obtain and maintain nursery stock. Acceptable records must contain the name and telephone number of the purchaser or seller, as applicable, names of the plants, the number of each plant sold or purchased, and the sales price for each plant.

(3) Failure to provide documentation when requested or providing inadequate documentation will result in denial of insurance for the crop year for any basic units for which such documentation was not provided. This provision does not apply to:

(i) Plant varieties you have not previously grown; or

(ii) New nurseries where an inspection has determined you have the ability to properly obtain and maintain the nursery stock.

* * * * *

(e) Your PIVR must reflect your insurable nursery plant inventory value by basic unit.

(1) The price for each plant and size listed on your PIVR will be the lower of the Plant Price Schedule price or the lowest wholesale price in your nursery catalog or price list submitted in accordance with section 6(k).

(2) In no instance will we be liable for plant values greater than those contained in the Plant Price Schedule.

(3) If you have previously made a claim and the loss adjuster is unable to determine whether a plant was damaged prior to submission of your PIVR for the current crop year, the plant will be insurable at full value based on the lesser of the Eligible Plant List price or the catalog or price list price. The value of the plant may be reduced at any time during the crop year if the extent of damage is discovered.

(f) For catastrophic level policies only, you must report, on the PIVR for each practice insured, your greatest plant sales in any of the previous 3 years and the actual inventory value on the date insurance attaches.

(1) You may be required to provide documentation to support the above reporting requirements. To be considered adequate, sales documents

must contain the name and telephone number of the purchaser, names of the plants, the number of each plant sold, and the sales price for each plant.

(2) For each applicable practice, the total of your basic unit values cannot exceed 110 percent of the higher of your:

(i) Greatest amount of plant sales in any of the previous 3 years; or

(ii) Actual inventory value on the date insurance attaches.

(3) Failure to provide documentation when requested or providing inadequate documentation will result in denial of insurance for the crop year for any basic unit for which such documentation was not provided. This provision does not apply to:

(i) Plant varieties you have not previously grown; or

(ii) New nurseries where an inspection has determined you have the ability to properly obtain and maintain the nursery stock.

(g) You may increase your reported inventory value for each basic unit no more than twice during the crop year by submitting a revised PIVR prior to 30 days before the end of such crop year.

(1) Any requested increase must be made in writing and contain the same information as required in section 6(c). The limitations in section 3(d) regarding making changes to the coverage level after a specified date are not applicable to a revised PIVR that adds new plant types. The limitations continue to apply if plants are added for a specific plant type.

(2) An inspection will be performed when the total of all the basic unit values contained on the revised PIVRs is increased 50 percent or more from the previous total of all the basic unit values on the PIVR, and the increase is not due to restocking subsequent to an insured loss.

(3) At our discretion, we may inspect the inventory if an increase of less than 50 percent is reported on the revised PIVR.

(4) Your revised PIVR will be considered accepted by us and insurance will attach on any proposed increase in inventory value 30 days after your written request is received unless we reject the proposed increase in your plant inventory value in writing.

(5) We will reject any requested increase if a loss occurs within 30 days of the date the request is made.

(6) You cannot revise your PIVR to decrease the plant inventory value after the start of the insurance period specified in section 9.

(h) For insurable plants that were damaged prior to the attachment of insurance coverage:

(1) The applicable price, as determined in accordance with section 6(e), will be reduced for inventory reporting purposes if we accept such plants for insurance coverage;

(2) The plants will be removed from the PIVR if they are not accepted;

(3) The procedure for calculating the insurable value of damaged plants that are accepted for coverage is contained in the Special Provisions.

* * * * *

(j) Insurable plants in over-sized containers will be valued for purposes of reporting inventory and loss adjustment as if the plants were in appropriate-sized containers in accordance with the standards contained in the current American Standard for Nursery Stock. Each cell in a multiple-cell container is considered a separate container. (See the Eligible Plant List at *http://www.rma.usda.gov/* for additional information and requirements on container specifications and volume calculation.)

(k) At a minimum, your wholesale catalog or price list must:

(1) Be type-written and legible;

(2) Show an issue date on the cover page (may be handwritten);

(3) Contain the name, address, and phone number of your nursery;

(4) Be provided to customers and used in the sale of your plants; and

(5) List each plant's name (scientific or common), plant or container size, and wholesale price.

■ 9. Revise section 7 of § 457.162 to read as follows:

7. Premium

(a) In lieu of section 7(c) of the Basic Provisions, we will determine your premium by multiplying the amount of insurance by the appropriate premium rate, any premium adjustment factor, and the monthly proration factor contained in the actuarial documents, if applicable.

(b) In addition to the provisions in section 7 of the Basic Provisions, we will prorate your premium based on:

(1) The time remaining in the crop year after insurance attaches:

(i) If you have made application after the start of the insurance period specified in section 9; or

(ii) If you submit a PIVR or wholesale catalog or price list after the sales closing date;

(2) The time remaining in the crop year after insurance attaches and the additional amount of inventory reported, if you submit a revised PIVR to report an increase in inventory value for a basic unit; and

(3) The time period for which insurance is provided under the Peak Inventory Endorsement.

(c) If your premium is prorated, premium will be charged for the entire month for any calendar month during which any amount of coverage is provided under these provisions or the Peak Inventory Endorsement.

(d) In lieu of section 7(a) of the Basic Provisions:

(1) If you apply for insurance before April 1st, the annual premium is earned and payable at the time coverage begins. You will be billed for the premium and administrative fee not earlier than the premium billing date specified in the Special Provisions.

(2) If you apply for insurance, or submit your PIVR or wholesale catalog or price list, on or after April 1st, the premium for the partial crop year will be due and must be paid at the time of application.

(3) Failure to pay the premium at the time of application, or when you submit your PIVR or wholesale catalog or price list, will result in no insurance and no indemnity being owed for the crop year.

■ 10. Amend section 8 of § 457.162 as follows:

■ a. Revise the heading of section 8;

■ b. Revise the introductory text of section 8;

■ c. Revise section 8(i);

■ d. Revise section 8(j); and

■ e. Add a new section 8(k).

The revised and added text reads as follows:

8. Insured Crop and Plants

In lieu of the provisions of sections 8 and 9 of the Basic Provisions, the crop insured will be all nursery plants and plant types in each practice, contained on the Eligible Price List, in which you have a share, that you elect to insure, and that:

* * * * *

(i) Are not stock plants or plants being grown solely for harvest of buds, flowers, or greenery;

(j) May produce edible fruits or nuts provided the plants are made available for sale (Harvest of the edible fruit or nuts does not affect insurability); and

(k) Are not produced in nursery containers that contain two or more different genera, species, subspecies, varieties or cultivars.

■ 11. Amend section 9 of § 457.162 as follows:

■ a. Revise section 9(a); and

■ b. Revise section 9(b)(4).

The revised text reads as follows:

9. Insurance Period

(a) In lieu of section 11 of the Basic Provisions:

(1) For the year of application, if you apply for coverage:

(i) On or before August 31, 2005, for the 2006 crop year, coverage begins on October 1, 2005, unless we notify you in writing that your inventory is not acceptable;

(ii) After August 31, 2005, and on or before May 1, 2006, for the 2006 crop year, or on or before May 1st of the crop year for any subsequent crop year, coverage begins 30 days after your crop insurance agent receives an application signed by you, unless we notify you in writing that your inventory is not acceptable;

(iii) After May 1, 2006, or after May 1st for any subsequent crop year, coverage will not begin until the next crop year, subject to the 30-day delay specified in subparagraph (ii); and

(2) For continuous policies:

(i) For the 2006 crop year, the insurance period begins on October 1, 2005.

(ii) For the 2007 crop year, the insurance period begins on June 1, 2006, and for each subsequent crop year, the insurance period begins on each June 1st.

(b) * * *

(4) 11:59 p.m. on May 31, 2006, for the 2006 crop year, and on May 31st for each subsequent crop year.

■ 12. Amend section 10 of § 457.162 as follows:

■ a. Amend section 10(a)(1) by removing ''(b)'' after the numeral ''10'' and adding ''(c)'' in its place;

■ b. Amend section 10(a)(4) by adding the word ''or'' at the end;

■ c. Amend section 10(a)(5) by removing ''; or'' and adding a period in its place;

■ d. Remove sections 10(a)(6) and (7);

■ e. Amend section 10 by redesignating sections 10(b) introductory text, 10(b)(1), and 10(b)(3) through (6) as sections 10(c), 10(c)(1), and 10(c)(2) through (5), respectively, removing 10(b)(2), and adding a new section 10(b);

■ f. Amend redesignated section 10(c) introductory text by changing the word ''section'' to ''sections'' and adding the phrase ''(a) and (c) through (f)'' between the numeral ''12'' and the word ''of'';

■ g. Revise redesignated section 10(c)(2);

■ h. Amend redesignated section 10(c)(4) by removing the word ''or'' at the end;

■ i. Revise redesignated section 10(c)(5); and

■ j. Add a new section 10(c)(6).

The revised and added text reads as follows:

10. Causes of Loss

* * * * *

(b) Insurance is also provided against the following if due to a cause of loss specified in section 10(a) that occurs within the insurance period:

(1) A loss in plant values because of an inability to market such plants, provided such plants would have been marketed during the crop year (e.g. poinsettias that are not marketable during their usual and recognized marketing period of November 1st through December 25th);

(2) Failure of the irrigation water supply; or

(3) Failure of, or reduction in, the power supply.

(c) * * *

* * * * *

(2) The inability to market the nursery plants as a result of:

(i) The refusal of a buyer to accept production;

(ii) Boycott; or

(iii) An order from a public official prohibiting sales including, but not limited to, a stop sales order, quarantine, or phytosanitary restriction on sales;

* * * * *

(5) Any cause of loss, including those specified in section 10(a), if the only damage suffered is a failure of plants to grow to an expected size; or

(6) In lieu of section 12(b) of the Basic Provisions, failure to follow recognized good nursery practices.

■ 13. Amend § 457.162 by revising section 11(a)(2) to read as follows:

11. Duties in the Event of Damage or Loss

(a) * * *

(2) You must submit a claim for indemnity to us on our form, not later than 60 days after the date of your loss, but in no event later than 60 days after the end of the insurance period. This requirement will be waived by us if the final adjustment of your claim is totally or partially deferred because we are unable to make an accurate determination of the amount of damage to the insured plants. If within the time frame specified we notify you that we are unable to make an accurate determination of damage on all or some of your damaged plants:

(i) For those damaged plants on which the loss adjustment and claim have not been deferred, you must submit a partial claim within the time frame specified in section 11(a)(2) and we will settle your claim on such plants;

(ii) For those damaged plants on which the loss adjustment and claim have been deferred, we will determine the amount of damage at the earliest possible date but no later than one year after the end of the insurance period for the crop year in which the damage occurred; and

(iii) You must maintain the identity of the plants on which loss adjustment is deferred throughout the deferral period.

* * * * *

■ 14. Amend section 12 of § 457.162 as follows:

■ a. Amend sections 12(a) and (d) by inserting a hyphen between the words ''under'' and ''report'';

■ b. Revise section 12(f); and

■ c. Revise section 12(g).

The revised text reads as follows:

12. Settlement of Claim

* * * * *

(f) If the result of section 12(e) is greater than zero, and subject to the limit of section 12(g);

(1) For other than catastrophic risk protection coverage, your indemnity equals the result of section 12(e), multiplied by your share.

(2) For catastrophic risk protection coverage, your indemnity equals the result of section 12(e) multiplied by fifty-five percent, multiplied by your share.

(g) The total of all indemnities for the crop year will not exceed the amount of insurance, including any peak amount of insurance during the coverage term of the Peak Inventory Endorsement, if this endorsement is elected.

■ 15. Revise section 14 of § 457.152 to read as follows:

14. Written Agreements

(a) In lieu of section 18(a) of the Basic Provisions, you must request in writing a written agreement with the application for the initial crop year, and not later than the cancellation date for each subsequent crop year, except as provided in section 14(c).

(b) In lieu of the requirements of section 18(d) of the Basic Provisions, any written agreement is valid only until the end of the insurance period for the crop year such written agreement applies; and

(c) In lieu of section 18(e) of the Basic Provisions, an application for a written agreement submitted after the date of application for the initial crop year and the cancellation date for all subsequent crop years may be approved if:

(1) You demonstrate your physical inability to have applied timely; and

(2) After physical examination of the nursery plant inventory, we determine the inventory will be marketable at the value shown on the PIVR.

■ 16. Revise section 15 of § 457.162 to read as follows:

15. Examples

Single Unit Example

Assume you have a 100 percent share and the plant inventory value reported

by you is $100,000, and your coverage level is 75 percent. Your amount of insurance is $75,000 ($100,000 × .75). At the time of loss, field market value A is $125,000, and field market value B is $80,000. The under-report factor is .80 ($100,000 divided by $125,000). The deductible percentage is 25 percent (100 − 75), the crop year deductible is $25,000 (.25 × $100,000) and the occurrence deductible is $25,000 (.25 × $125,000 × .80). Your indemnity would be calculated as follows:

Step (1) Determine the under-report factor $100,000 ÷ $125,000 = .80;

Step (2) Field market value A minus field market value B $125,000 − $80,000 = $45,000;

Step (3) The result of step (2) multiplied by the result of step (1) $45,000 × .80 = $36,000;

Step (4) The result of step (3) minus the occurrence deductible $36,000 − $25,000 = $11,000; and

Step (5) Result of step (4) multiplied by your share $11,000 × 1.000 = $11,000 indemnity payment.

Peak Inventory Value Report Example

Assume you have a second loss on the same basic unit. Your amount of insurance has been reduced by subtracting your previous indemnity payment of $11,000 from your amount of insurance ($75,000 − $11,000 = $64,000). Your crop year deductible has been reduced to zero by the previous loss ($25,000 − $36,000, but not less than zero). You purchase a Peak Inventory Endorsement and report $60,000 in inventory. Your peak amount of insurance is your reported inventory times your coverage level ($60,000 × .75 = $45,000). The combined amount of insurance for the coverage term of the peak endorsement is $64,000 + $45,000 = $109,000. Your crop year deductible is increased by $15,000 ($60,000 × .25). At the time of loss, field market value A is $124,000, and field market value B is $58,000. The under-report factor is 1.00 [($160,000 − $36,000)/$124,000]. The crop year deductible is $15,000 (.25 × $60,000) and the occurrence deductible is $15,000 (the lesser of field market value A × .25 or the crop year deductible). Your indemnity would be calculated as follows:

Step (1) Determine the under-report factor $160,000 − $36,000) ÷ $124,000 = 1.00;

Step (2) Field market value A minus field market value B $124,000 − $58,000 = $66,000;

Step (3) The result of step (2) multiplied by the result of step (1) $66,000 × 1.0 = $66,000;

Step (4) The result of step (3) minus the occurrence deductible $66,000 − $15,000 = $51,000; and

Step (5) Result of step (4) multiplied by your share $51,000 × 1.000 = $51,000 indemnity payment.

Your peak amount of insurance is reduced to zero. Your amount of insurance is reduced by the amount the indemnity exceeds the peak amount of insurance. $64,000 − ($51,000 − 45,000) = $64,000 − $6,000 = $58,000.

**§ 457.163 [Amended]**

■ 17. Amend section 1 of § 457.163 as follows:

■ a. Revise the definitions of ''coverage commencement date,'' ''peak amount of insurance,'' and ''peak inventory value report''; and

■ b. Add a definition of ''peak inventory premium adjustment factor.''

The revised and added text reads as follows:

**§ 457.163 Nursery peak inventory endorsement.**

* * * * *

1. Definitions

*Coverage commencement date.* The later of the date you declare as the beginning of the coverage or 30 days after a properly completed Peak Inventory Value Report is received by us.

* * * * *

*Peak amount of insurance.* The additional inventory value reported on the Peak Inventory Value Report for each basic unit multiplied by your coverage level and by your share.

*Peak Inventory Value Report.* A report that increases the value of insurable plants over the value reported on the PIVR, declares the coverage commencement and coverage termination dates, and the other requirements of section 6 of the Nursery Crop Insurance Provisions.

*Peak inventory premium adjustment factor.* A factor calculated by subtracting the monthly proration factor for the month following the month containing the coverage termination date from the proration factor for the month in which coverage commenced. Peak Inventory Endorsements with a coverage termination date during the month of May will have a premium adjustment factor equal to the proration factor for the month containing the coverage commencement date.

* * * * *

■ 18. Amend paragraph 2 of § 457.163 as follows:

■ a. Amend paragraph 2(a) by removing ''7 CFR 457.162'';

■ b. Amend section 2(b) by removing the phrase ''either the limited or'' and adding the word ''an'' in its place;

■ c. Revise paragraph 2(c); and

■ d. Revise paragraph 2(d).

The revised text reads as follows:

2. Eligibility

* * * * *

(c) You must submit a Peak Inventory Value Report, which will serve as the application for coverage under this endorsement.

(1) The Peak Inventory Value Report may contain one or more plant type basic units and each plant type basic unit will be considered a separate Peak Inventory Endorsement.

(2) We may reject the Peak Inventory Value Report if all requirements in this endorsement and the Nursery Crop Insurance Provisions are not met.

(d) You may purchase no more than one Peak Inventory Endorsement for each basic unit during the crop year unless you have suffered insured losses and have restocked your nursery, in which case an additional Peak Inventory Endorsement may be purchased after each insured loss.

■ 19. Amend section 3 of § 457.163 by revising paragraph (a) to read as follows:

3. Coverage

(a) The amount of insurance provided under the Nursery Crop Provisions for each basic unit is increased by the peak amount of insurance for such unit for the coverage term.

* * * * *

■ 20. Amend section 4 of § 457.163 by removing the phrase ''at 12:01 a.m.''

■ 21. Amend section 5 of § 457.163 by revising paragraph (a) and adding an example of a Peak Inventory Endorsement premium calculation at the end of this paragraph to read as follows:

5. Premium

(a) The premium for this endorsement is determined by multiplying the peak amount of insurance by the appropriate premium rate and by the peak inventory premium adjustment factor.

*Example of Peak Inventory Endorsement Total Premium Calculation*

Assume a grower reports a peak amount of insurance on a basic unit of $100,000 with a 65 percent coverage level and a share of 1.000. The base premium rate is $0.051. The proration factors for the Peak Inventory Endorsement are 0.68 for the month that coverage commenced and 0.52 for the month following the month containing the coverage termination date, as stated in the actuarial documents. The peak

premium adjustment factor is 0.16 (0.68—0.52). The total premium amount for the Peak Inventory Endorsement is $530.40 ($100,000 × 0.65 × 1.000 × $0.051 × 0.16).

* * * * *

■ 22. Amend section 6 of § 457.163 by capitalizing the phrase ''peak inventory value report.''

■ 23. Amend section 7 of § 457.163 by removing the phrase ''the practice'' and adding the phrase ''200 percent of the basic unit'' in its place.

■ 24. Add a new § 457.164 to read as follows:

**§ 457.164 Nursery rehabilitation endorsement.**

**Nursery Crop Insurance Rehabilitation Endorsement**

If you elect this endorsement and pay the additional premium designated in the actuarial documents, this endorsement is attached to and made a part of your Nursery Crop Insurance Provisions subject to the terms and conditions herein. In the event of a conflict between the Nursery Crop Insurance Provisions and this endorsement, this endorsement will control.

1. Eligibility

(a) You must have purchased additional coverage under the Nursery Crop Insurance Provisions, and you must comply with all terms and conditions contained in the applicable Nursery Crop Insurance Provisions and endorsements.

(b) All field grown nursery plants insured under the Nursery Crop Insurance Provisions must be insured under this endorsement. Nursery plants produced in standard nursery containers are not covered under this endorsement.

(c) You must elect this endorsement:

(1) At the time of application for the initial crop year your field grown nursery plants will be insured under the Nursery Crop Insurance Provisions; or

(2) By October 1, 2005, for the 2006 crop year and by the sales closing date for each subsequent crop year if your field grown plants are already insured under the Nursery Crop Insurance Provisions.

2. Coverage

(a) This endorsement is only applicable to field grown plants damaged by an insured cause of loss specified in section 10 of the Nursery Crop Insurance Provisions.

(b) Rehabilitation costs covered by this endorsement are limited to expenditures for labor and materials for pruning and setup (righting, propping, and staking).

(c) To be eligible for a rehabilitation payment:

(1) The damaged plants must have a reasonable expectation of recovery based on:

(i) The type of damage (e.g., broken limbs from high winds, trees uprooted by hurricane, etc.);

(ii) The extent of damage (e.g., twenty percent of the limbs broken, half the canopy removed, etc.); and

(iii) Whether the plant can recover to the point it is marketable;

(2) Verifiable records must be provided showing actual expenditures for rehabilitation and such expenditures must be reasonable and customary for the type and extent of damage sustained by the plants;

(3) Rehabilitation procedures must be performed directly following the occurrence of damage and before additional deterioration of the damaged plants occurs;

(4) We must determine it is practical to rehabilitate the damaged plants (It is not practical if the costs of rehabilitation are greater than the value of the plant); and

(5) The total actual rehabilitation costs for each loss occurrence on the basic unit must be at least the lesser of 2.0 percent of field market value A or $5,000.

(d) The maximum amount of each rehabilitation payment for each basic unit will be the lesser of:

(1) Your total actual rehabilitation costs multiplied by the under-report factor contained in the Nursery Crop Insurance Provisions; or

(2) An amount equal to 7.5 percent of the value (based on insurable plant prices determined in accordance with section 6 of the Nursery Crop Insurance Provisions) of all your insurable field grown plants that were rehabilitated subsequent to an insured cause of loss, multiplied by the under-report factor described in the Nursery Crop Insurance Provisions, multiplied by the coverage level percentage you elect, and multiplied by your share. Insurable, rehabilitated plants that have not recovered from damage that occurred prior to attachment of this endorsement will have a reduced value in accordance with section 6(h) of the Nursery Crop Insurance Provisions.

(e) The total of all rehabilitation payments for the crop year for the basic unit will not exceed 7.5 percent of the value (based on insurable plant prices determined in accordance with section 6 of the Nursery Crop Insurance Provisions) of all your insurable field grown plants in such basic unit, multiplied by the under-report factor described in the Nursery Crop Insurance Provisions, multiplied by the coverage level percentage you elect, and multiplied by your share.

3. Cancellation

This endorsement will continue in effect until canceled or coverage under the Nursery Crop Insurance Provisions is cancelled or terminated. This endorsement may be canceled by you or us for any succeeding crop year by giving written notice to the other party on or before the cancellation date, contained in the Nursery Crop Insurance Provisions, preceding the crop year for which the cancellation of this endorsement is to be effective.

Signed in Washington, DC, on June 21, 2005.

**Ross J. Davidson, Jr.,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 05–12644 Filed 6–27–05; 8:45 am]

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Vol. 70, No. 123

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**Agricultural Marketing Service**
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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. 1760/P.L. 109–15**
To designate the facility of the United States Postal Service located at 215 Martin Luther King, Jr. Boulevard in Madison, Wisconsin, as the "Robert M. La Follette, Sr. Post Office Building". (June 17, 2005; 119 Stat. 337)

**Last List June 2, 2005**

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