Vol. 70
Iss. 4
JAN 6

2005

Federal Register

1–6–05 Thursday
Vol. 70 No. 4 Jan. 6, 2005

United States
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(ISSN 0097-6326)

Federal Register

1–6–05 Thursday
Vol. 70 No. 4 Jan. 6, 2005

Pages 1161–1324

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM298, Special Conditions No. 25–282–SC]

Special Conditions: Dassault-Breguet Model Falcon 10 Airplane; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for a Dassault-Breguet Model Falcon 10 airplane modified by Long Beach Avionics of Long Beach, California. The modified airplane will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of a Collins Model ALI–80 Altimeter and Model MSI–80 Mach Airspeed Indicator. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 23, 2004. Comments must be received on or before February 7, 2005.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM298, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM298. 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: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

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

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

Background

On October 11, 2004, Long Beach Avionics of Long Beach, California, applied to the FAA, Los Angeles Aircraft Certification Office for a supplemental type certificate (STC) to modify a Dassault-Breguet Model Falcon 10 airplane. The proposed modification incorporates the installation of a Collins Model ALI–80 Altimeter and a Model MSI–80 Mach Airspeed Indicator as primary instruments. These digital instruments would perform critical functions, that is, functions whose failure would prevent the continued safe flight and landing of the airplane. The Altimeter and Mach Airspeed Indicator to be installed in the airplane have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Amendment 21–69, effective September 16, 1991, Long Beach Avionics must show that the Model Falcon 10 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A33EU or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis."

The regulations incorporated by reference in Type Certificate No. A33EU include 14 CFR part 25, as amended by Amendments 25–1 through 25–20.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the modified Dassault-Breguet Model Falcon 10 airplane 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 Model Falcon 10

airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

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

Novel or Unusual Design Features

The Dassault-Breguet Model Falcon 10 airplane modified by Long Beach Avionics will incorporate new digital equipment that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

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

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Dassault-Breguet Model Falcon 10 airplane modified by Long Beach Avionics. These special conditions require that new digital equipment that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

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

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

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

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

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

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

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

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

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

Applicability

As discussed above, these special conditions are applicable to a Dassault-Breguet Model Falcon 10 airplane modified by Long Beach Avionics. Should Long Beach Avionics apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate A33EU to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well as under the provisions of 14 CFR 21.101.

Conclusion

This action affects only certain design features on the Dassault-Breguet Model Falcon 10 airplane modified by Long Beach Avionics. It is not a rule of general applicability and affects only the applicant which applied to the FAA for approval of these features on the airplane.

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

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

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

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the modified Dassault-Breguet Model Falcon 10 airplane:

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

2. For the purpose of these special conditions, the following definition

applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

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

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–236 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM287; Special Conditions No. 25–281–SC]

Special Conditions: Airbus Model A330, A340–200 and A340–300 Series Airplanes; Lower Deck Mobile Crew Rest (LD–MCR) Compartment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Airbus Model A330, A340–200, and A340–300 series airplanes. These airplanes will have novel or unusual design features associated with a lower deck mobile crew rest (LD–MCR) compartment. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. 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.

EFFECTIVE DATE: December 23, 2004.

FOR FURTHER INFORMATION CONTACT: Tim Backman, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2797; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On March 20, 2003, Airbus applied for a change to Type Certificate Numbers A46NM and A43NM to permit installation of an LD–MCR compartment in Airbus Model A330, A340–200, and A340–300 series airplanes.

The LD–MCR compartment will be located under the passenger cabin floor in the aft cargo compartment of Airbus Model A330, A340–200, and A340–300 series airplanes. It will be the size of a standard airfreight container and will be removable from the cargo compartment. The LD–MCR compartment will be occupied in flight but not during taxi, takeoff, or landing. No more than seven crewmembers at a time will be permitted to occupy it. The LD–MCR compartment will have a smoke detection system, a fire suppression system, and an oxygen system.

The LD–MCR compartment will be accessed from the main deck via a "stairhouse." The floor within the stairhouse has a hatch that leads to stairs which occupants use to descend into the LD–MCR compartment. An interface will keep this hatch open when the stairhouse door is open. In addition, there will be an emergency hatch which opens directly into the main passenger cabin. The LD–MCR compartment has a maintenance door. This door is intended to be used to allow maintenance personnel and cargo handlers to enter the LD–MCR from the cargo compartment when the airplane is not in flight.

Type Certification Basis

Under the provisions of § 21.101, Airbus must show that Airbus Model A330, A340–200, and A340–300 series airplanes, as changed, continue to meet (1) the applicable provisions of the regulations incorporated by reference in A46NM (for Airbus Model A330) and in A43NM (for Airbus Model A340–200 and A340–300 series airplanes) or (2) the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in A46NM and A43NM are as follows:

The certification basis for Airbus Models A330–300, A340–200, and A340–300 series airplanes is 14 CFR part 25, as amended by Amendments 25–1 through 25–63; certain regulations at later Amendments 25–65, 25–66, and 25–77; and Amendment 25–64 with exceptions. Refer to Type Certificate Data Sheet (TCDS) A46NM or A43NM, as applicable, for a complete description of the certification basis for these models, including certain special conditions that are not relevant to these proposed special conditions.

The certification basis for Airbus Model A330–200 series airplanes is 14 CFR part 25, as amended by Amendments 25–1 through 25–63, 25–65, 25–66, 25–68, 25–69, 25–73, 25–75, 25–77, 25–78, 25–81, 25–82, 25–84 and 25–85; certain regulations at Amendments 25–72 and 25–74; and Amendment 25–64 with exceptions. Refer to TCDS A46NM for a complete description of the certification basis for that model, including certain special conditions that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for Airbus Model A330, A340–200, and A340–300 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Airbus Model A330, A340–200, and A340–300 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

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

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same or similar 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

While the installation of a crew rest compartment is not a new concept for large transport category airplanes, each crew rest compartment has unique features based on design, location, and use on the airplane. The LD–MCR compartment is novel in terms of part 25 in that it will be located below the passenger cabin floor in the aft cargo compartment of Airbus Model A330, A340–200, and A340–300 series airplanes. Due to the novel or unusual features associated with the installation of a LD–MCR compartment, special conditions are considered necessary to provide a level of safety equal to that established by the airworthiness regulations incorporated by reference in the type certificates of these airplanes. These special conditions do not negate the need to address other applicable part 25 regulations.

Operational Evaluations and Approval

These special conditions specify requirements for design approvals (*i.e.*, type design changes and supplemental type certificates) of LD–MCR compartments administered by the FAA's Aircraft Certification Service. Prior to operational use of a LD–MCR compartment, the FAA's Flight Standards Service, Aircraft Evaluation Group (AEG), must evaluate and approve the "basic suitability" of the LD–MCR compartment for occupation by crewmembers. If an operator wishes to utilize a LD–MCR compartment as "sleeping quarters," the LD–MCR compartment must undergo an additional operational evaluation and approval. The LD–MCR compartments will be evaluated for compliance to §§ 121.485(a) and 121.523(b), with Advisory Circular 121–31 providing one method of compliance to these operating regulations.

To obtain an operational evaluation, the type design holder must contact the AEG within the Flight Standards Service which has operational approval authority for the project. In this instance, it is the Seattle AEG. The type design holder must request a "basic suitability" evaluation or a "sleeping quarters" evaluation of the crew rest. The type design holder may make these requests concurrently with the demonstration of compliance to these special conditions.

The results of these evaluations will be documented in the A330, A340–200 and A340–300 Flight Standardization Board (FSB) Report Appendix. In discussions with their FAA Principal Operating Inspector (POI), individual operators may reference these standardized evaluations as the basis for an operational approval, in lieu of an on-site operational evaluation.

An operational re-evaluation and approval will be required for any changes to the approved LD–MCR compartment configuration, if the changes affect procedures for emergency egress of crewmembers, other safety procedures for crewmembers occupying the LD–MCR compartment, or training related to these procedures. The applicant for any such change is responsible for notifying the Seattle AEG that a new crew rest evaluation is required.

All instructions for continued airworthiness (ICAW), including service bulletins, must be submitted to the Seattle AEG for approval acceptance before the FAA issues its approval of the modification.

Discussion of Special Conditions No. 9 and 12

The following clarifies how Special Condition No. 9 should be understood relative to the requirements of § 25.1439(a). Amendment 25–38 modified the requirements of § 25.1439(a) by adding the following language,

> In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation.

Section 25.1439(a) requires protective breathing equipment (PBE) in isolated separate compartments in which crewmember occupancy is permitted. But the PBE requirements of § 25.1439(a) are not appropriate in this case, because the LD–MCR compartment is novel and unusual in terms of the number of occupants.

In 1976, when Amendment 25–38 was adopted, underfloor galleys were the only isolated compartments that had been certificated, with a maximum of two crewmembers expected to occupy those galleys. Special Condition No. 9 addresses PBE requirements for LD–MCR compartments, which can accommodate up to 7 crewmembers. This number of occupants in an isolated compartment was not envisioned at the time Amendment 25–38 was adopted.

In the event of a fire, an occupant's first action should be to leave the confined space, unless the occupant(s) is fighting the fire. It is not appropriate for all LD–MCR compartment occupants to don PBE. Taking the time to don the PBE would prolong the time for the occupant's emergency evacuation and possibly interfere with efforts to extinguish the fire.

In regard to Special Condition No. 12, the FAA considers that, during the one minute smoke detection time, penetration of a small quantity of smoke from the LD–MCR compartment into an occupied area on this airplane configuration would be acceptable based upon the limitations placed in these special conditions. The FAA determination considers that the special conditions place sufficient restrictions in the quantity and type of material allowed in crew carry-on bags that the threat from a fire in this remote area would be equivalent to that experienced in the main cabin.

Discussion of Comments

Notice of proposed special conditions No. 25–04–02–SC for the Airbus Model A330, A340–200 and A340–300 series airplanes was published in the **Federal Register** on September 3, 2004 (69 FR 53841). Several commenters submitted comments on the proposed special conditions.

Proposed Special Condition 1(a) requires that there be appropriate placards displayed in a conspicuous place at each entrance to the LD–MCR compartment.

One commenter suggested that since cargo may be loaded through the maintenance door, the placard should be required to be outside the maintenance door.

The FAA considers that the special condition is sufficient as written, because the maintenance door is strictly for accessing and servicing the LD–MCR. No cargo or baggage will be loaded through the maintenance door, and, therefore, a placard is not needed on the outside of the door.

Proposed Special Condition 1(d) requires a means for any door installed between the LD–MCR and the passenger cabin to be quickly opened from "inside" the LD–MCR, even when crowding occurs at each side of the door.

One commenter indicates that the requirement for quick opening during crowding should also apply if there is an attempt to open the door from the passenger cabin.

This requirement addresses crew members who are exiting the mobile crew rest area and, therefore, do not have control of the area outside the door. When crew members are entering the LD–MCR, they would have sufficient control of the area outside the door to be able to enter the LD–MCR. Therefore, the FAA considers the special conditions sufficient to address this installation.

Proposed Special Condition 2 requires two emergency evacuation routes which could be used by each occupant of the LD–MCR compartment to rapidly evacuate to the main cabin.

One commenter states that the phrase "each occupant" in 14 CFR part 25 has been interpreted to mean a 5th percent female to a 95th percentile male. Yet the proposed Special Condition mentions only the 95th percentile male when addressing means to evacuate an incapacitated crewmember. The commenter suggests that the FAA define "each occupant" as used in this Special Condition.

In terms of evacuating an incapacitated crewmember, an incapacitated 95th percentile male is considered the "worst case" and is specifically addressed in the special conditions. The FAA concludes that

these special conditions are sufficient to address this installation.

Proposed Special Condition 12, in the third paragraph, addresses built-in fire extinguisher systems in the LD–MCR. It proposes that the system "must have adequate capacity to suppress any fire occurring in the LD–MCR compartment, considering the fire threat, the volume of the compartment, and the ventilation rate."

One commenter suggests that the Special Condition be revised to include the maximum approved Extended-Range Twin-Engine operations (ETOPS) diversion time for the airplane in the list of things to be considered when determining adequate capacity of the fire extinguisher system.

The FAA does not concur. Since the certification regulations are design requirements and do not address the types of operation, the special conditions are intended to address only the design parameters of the LD–MCR. Therefore, these special conditions are considered sufficient to address this installation.

Proposed Special Condition 16 requires that materials and mattresses comply with the flammability standards of 14 CFR § 25.853 (Compartment Interiors) at Amendment 25–66.

One commenter states that—in Special Conditions No. 25–230–SC which were applied to Boeing's overhead crew rests—the FAA required that the materials comply with § 25.853 at Amendment 25–83. The commenter asks for clarification of the reason that the lower lobe area allows for compliance with a lower amendment level of the design requirements.

In response, the FAA notes that, before initiating these special conditions, we determined the applicable airworthiness standards for this design change in accordance with 14 CFR 21.101 and Advisory Circular 21.101–1. Because the LD–MCR is not a "product level" change, we do not consider this change "significant" for purposes of that regulation. Therefore, the applicable regulations are those specified in the type certificate for the airplane, and it is not necessary for the applicant to show compliance with later amendments. For the A330 and A340, the certification amendment level is Amendment 25–66, whereas for the Boeing airplane, the certification amendment level is Amendment 25–83. In adopting special conditions in accordance with 14 CFR 21.16, we establish a level of safety equivalent to the applicable regulations. Therefore, the referenced amendment level is different for the two types of airplanes.

Proposed Special Condition 19 requires that "means must be provided to prevent access into the Class C cargo compartment during all airplane operations and to ensure that the maintenance door is closed during all airplane flight operations.

One commenter suggests that the proposed special condition is confusing, because the FAA uses two very different phrases: "airplane operations" and "airplane flight operations." The commenter asks that the FAA define the terms, since "airplane operations" seems to be broader than "airplane flight operations." In addition, the commenter asks that the wording be revised to require that the door be "secured" during flight operations, not just closed. The securing of this maintenance door during airplane operations is an important security measure to prevent passengers from accessing the cargo compartment or stowaways in the cargo compartment from accessing the airplane.

The FAA concurs and will revise the special condition as follows:

Means must be provided to prevent access into the Class C cargo compartment during all airplane *flight* operations and to ensure that the maintenance door is closed *and secured* during all airplane flight operations.

Proposed Additional Special Conditions:

One commenter suggests that there are some unique features of the LD–MCR that do not appear to be adequately covered by the proposed Special Condition.

1. One of these features is that two means of access from the LD–MCR to the main passenger compartment are required as part of the modification to the Airbus airplanes. Since the LD–MCR is removable, there must be provisions to secure the access means to eliminate any possibility of access between the cargo compartment and the passenger cabin when the LD–MCR is *not* installed.

The FAA concurs, and the FAA considers these special conditions, specifically No. 19, sufficient to address the certification requirements for this installation.

2. The commenter states that another unique feature of the LD–MCR is that it must connect to the airplane for electrical power and may have potable water and waste water attachments if it contains a lavatory. Since the LD–MCR is removable, those systems must be readily disconnected. As such, there should be requirements that ensure the integrity of those disconnects during a survivable crash landing, so that there are no sources of electrical arcing or the waste water system is not breached, possibly contaminating evacuating passengers.

The FAA concurs, and the FAA considers the basic requirements of 14 CFR part 25 and these special conditions sufficient to address the certification requirements for this installation.

3. Finally, one commenter suggests that the facility should be physically isolated from the active areas and located close to the Flight Deck, so as to allow access to the flight deck without transiting public areas.

In response, the FAA indicates that there are no current regulations which require a crew rest to be located such that the flight deck personnel have private access to the crew rest or do not have to pass through public areas to get to it. These requirements are not necessary to establish a level of safety equivalent to the regulations. The FAA concludes that these special conditions are sufficient to address the certification requirements for this crew rest installation.

Applicability

As mentioned above, these special conditions are applicable to Airbus Model A330, A340–200 and A340–300 series airplanes. Should Airbus apply at a later date for a change to the type certificate to include another model incorporating the same or similar novel or unusual design feature, these special conditions would apply to that model as well.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Airbus Model A330, A340–200, and A340–300 is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on the A330, A340–200, and A340–300 series airplanes. It is not a rule of general applicability, and it affects only the applicant which applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

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

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

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for certain Airbus Model A330, A340–200, and A340–300 series airplanes.

1. Occupancy of the LD–MCR compartment is limited to the total number of installed bunks and seats in each compartment. For each occupant permitted in the LD–MCR compartment, there must be an approved seat or berth able to withstand the maximum flight loads when occupied. The maximum occupancy in the LD–MCR compartment is seven.

(a) There must be appropriate placards displayed in a conspicuous place at each entrance to the LD–MCR compartment indicating the following information:

(1) The maximum number of occupants allowed;

(2) That occupancy is restricted to crewmembers trained in the evacuation procedures for the LD–MCR compartment;

(3) That occupancy is prohibited during taxi, take-off and landing;

(4) That smoking is prohibited in the LD–MCR compartment; and

(5) That the LD–MCR compartment is limited to the stowage of personal luggage of crewmembers and must not be used for the stowage of cargo or passenger baggage.

(b) There must be at least one ashtray located conspicuously on or near the entry side of any entrance to the LD–MCR compartment.

(c) There must be a means to prevent passengers from entering the LD–MCR compartment in an emergency or when no flight attendant is present.

(d) There must be a means for any door installed between the LD–MCR compartment and the passenger cabin to be capable of being quickly opened from inside the LD–MCR compartment, even when crowding occurs at each side of the door.

(e) For all doors installed in the evacuation routes, there must be a means to preclude anyone from being trapped inside a compartment. If a locking mechanism is installed, it must be capable of being unlocked from the outside without the aid of special tools. The lock must not prevent opening from the inside of a compartment at any time.

2. There must be at least two emergency evacuation routes, which could be used by each occupant of the LD–MCR compartment to rapidly evacuate to the main cabin and could be closed from the main passenger cabin after evacuation.

(a) The routes must be located with one at each end of the LD–MCR compartment or with two having sufficient separation within the LD–MCR compartment and between the routes to minimize the possibility of an event (either inside or outside of the LD–MCR compartment) rendering both routes inoperative.

(b) The routes must be designed to minimize the possibility of blockage, which might result from fire, mechanical or structural failure or from persons standing on top of or against the escape route. If an evacuation route utilizes an area where normal movement of passengers occurs, it must be demonstrated that passengers would not impede egress to the main deck. If a hatch is installed in an evacuation route, the point at which the evacuation route terminates in the passenger cabin should not be located where normal movement by passengers or crew occur, such as in a main aisle, cross aisle, passageway or galley complex.

If such a location cannot be avoided, special consideration must be taken to ensure that the hatch or door can be opened when a person who is the weight of a ninety-fifth percentile male is standing on the hatch or door.

The use of evacuation routes must not be dependent on any powered device. If there is low headroom at or near an evacuation route, provision must be made to prevent or to protect occupants of the LD–MCR compartment from head injury.

(c) Emergency evacuation procedures, including the emergency evacuation of an incapacitated crewmember from the LD–MCR compartment, must be established. All of these procedures must be transmitted to the operator for incorporation into its training programs and appropriate operational manuals.

(d) There must be a limitation in the Airplane Flight Manual or other suitable means requiring that crewmembers be trained in the use of evacuation routes.

3. There must be a means for the evacuation of an incapacitated crewmember who is representative of a 95th percentile male from the LD–MCR compartment to the passenger cabin floor. The evacuation must be demonstrated for all evacuation routes. A flight attendant or other crewmember (a total of one assistant within the LD–MCR compartment) may provide assistance in the evacuation. Additional assistance may be provided by up to three persons in the main passenger compartment. For evacuation routes having stairways, the additional assistants may descend down to one half the elevation change from the main deck to the LD–MCR compartment or to the first landing, whichever is higher.

4. The following signs and placards must be provided in the LD–MCR compartment:

(a) At least one exit sign which meets the requirements of § 25.812(b)(1)(i) at Amendment 25–58 must be located near each exit. However, a sign with reduced background area of no less than 5.3 square inches (excluding the letters) may be utilized, provided that it is installed such that the material surrounding the exit sign is light in color (*e.g.*, white, cream, light beige). If the material surrounding the exit sign is not light in color, a sign with a minimum of a one-inch wide background border around the letters would also be acceptable;

(b) An appropriate placard which defines the location and the operating instructions for each evacuation route must be located near each exit;

(c) Placards must be readable from a distance of 30 inches under emergency lighting conditions; and

(d) The exit handles and the placards with the evacuation path operating instructions must be illuminated to at least 160 microlamberts under emergency lighting conditions.

5. There must be a means for emergency illumination to be automatically provided for the LD–MCR compartment in the event of failure of the main power system of the airplane or of the normal lighting system of the LD–MCR compartment.

(a) This emergency illumination must be independent of the main lighting system.

(b) The sources of general cabin illumination may be common to both the emergency and the main lighting systems, if the power supply to the emergency lighting system is independent of the power supply to the main lighting system.

(c) The illumination level must be sufficient for the occupants of the LD–MCR compartment to locate and transfer to the main passenger cabin floor by means of each evacuation route.

(d) The illumination level must be sufficient to locate a deployed oxygen mask with the privacy curtains in the closed position for each occupant of the LD–MCR compartment.

6. There must be means for two-way voice communications between crewmembers on the flight deck and crewmembers in the LD–MCR compartment. Section 25.785(h) at Amendment 25–51 requires flight attendant seats near required floor level emergency exits. Each such exit seat on the aircraft must have a public address system microphone that allows two-way

voice communications between flight attendants and crewmembers in the LD–MCR compartment. One microphone may serve more than one such exit seat, provided the proximity of the exits allows unassisted verbal communications between seated flight attendants.

7. There must be a means for manual activation of an aural emergency alarm system, audible during normal and emergency conditions, to enable crewmembers on the flight deck and at each pair of required floor-level emergency exits to alert crewmembers in the LD–MCR compartment of an emergency. Use of a public address or crew interphone system will be acceptable, provided an adequate means of differentiating between normal and emergency communications is incorporated. The system must be powered in flight for at least ten minutes after the shutdown or failure of all engines and auxiliary power units (APU) or the disconnection or failure of all power sources which are dependent on the continued operation of the engines and APUs.

8. There must be a means—readily detectable by seated or standing occupants of the LD–MCR compartment—which indicates when seat belts should be fastened. If there are no seats, at least one means, such as sufficient handholds, must be provided to cover anticipated turbulence. Seat belt-type restraints must be provided for berths and must be compatible with the sleeping attitude during cruise conditions. There must be a placard on each berth indicating that seat belts must be fastened when the berth is occupied. If compliance with any of the other requirements of these special conditions is predicated on specific head location, there must be a placard specifying the head position.

9. To provide a level of safety equivalent to that provided to occupants of a small isolated galley—in lieu of the requirements of § 25.1439(a) at Amendment 25–38 that pertain to isolated compartments—the following equipment must be provided in the LD–MCR compartment:

(a) At least one approved hand-held fire extinguisher appropriate for the kinds of fires likely to occur;

(b) Two Personal Breathing Equipment (PBE) units approved to Technical Standard Order (TSO)–C116 or equivalent, which are suitable for fire fighting, or one PBE for each hand-held fire extinguisher, whichever is greater; and

(c) One flashlight.

Note: Additional PBEs and fire extinguishers in specific locations, beyond the minimum numbers prescribed in Special Condition No. 9, may be required as a result of any egress analysis accomplished to satisfy Special Condition No. 2(a).

10. A smoke or fire detection system or systems must be provided to monitor each occupiable area within the LD–MCR compartment, including those areas partitioned by curtains. Flight tests must be conducted to show compliance with this requirement. Each smoke or fire detection system must provide the following:

(a) A visual indication to the flight deck within one minute after the start of a fire;

(b) An aural warning in the LD–MCR compartment; and

(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.

11. The LD–MCR compartment must be designed such that fires within it can be controlled without a crewmember having to enter the compartment or be designed such that crewmembers equipped for fire fighting have unrestricted access to the compartment. The time for a crewmember on the main deck to react to the fire alarm, don the fire fighting equipment, and gain access must not exceed the time for the compartment to become smoke-filled, making it difficult to locate the source of the fire.

12. There must be a means provided to exclude hazardous quantities of smoke or extinguishing agent originating in the LD–MCR compartment from entering any other compartment occupied by crewmembers or passengers. This means must include the time periods during the evacuation of the LD–MCR compartment and, if applicable, when accessing the LD–MCR compartment to manually fight a fire. Smoke entering any other compartment occupied by crewmembers or passengers when the LD–MCR compartment is opened during an emergency evacuation must dissipate within five minutes after the LD–MCR compartment is closed.

Hazardous quantities of smoke may not enter any other compartment occupied by crewmembers or passengers during subsequent access to manually fight a fire in the LD–MCR compartment. (The amount of smoke entrained by a firefighter exiting the LD–MCR compartment through the access is not considered hazardous.) During the one-minute smoke detection time, penetration of a small quantity of smoke from the LD–MCR compartment into an occupied area is acceptable. Flight tests must be conducted to show compliance with this requirement.

If a built-in fire suppression system is used in lieu of manual fire fighting, the fire suppression system must be designed so that no hazardous quantities of extinguishing agent will enter other compartments occupied by passengers or crewmembers. The system must have adequate capacity to suppress any fire occurring in the LD–MCR compartment, considering the fire threat, the volume of the compartment and the ventilation rate.

13. For each seat and berth in the LD–MCR compartment, there must be a supplemental oxygen system equivalent to that provided for main deck passengers. The system must provide an aural and visual warning to alert the occupants of the LD–MCR compartment of the need to don oxygen masks in the event of decompression. The warning must activate before the cabin pressure altitude exceeds 15,000 feet. The aural warning must sound continuously for a minimum of five minutes or until a reset push button in the LD–MCR compartment is depressed. Procedures for crewmembers in the LD–MCR compartment to follow in the event of decompression must be established. These procedures must be transmitted to the operator for incorporation into their training programs and appropriate operational manuals.

14. The following requirements apply to LD–MCR compartments that are divided into several sections by the installation of curtains or doors:

(a) To warn crewmembers who may be sleeping, there must be an aural alert that accompanies automatic presentation of supplemental oxygen masks. The alert must be able to be heard in each section of the LD–MCR compartment. A visual indicator that occupants must don an oxygen mask is required in each section where seats or berths are not installed. A minimum of two supplemental oxygen masks is required for each seat or berth. There must also be a means to manually deploy the oxygen masks from the flight deck.

(b) A placard is required adjacent to each curtain that visually divides or separates the LD–MCR compartment into small sections for privacy purposes. The placard must indicate that the curtain is to remain open when the private section it creates is unoccupied.

(c) For each section created by the installation of a curtain, the following requirements of these special conditions

must be met both with the curtain open and with the curtain closed:

(1) Emergency illumination (Special Condition No. 5);

(2) Aural emergency alarm (Special Condition No. 7);

(3) Fasten seat belt signal or return to seat signal as applicable (Special Condition No. 8); and

(4) Smoke or fire detection (Special Condition No. 10).

(d) Crew rest compartments visually divided to the extent that evacuation could be affected must have exit signs that direct occupants to the primary stairway exit. The exit signs must be provided in each separate section of the LD–MCR compartment and must meet the requirements of § 25.812(b)(1)(i) at Amendment 25–58. An exit sign with reduced background area, as described in Special Condition No. 4. (a), may be used to meet this requirement.

(e) For sections within a LD–MCR compartment that are created by the installation of a partition with a door separating the sections, the following requirements of these special conditions must be met with the door open and with the door closed:

(1) There must be a secondary evacuation route from each section to the main deck, or it must be shown that any door between the sections has been designed to preclude anyone from being trapped inside the compartment. Removal of an incapacitated crewmember from this area must be considered. A secondary evacuation route from a small room designed for only one occupant for a short period of time, such as a changing area or lavatory, is not required. However, removal of an incapacitated occupant from this area must be considered.

(2) Any door between the sections must be shown to be openable when crowded against, even when crowding occurs at each side of the door.

(3) There may be no more than one door between any seat or berth and the primary stairway exit.

(4) There must be exit signs in each section which meet the requirements of § 25.812(b)(1)(i) at Amendment 25–58 that direct occupants to the primary stairway exit. An exit sign with reduced background area, as described in Special Condition No. 4.(a), may be used to meet this requirement.

(5) Special Conditions No. 5 (emergency illumination), No. 7 (aural emergency alarm), No. 8 (fasten seat belt signal or return to seat signal as applicable) and No. 10 (smoke and fire detection) must be met both with the door open and the door closed.

(6) Special Conditions No. 6 (two-way voice communication) and No. 9 (PBE and other equipment) must be met independently for each separate section, except in lavatories or other small areas that are not intended to be occupied for extended periods of time.

15. Where a waste disposal receptacle is fitted, it must be equipped with a built-in fire extinguisher designed to discharge automatically upon occurrence of a fire in the receptacle.

16. Materials, including finishes or decorative surfaces applied to the materials, must comply with the flammability standards of § 25.853 at Amendment 25–66. Mattresses must comply with the flammability standards of § 25.853(b) and (c) at Amendment 25–66.

17. A lavatory within the LD–MCR compartment must meet the same requirements as a lavatory installed on the main deck, except with regard to Special Condition No. 10 for smoke detection.

18. When a LD–MCR compartment is installed or enclosed as a removable module in part of a cargo compartment or is located directly adjacent to a cargo compartment without an intervening cargo compartment wall, the following conditions apply:

(a) Any wall of the LD–MCR compartment—which forms part of the boundary of the reduced cargo compartment and is subject to direct flame impingement from a fire in the cargo compartment—and any interface item between the LD–MCR compartment and the airplane structure or systems must meet the applicable requirements of § 25.855 at Amendment 25–60.

(b) Means must be provided to ensure that the fire protection level of the cargo compartment meets the applicable requirements of §§ 25.855 at Amendment 25–60; 25.857 at Amendment 25–60; and 25.858 at Amendment 25–54 when the LD–MCR compartment is not installed.

(c) Use of each emergency evacuation route must not require occupants of the LD–MCR compartment to enter the cargo compartment in order to return to the passenger compartment.

(d) The aural emergency alarm specified in Special Condition No. 7 must sound in the LD–MCR compartment in the event of a fire in the cargo compartment.

19. Means must be provided to prevent access into the Class C cargo compartment—whether or not the LD–MCR is installed—during all airplane flight operations and to ensure that the maintenance door is closed and secured during all airplane flight operations.

20. All enclosed stowage compartments within the LD–MCR compartment—that are not limited to stowage of emergency equipment or airplane supplied equipment (*i.e.*, bedding)—must meet the design criteria given in the table below. As indicated in the table, enclosed stowage compartments larger than 200 ft^3 in interior volume are not addressed by this Special Condition. The in-flight accessibility of very large enclosed stowage compartments and the subsequent impact on the crewmembers' ability to effectively reach any part of the compartment with the contents of a hand fire extinguisher will require additional fire protection considerations similar to those required for inaccessible compartments such as Class C cargo compartments.

Fire protection features	Interior volume of stowage compartment		
	Less than 25 ft^3	25 ft^3 to 57 ft^3	57 ft^3 to 200 ft^3
Materials of Construction [1]	Yes	Yes	Yes.
Smoke or Fire Detectors [2]	No	Yes	Yes.
Liner [3]	No	Conditional	Yes.
Location Detector [4]	No	Yes	Yes.

[1] *Material*

The material used to construct each enclosed stowage compartment must at least be fire resistant and must meet the flammability standards for interior components specified in § 25.853. For compartments less than 25 ft^3 in interior volume, the design must ensure the ability to contain a fire likely to occur within the compartment under normal use.

[2] *Detectors*

Enclosed stowage compartments with an interior volume which equals or exceeds 25 ft^3 must be provided with a smoke or fire detection system to ensure that a fire can be detected within a one-minute detection time. Flight tests must be conducted to show compliance with this requirement. Each system (or systems) must provide:

(a) A visual indication in the flight deck within one minute after the start of a fire;

(b) An aural-warning in the LD–MCR compartment; and
(c) A warning in the main passenger cabin. This warning must be readily detectable by a flight attendant, taking into consideration the positioning of flight attendants throughout the main passenger compartment during various phases of flight.
[3] *Liner*
If it can be shown that the material used to construct the stowage compartment meets the flammability requirements of a liner for a Class B cargo compartment, no liner would be required for enclosed stowage compartments equal to or greater than 25 ft^3 but less than 57 ft^3 in interior volume. For all enclosed stowage compartments equal to or greater than 57 ft^3 but less than or equal to 200 ft^3 in interior volume, a liner must be provided that meets the requirements of § 25.855 at Amendment 25–60 for a class B cargo compartment.
[4] *Location Detector*
LD–MCR compartments which contain enclosed stowage compartments with an interior volume which exceeds 25 ft^3 and which are located away from one central location, such as the entry to the LD–MCR compartment or a common area within the LD–MCR compartment, would require additional fire protection features or devices to assist the firefighter in determining the location of a fire.

Issued in Renton, Washington, on December 29, 2004.

Kevin Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–235 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19089; Directorate Identifier 2000–CE–38–AD; Amendment 39–13928; AD 2005–01–04]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company 90, 99, 100, 200, and 300 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) to supersede (AD) 98–15–13, which applies to certain Raytheon Aircraft Company 90, 100, 200, and 300 series airplanes. This AD adds the Raytheon Beech 99 series to the applicability listed in AD 98–15–13. The compliance actions remain the same for those aircraft originally affected by AD 98–15–13. AD 98–15–13 currently requires you to check the airplane maintenance records from January 1, 1994, up to and including the effective date of that AD, for any MIL–H–6000B fuel hose replacements on the affected airplanes; inspecting any replaced rubber fuel hose for a spiral or diagonal external wrap with a red or orange-red stripe along the length of the hose with 94519 printed along the stripe; and replacing any MIL–H–6000B rubber fuel hose matching this description with an FAA-approved hose having a criss-cross or braided external wrap. We are issuing this AD to prevent fuel flow interruption, which could lead to uncommanded loss of engine power and loss of control of the airplane.

DATES: This AD becomes effective on February 22, 2005.

As of February 22, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–19089.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Pretz, Aerospace Engineer, ACE–116W, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Blockage of fuel hoses due to hose delamination on certain Raytheon Aircraft Company 90, 100, 200, and 300 series airplanes caused us to issue AD 98–15–13, Amendment 39–10664 (63 FR 38295–98, July 16, 1998). AD 98–15–13 currently requires the following on the affected airplanes:

—Checking the airplane maintenance records from January 1, 1994, up to and including the effective date of the AD, for any MIL–H–6000B fuel hose replacements on the affected airplanes;
—Inspecting any replaced rubber fuel hose for a spiral or diagonal external wrap with a red or orange-red stripe along the length of the hose with 94519 printed along the stripe; and
—Replacing any MIL–H–6000B rubber fuel hose matching this description with an FAA-approved hose having a criss-cross or braided external wrap.

What has happened since AD 98–15–13 to initiate this action? The FAA has evaluated the design of the Raytheon Beech 99 series airplanes and determined that they could incorporate the same fuel hoses. Therefore, we have determined that the 99 series airplanes should be added to the applicability of these actions.

What is the potential impact if FAA took no action? Fuel flow interruption could lead to uncommanded loss of engine power and loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Aircraft Company 90, 99, 100, 200, and 300 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 14, 2004 (69 FR 60971).

The NPRM proposed to supersede AD 98–15–13, which applies to certain Raytheon Aircraft Company 90, 100, 200, and 300 series airplanes. AD 98–15–13 currently requires you to check the airplane maintenance records from January 1, 1994, up to and including the effective date of that AD, for any MIL–H–6000B fuel hose replacements on the affected airplanes; inspecting any replaced rubber fuel hose for a spiral or diagonal external wrap with a red or orange-red stripe along the length of the hose with 94519 printed along the stripe; and replacing any MIL–H–6000B rubber fuel hose matching this description with an FAA-approved hose having a criss-cross or braided external wrap; and the NPRM proposed to add the Raytheon Beech 99 series to the applicability listed in AD 98–15–13.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

How many airplanes will this AD impact? We estimate that this AD affects 5,107 airplanes in the U.S. registry. AD 98–15–13 affected an estimated 4,868 airplanes; this AD will add an estimated 239 airplanes to the number of affected airplanes.

What will be the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish this inspection:

Labor cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $65 = $65	$65	$331,955

What is the difference between the cost impact of this AD and the cost impact of AD 98–15–13? We estimate the following costs to accomplish this inspection for the Raytheon Beech 99 Series airplanes:

Labor cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $65 = $65	$65	$15,535

Raytheon Aircraft Company will provide warranty credit for parts and replacement as specified in the service information.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? 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 AD.

Regulatory Findings

Will this AD impact various entities? 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.

Will this AD involve a significant rule or regulatory action? 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19089; Directorate Identifier 2000–CE–38–AD" in your request.

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 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. FAA amends § 39.13 by removing Airworthiness Directive (AD) 98–15–13, Amendment 39–10664 (63 FR 38295–98, July 16, 1998), and by adding a new AD to read as follows:

2005–01–04 Raytheon Aircraft Company: Amendment 39–13928; Docket No. FAA–2004–19089; Directorate Identifier 2000–CE–38–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on February 22, 2005.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 98–15–13, Amendment 39–10664.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category:

Model	Series
(1) 65–90	LJ–1 through LJ–75, and LJ–77 through LJ–113.
(2) 65–A90	LJ–76, LJ–114 through LJ–317, and LJ–178A.
(3) B90	LJ–318 through LJ–501.
(4) C90	LJ–502 through LJ–1062.
(5) C90A	LJ–1063 through LJ–1287, LJ–1289 through LJ–1294, and LJ–1296 through LJ–1299.
(6) C90B	LJ–1288, LJ–1295, and LJ–1300 through LJ–1445.
(7) E90	LW–1 through LW–347.
(8) F90	LA–2 through LA–236.
(9) H90	LL–1 through LL–61.
(10) 100	B–2 through B–89, and B–93.
(11) A100	B–1, B–90 through B–92, B–94 through B–204, and B–206 through B–247.
(12) A100–1 (RU–21J)	BB–3 through BB–5.
(13) B100	BE–1 through BE–137.
(14) 200	BB–2, BB–6 through BB–185, BB–187 through BB–202, BB–204 through BB–269, BB–271 through BB–407, BB–409 through BB–468, BB–470 through BB–488, BB–490 through BB–509, BB–511 through BB–529, BB–531 through BB–550, BB–552 through BB–562, BB–564 through BB–572, BB–574 through BB–590, BB–592 through BB–608, BB–610 through BB–626, BB–628 through BB–646, BB–648 through BB–664, BB–735 through BB–792, BB–794 through BB–797, BB–799 through BB–822, BB–824 through BB–828, BB–830 through BB–853, BB–872, BB–873, BB–892, BB–893, and BB–912.
(15) 200C	BL–1 through BL–23, and BL–25 through BL–36.
(16) 200CT	BN–1.
(17) 200T	BT–1 through BT–22, and BT–28.
(18) A200	BC–1 through BC–75, and BD–1 through BD–30.
(19) A200C	BJ–1 through BJ–66.
(20) A200CT	BP–1, BP–7 through BP–11, BP–22, BP–24 through BP–63, FC–1 through FC–3, FE–1 through FE–36, and GR–1 through GR–19.
(21) B200	BB–829, BB–854 through BB–870, BB–874 through BB–891, BB–894, BB–896 through BB–911, BB–913 through BB–990, BB–992 through BB–1051, BB–1053 through BB–1092, BB–1094, BB–1095, BB–1099 through BB–1104, BB–1106 through BB–1116, BB–1118 through BB–1184, BB–1186 through BB–1263, BB–1265 through BB–1288, BB–1290 through BB–1300, BB–1302 through BB–1425, BB–1427 through BB–1447, BB–1449, BB–1450, BB–1452, BB–1453, BB–1455, BB–1456, and BB–1458 through BB–1536.
(22) B200C	BL–37 through BL–57, BL–61 through BL–140, BU–1 through BU–10, BV–1 through BV–12, and BW–1 through BW–21.
(23) B200CT	BN–2 through BN–4, BU–11, BU–12, FG–1, and FG–2.
(24) B200T	BT–23 through BT–27, and BT–29 through BT–38.
(25) 300	FA–1 through BA–230, and FF–1 through FF–19.
(26) B300	FL–1 through FL–141.
(27) B300C	FM–1 through FM–9, and FN–1.
(28) 99, 99A, A99, A99A	U–1 through U–49, U–51 through U–145, and U–147.
(29) B99	U–146, and U–148 through U–164.
(30) C99	U–50, and U–165 through U–239.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of blockage of fuel hose due to hose delamination. The actions specified in this AD are intended to prevent fuel flow interruption, which could lead to uncommanded loss of engine power and loss of control of the airplane.

What Must I Do To Address This Problem?

(e) To address this problem, you must do the following:

Actions	Compliance	Procedures
(1) For airplanes manufactured prior to January 1, 1994, check airplane maintenance records for any MIL-H–6000B fuel hose replacement from January 1, 1994, up to and including the effective date of this AD.	For all affected airplanes other than Models 99, 99A, A99, A99A, B99, and C99: Within 200 hours time-in-service (TIS) after August 28, 1998 (the effective date of AD 98–15–13). For all affected Models 99, 99A, A99, A99A, B99, and C99 airplanes: Within the next 200 hours TIS after February 22, 2005 (the effective date of this AD).	Documented compliance with AD 98–15–13 or follow PART II of the ACCOMPLISHMENT INSTRUCTIONS section in Raytheon Aircraft Mandatory Service Bulletin SB 2718, Revision 1, dated June 1997; or Revision 2, dated April 2000. An owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations 914 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.7 of the Federal Aviation Regulations (14 CFR 43.9) can accomplish paragraph (e)(1) required by this AD.

Actions	Compliance	Procedures
(2) If the airplane records show that a MIL–H–6000B fuel hose has been replaced, inspect the airplane fuel hoses for a 3/8-inch-wide red or orange-red, length-wise stripe, with manufacturer's code, 94519, printed periodically along the line in red letters on one side. The hoses have a spiral or diagonal outer wrap with a fabric-type texture on the rubber surface.	For all affected airplanes other than the Models 99, 99A, A99, A99A, B99, and C99: Within 200 hours TIS after August 28, 1998 (the effective date of AD 98–15–13). For all affected Models 99, 99A, A99, A99A, B99, and C99 airplanes: Within the next 200 hours TIS after February 22, 2005 (the effective date of this AD).	Documented compliance with AD 98–15–13 or follow PART II of the ACCOMPLISHMENT INSTRUCTIONS section in Raytheon Aircraft Mandatory Service Bulletin SB 2718, Revision 1, dated June 1997; or Revision 2, dated April 2000.
(3) Replace any fuel hose that matches the description in paragraph (e)(2) of this AD with an FAA-approved MIL–H–6000B fuel hose that has a criss-cross or braided external wrap.	For all affected airplanes other than the Models 99, 99A, A99, A99A, B99, and C99: Within 200 hours TIS after August 28, 1998 (the effective date of AD 98–15–13). For all affected Models 99, 99A, A99, A99A, B99, and C99 airplanes: Within the next 200 hours TIS after February 22, 2005 (the effective date of this AD).	Documented compliance with AD 98–15–13 or follow PART II of the ACCOMPLISHMENT INSTRUCTIONS section in Raytheon Aircraft Mandatory Service Bulletin SB 2718, Revision 1, dated June 1997; or Revision 2, dated April 2000.
(4) For Raytheon Models C90A, B200, and B300 airplanes that were manufactured on January 1, 1994, and after, replace the MIL–H–6000B fuel hoses.	Within 200 hours TIS after August 28, 1998 (the effective date of AD 98–15–13).	Documented compliance with AD 98–15–13 or follow PART I of the ACCOMPLISHMENT INSTRUCTIONS section in Raytheon Aircraft Mandatory Service Bulletin SB 2718, Revision 1, dated June 1997; or Revision 2, dated April 2000.
(5) Do not install a rubber fuel hose having spiral or diagonal external wrap with a 3/8-inch-wide red or orange-red, length-wise stripe running down the side of the hose, with the manufacturer's code, 94519, printed periodically along the line in red letters on any of the affected airplanes.	As of February 22, 2005 (the effective date of this AD).	Not applicable.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Jeffrey A. Pretz, Aerospace Engineer, ACE–116W, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Raytheon Aircraft Mandatory Service Bulletin SB 2718, Revision 1, dated June 1997; or Revision 2, dated April 2000. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–19089.

Issued in Kansas City, Missouri, on December 27, 2004.

William J. Timberlake,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–35 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–NE–11–AD; Amendment 39–13922; AD 2004–26–10]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland (RRD) (Formerly Rolls-Royce, plc) Tay 611–8, Tay 620–15, Tay 620–15/20, Tay 650–15, Tay 650–15/10, and Tay 651–54 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for certain RRD Tay 611–8, Tay 620–15, Tay 620–15/20, Tay 650–15, Tay 650–15/10, and Tay 651–54 turbofan engines with ice-impact panels installed in the low pressure (LP) compressor case. That AD currently requires visually inspecting all ice-impact panels and fillers in the LP compressor case for certain conditions, and if necessary, replacing any ice-impact panels and fillers that have those conditions. This AD requires initial and repetitive visual inspections of all ice-impact panels and fillers in the LP compressor case for certain conditions and replacing as necessary, any or all panels. This AD also introduces a new compliance date of no later than March 1, 2005, to have all but one engine on each airplane in compliance with the polysulfide bonding of panels. This AD results from RRD issuing two service bulletins since AD 2004–05–22 was published, that required repetitive visual inspections of panels, and defines a minimum configuration and repair standard. We are issuing this AD to prevent release of ice-impact panels due to improper bonding that can result in loss of thrust in both engines.

DATES: Effective January 21, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of January 21, 2005.

We must receive any comments on this AD by March 7, 2005.

ADDRESSES: Use one of the following addresses to comment on this AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- 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 Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356, for the service information referenced in this AD. You may examine the comments on this AD in the AD docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7747; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: On March 3, 2004, the FAA issued AD 2004–05–22, Amendment 39–13517 (69 FR 11305, March 10, 2004). That AD requires visually inspecting all LP compressor case ice-impact panels and fillers that conform to the RR Service Bulletin (SB) No. TAY–72–1326 standard or were repaired using RR repair scheme TV5451R or HRS3491, for certain conditions. That AD also requires replacing any ice-impact panels and fillers that have those conditions, if necessary. That AD was the result of two reported events of ice-impact panels that released during flight, one of which resulted in reduction of power in both engines. That condition, if not corrected, could result in release of ice-impact panels due to improper bonding that can result in loss of thrust in both engines.

Actions Since AD 2004–05–22 Was Issued

Since AD 2004–5–22 was issued, RRD issued two SBs that supersede the existing SBs used in that AD. The new SBs require initial and repetitive visual inspections of all LP compressor case ice-impact panels and fillers that conform to RR SB No. TAY–72–1326, or were repaired using RR repair scheme TV5451R or HRS3491, for certain conditions. The new SBs also require bonding of replacement ice-impact panels using polysulfide bonding. Also, the new SBs introduce a new compliance date of no later than March 1, 2005, to have all but one engine on each airplane in compliance with the polysulfide bonding of panels.

Relevant Service Information

We have reviewed and approved the technical contents of RRD SB No. TAY–72–1638, Revision 2, dated September 21, 2004, and RRD SB No. TAY–72–1639, Revision 2, dated September 21, 2004, that are described in the previous paragraph. The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, classified these SBs as mandatory and issued AD D2004–313R2, dated September 21, 2004, in order to ensure the airworthiness of these RRD engines in Germany.

Bilateral Airworthiness Agreement

This engine model is manufactured in the United Kingdom (U.K). and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the Civil Aviation Authority (CAA), which is the airworthiness authority for the U.K., has kept the FAA informed of the situation described above. We have examined the findings of the CAA, 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.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other RRD Tay 611–8, Tay 620–15, Tay 620–15/20, Tay 650–15, Tay 650–15/10, and Tay 651–54 turbofan engines of the same type design. We are issuing this AD to prevent release of ice-impact panels due to improper bonding that can result in loss of thrust in both engines. This AD requires the following:

- Initial and repetitive visual inspections of all ice-impact panels and fillers in the LP compressor case for certain conditions and replacing any or all panels, based on condition.
- Bonding of replacement ice-impact panels using polysulfide bonding.
- Introduction of a new compliance date of no later than March 1, 2005, to have all but one engine on each airplane in compliance with the polysulfide bonding of panels.

You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2004–NE–11–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

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 the regulation:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2004–NE–11–AD" in your request.

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 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. The FAA amends § 39.13 by removing Amendment 39–13517 (69 FR 11305, March 10, 2004), and by adding a new airworthiness directive, Amendment 39–13922, to read as follows:

2004–26–10 Rolls-Royce Deutschland (RRD) (Formerly Rolls-Royce, plc): Amendment 39–13922. Docket No. 2004–NE–11–AD. Supersedes AD 2004–05–22, Amendment 39–13517.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 21, 2005.

Affected ADs

(b) This AD supersedes AD 2004–05–22, Amendment 39–13517.

Applicability

(c) This AD applies to RRD Tay 611–8, Tay 620–15, Tay 620–15/20, Tay 650–15, Tay 650–15/10, and Tay 651–54 turbofan engines that have one or more ice-impact panels installed in the low pressure (LP) compressor case that conform to the Rolls-Royce, plc (RR) Service Bulletin (SB) No. TAY–72–1326 standard. These engines are installed on, but not limited to, Fokker F.28 Mk.0070 and Mk.0100 series airplanes, Gulfstream Aerospace G–IV series airplanes, and Boeing Company 727–100 series airplanes modified in accordance with Supplemental Type Certificate SA8472SW (727–QF).

Unsafe Condition

(d) This AD results from RRD issuing two SBs since AD 2004–05–22 was published, that require repetitive visual inspections of ice-impact panels and defines a minimum configuration and repair standard. We are issuing this AD to prevent release of ice-impact panels due to improper bonding that can result in loss of thrust in both engines.

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.

Inspecting Ice-Impact Panels in Tay 620–15, Tay 620–15/20, Tay 650–15, and Tay 650–15/10 Engines

(f) For airplanes that have one Tay 620–15, Tay 620–15/20, Tay 650–15, or Tay 650–15/10 engine with ice-impact panels incorporated by the RR SB No. TAY–72–1326 standard, and not all panels were repaired using polysulfide bonding material by RR repair scheme TV5451R, HRS3491, HRS3615, HRS3648, or HRS3649, do the following:

(1) Within 500 cycles-in-service (CIS) after the effective date of this AD, but no later than February 15, 2005, inspect the ice-impact panels and the surrounding fillers. Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1638, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

TABLE 1.—INSPECTION DISPOSITION CRITERIA

If:	Then:
(a) Any movement or rocking motion of LP compressor ice-impact panel, or any movement of the front edge of ice-impact panel.	Before further flight, replace all panels using repair scheme HRS3648 or HRS3649.
(b) Reappearing signs of moisture on the ice-impact panel or the surrounding filler.	Before further flight, replace all panels using repair scheme HRS3648 or HRS3649.
(c) Any dents or impact damage on the ice-impact panel that is greater than 3.1 square inch in total.	Before further flight, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(d) Any dents or impact damage on the ice-impact panel that is between 1.55 square inch and 3.1 square inch in total.	Within 5 flight cycles or 5 flight hours, whichever occurs first, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(e) Any dents or impact damage on the ice-impact panel that is less than 1.55 square inch in total.	Within 50 flight cycles or 50 flight hours, whichever occurs first, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(f) Any crack appears on the ice-impact panel and there is visible distortion of the airwashed surface.	Within 50 flight cycles or 50 flight hours, whichever occurs first, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(g) Any crack appears on the ice-impact panel and there is no visible distortion of the airwashed surface.	Within 150 flight cycles or 150 flight hours, whichever occurs first, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(h) Delamination or peeling of the compound layers of the airwashed surface and the penetrated area is greater than 3.1 square inch in total.	Before further flight, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(i) Delamination or peeling of the compound layers of the airwashed surface and the penetrated area is between 1.55 square inch and 3.1 square inch in total.	Within 5 cycles or 5 flight hours, whichever occurs first, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(j) Delamination or peeling of the compound layers of the airwashed surface and the penetrated area is less than 1.55 square inch in total.	Within 50 cycles or 50 flight hours, whichever occurs first, replace the damaged panel using repair scheme HRS3648 or HRS3649.
(k) Delamination or peeling of the compound layers but the airwashed surface is not penetrated.	Within 150 flight cycles or 150 flight hours, whichever occurs first, repair the damaged panel using repair scheme HRS3630.
(l) Missing filler surrounding the LP compressor case	Before further flight, repair the damaged filler using repair scheme HRS3630.
(m) Damage to the filler surrounding the LP compressor case such as chipped, cracked, or missing material.	Within 25 flight cycles or 25 flight hours, whichever occurs first, repair damaged filler using repair scheme HRS 3630.

(2) Re-inspect within every 500 cycles-since-last-inspection (CSLI) or two months since-last-inspection, whichever occurs first. Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1638, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

(g) For airplanes that have two Tay 620–15, Tay 620–15/20, Tay 650–15, or Tay 650–15/10 engines with ice-impact panels incorporated by the RR SB No. TAY–72–1326 standard, and not all panels were repaired using polysulfide bonding material by RR repair scheme TV5451R, HRS3491, HRS3615, HRS3648, or HRS3649, do the following:

(1) Before further flight, inspect the ice-impact panels and the surrounding fillers on at least one of the affected engines. Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1638, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

(2) Within 60 CIS after the effective date of this AD, but no later than January 15, 2005, inspect the remaining engine ice-impact panels and the surrounding fillers. Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1638, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

(3) Re-inspect one of the affected engines on the airplane, within every 250 CSLI or one month since-last-inspection, whichever occurs first. Thereafter, alternate the repetitive inspections between the two engines. Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1638, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

(h) Before March 1, 2005, rework all six ice-impact panels using repair scheme HRS3648 or HRS3649 on at least one of the affected engines.

(i) After complying with paragraph (h) of this AD, re-inspect the engine not reworked, using the intervals in paragraph (f)(2) of this AD.

Inspecting Ice-Impact Panels in Tay 651–54 Engines

(j) For airplanes that have one Tay 651–54 engine with ice-impact panels incorporated by the RR SB No. TAY–72–1326 standard, and not all panels were repaired using polysulfide bonding material by RR repair scheme TV5451R, HRS3491, HRS3615, HRS3648, or HRS3649, do the following:

(1) Within 30 CIS after the effective date of this AD, inspect the ice-impact panels and the surrounding fillers on the affected engine. Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1638, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

(2) Re-inspect the affected engine within every 500 CSLI or six months since-last-inspection, whichever occurs first. Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1638, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

(k) For airplanes that have more than one Tay 651–54 engine with ice-impact panels incorporated by the RR SB No. TAY–72–1326 standard, and not all panels were repaired using polysulfide bonding material by RR repair scheme TV5451R, HRS3491, HRS3615, HRS3648, or HRS3649, do the following:

(1) Before further flight, inspect the ice-impact panels and the surrounding fillers on at least one of the engines affected. Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1638, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

(2) Within 30 CIS after the effective date of this AD, inspect the ice-impact panels and the surrounding fillers on the remaining engine. Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1638, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

(3) Re-inspect at least one of the affected engines within every 250 CSLI or three months since-last inspection, whichever occurs first. Use paragraph 3.E of the Accomplishment Instructions of RRD SB No. TAY–72–1638, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

(l) Before March 1, 2005, rework all six ice-impact panels using RR repair scheme HRS3648 or HRS3649 on at least one of the affected engines.

(m) After complying with paragraph (l) of this AD, re-inspect the engine not reworked, using the intervals in paragraph (j)(2) of this AD.

Repetitive Inspections for Tay 620–15, Tay 620–15/20, Tay 650–15, Tay 650–15/10, and Tay 651–54 Engines With All Ice-impact Panels Repaired by Polysulfide Bonding Material

(n) For Tay 620–15, Tay 620–15/20, Tay 650–15, Tay 650–15/10, and Tay 651–54 engines with ice-impact panels incorporated by the RRD SB No. SB 72–1326 standard, and all panels were repaired using polysulfide bonding material by RR repair scheme TV5451R, HRS3491, HRS3615, HRS3648 or HRS3649, do the following:

(1) Re-inspect within every 1,500 CSLI, for the condition of the ice-impact panels and the surrounding fillers.

(2) Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1638, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

Inspecting Ice-Impact Panels in Tay 611–8 Engines

(o) For airplanes that have one Tay 611–8 engine with ice-impact panels incorporated by the RR SB No. TAY–72–1326 standard, and RR repair scheme HRS3491 or HRS3615 was done with two pack epoxy (Omat 8/52) on one or more of the six ice-impact panels, do the following:

(1) Within 450 flight hours after the effective date of this AD, inspect the ice-impact panels on the affected engine. Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1639, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

(2) Re-inspect the ice impact panels within every 1,000 CSLI or six months since-last-inspection, whichever occurs first, Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1639, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

(p) For airplanes with both Tay 611–8 engines with ice-impact panels incorporated with the RR SB No. TAY–72–1326 standard, and RR repair scheme HRS3491 or HRS3615 was done with two pack epoxy (Omat 8/52) on one or more of the six ice-impact panels on the affected engines, do the following:

(1) Within 150 flight hours after the effective date of this AD, inspect the ice-impact panels on one of the affected engines. Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1639, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

(2) Within 450 flight hours after the effective date of this AD, inspect the ice-impact panels on the remaining engine. Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1639, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

(3) Re-inspect the ice impact panels within every 500 CSLI or three months since-last-inspection, whichever occurs first, Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1639, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD, on at least one of the affected engines.

(q) Before March 1, 2005, rework all six ice-impact panels using RR repair scheme HRS3648, or HRS3649 on at least one of the affected engines.

(r) After complying with paragraph (q) of this AD, re-inspect the engine not reworked, using the intervals in paragraph (o)(2) of this AD.

Repetitive Inspections for Tay 611–8 Engines With All Ice-impact Panels Repaired by Polysulfide Bonding Material or Introduced Since New Production

(s) For Tay 611–8 engines with ice-impact panels incorporated by the RRD SB No. SB 72–1326 standard and all panels were repaired using polysulfide bonding material by RR repair scheme TV5451R, HRS3491, HRS3615, HRS3648 or HRS3649, or panels were introduced since new production, do the following:

(1) Re-inspect within every 3,000 CSLI, for the condition of the ice-impact panels and the surrounding fillers.

(2) Use paragraph 3.E. of the Accomplishment Instructions of RRD SB No. TAY–72–1638, Revision 2, dated September 21, 2004, and the inspection disposition criteria in Table 1 of this AD.

Installing Engines That Are Not Inspected

(t) After the effective date of this AD, do not install any Tay 620–15, Tay 620–15/20,

Tay 650–15, Tay 650–15/10, and Tay 651–54 engines with ice-impact panels if:

(1) Those ice-impact panels incorporate the RR SB No. TAY–72–1326 standard; and

(2) Ice-impact panels were repaired using RR repair scheme TV5451R, HRS3491, or HRS3615 and bonding material other than polysulfide; unless

(3) The panels and the surrounding fillers are inspected for condition using 3.B. through 3.D.(3) (in-service) or 3.K.(1) through 3.(M)(3) (at overhaul or shop visit) of the Accomplishment Instructions of RRD SB No. TAY–72–1638, Revision 2, dated September 21, 2004.

(u) Perform repetitive inspections as specified in paragraph (n) of this AD.

(v) After the effective date of this AD, do not install any Tay 611–8 engine with ice-impact panels if:

(1) Those ice-impact panels incorporate the RR SB No. TAY–72–1326 standard; and

(2) Ice-impact panels were repaired using RR repair scheme TV5451R, HRS3491, or HRS3615 and bonding material other than polysulfide, unless

(3) The panels and the surrounding fillers are inspected for condition using 3.B. through 3.D.(2) (in-service) or 3.K.(1) through 3.M.(3) (at overhaul or shop visit) of the Accomplishment Instructions of RRD SB No. TAY–72–1639, Revision 2, dated September 21, 2004.

(w) Perform repetitive inspections as specified in paragraph (s) of this AD.

Alternative Methods of Compliance

(x) 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.

Material Incorporated by Reference

(y) You must use the Rolls-Royce service information specified in Table 2 to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 2 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany; telephone 49 (0) 33–7086–1768; fax 49 (0) 33–7086–3356. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. Table 2 follows:

TABLE 2.—INCORPORATION BY REFERENCE

Service information No.	Page	Revision	Date
SB No. TAY–72–1638 Total Pages: 35	ALL	2	Sept. 21, 2004.
SB No. TAY–72–1639 Total Pages: 28	ALL	2	Sept. 21, 2004.
Repair Scheme No. HRS3648 Front Sheet Total Pages: 1	ALL	2	Jan. 28, 2004.
Repair Scheme No. HRS3648 History Sheet Total Pages: 3	ALL	2	Jan. 28, 2004.
Repair Scheme No. HRS3648 Total Pages: 30	ALL	2	Jan. 27, 2004.
Repair Scheme No. HRS3649 Front Sheet Total Pages: 1	ALL	2	Sept. 1, 2004.
Repair Scheme No. HRS3649 History Sheet Total Pages: 3	ALL	2	Sept. 7, 2004.
Repair Scheme No. HRS3649 Total Pages: 24	ALL	2	June 17, 2004.

Related Information

(z) LBA AD D2004–313R2, dated September 21, 2004, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on December 22, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–40 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19494; Directorate Identifier 2004–NM–135–AD; Amendment 39–13919; AD 2004–26–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes Equipped With Air Cruisers/Aerazur Forward and Aft Passenger Door Emergency Escape Slides

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A318, A319, A320, and A321 series airplanes equipped with certain forward and aft passenger door emergency escape slides. This AD requires modifying the forward and aft door slides. This AD is prompted by manufacturer testing that has shown contact between the inflation hose and fabric roll, within a short period of time after inflation of the emergency escape slides, can rupture the inflation hose at its end fittings. We are issuing this AD to prevent interference between the inflation hose and slide fabric and rupture of the inflation hose, which could result in incomplete inflation of the emergency escape slides and consequent unavailability of those slides during an emergency evacuation.

DATES: This AD becomes effective February 10, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of February 10, 2005.

ADDRESSES: For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. You can examine this information at the National Archives and Records Administration

(NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2004–19494; the directorate identifier for this docket is 2004–NM–135–AD.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; 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 certain Airbus Model A318, A319, A320, and A321 series airplanes equipped with certain forward and aft passenger door emergency escape slides. That action, published in the **Federal Register** on November 3, 2004 (69 FR 63960), proposed to require modifying the forward and aft door slides.

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.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD, at an average labor rate of $65 per work hour.

ESTIMATED COSTS

Action	Work hours per slide	Slides per airplane	Parts	Cost per airplane	Number of U.S. registered airplanes	Fleet cost
Modification	1	2	Free	$130	648	$84,240

Authority for This Rulemaking

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

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

Regulatory Findings

We have determined that this 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):

2004–26–07 Airbus: Amendment 39–13919. Docket No. FAA–2004–19494; Directorate Identifier 2004–NM–135–AD.

Effective Date

(a) This AD becomes effective February 10, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–111 and –112 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 series airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 series airplanes; and Model A321–111, –112, –131, –211, and –231 series airplanes; certificated in any category; equipped with Air Cruisers/Aerazur forward passenger door emergency escape slides, part number (P/N) D31516–111, –113, –115, –117, –311, or –313, and aft passenger door emergency escape slides, P/N D31517–111, –113, –115, –117, –311, or –313; except those airplanes on which Airbus Modification 33429 has been accomplished in production.

Unsafe Condition

(d) This AD was prompted by manufacturer testing that has shown contact between the inflation hose and fabric roll, within a short period of time after inflation of the emergency escape slides, can rupture

the inflation hose at its end fittings. We are issuing this AD to prevent interference between the inflation hose and slide fabric and rupture of the inflation hose, which could result in incomplete inflation of the emergency escape slides and consequent unavailability of those slides during an emergency evacuation.

Compliance

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

Modification

(f) Within 37 months after the effective date of this AD, modify the forward and aft door slides, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–25–1338, dated February 9, 2004.

Note 1: Airbus Service Bulletin A320–25–1338, dated February 9, 2004, refers to Air Cruisers/Aerazur Service Bulletin A320 004–25–72, dated October 28, 2003, as an additional source of service information for modifying the forward and aft door slides.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) French airworthiness directive F–2004–072, dated May 26, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Airbus Service Bulletin A320–25–1338, dated February 9, 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 these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For copies of the service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on December 20, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–107 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–186–AD; Amendment 39–13918; AD 2004–26–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–300 and 767–300F Series Airplanes Equipped With General Electric or Pratt & Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to certain Boeing Model 767–300 and 767–300F series airplanes equipped with General Electric or Pratt & Whitney engines. This AD requires reworking the wing-to-strut diagonal braces and the aft pitch load fittings of the wings, and reinstalling the diagonal braces with new fuse pins and associated hardware. This action is necessary to prevent undetected loss of the diagonal brace fuse pins of the wings and consequent increased loads in other wing-to-strut joints, which could result in separation of the struts and engines from the wings. This action is intended to address the identified unsafe condition.

DATES: Effective February 10, 2005.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 10, 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; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6441; 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 767–300 and 767–300F series airplanes equipped with General Electric or Pratt & Whitney engines was published in the **Federal Register** on April 1, 2004 (69 FR 17080). That action proposed to require reworking the wing-to-strut diagonal braces and the aft pitch load fittings of the wings, and reinstalling the diagonal braces with new fuse pins and associated hardware. For certain airplanes, that proposal would require replacing the bushings of the aft pitch load fittings, installing new fuse pins, and reworking the fittings, as applicable

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request for Credit for Actions Accomplished per Revision 1 of the Service Bulletin

Two commenters, the manufacturer and one operator, request that the FAA give credit for actions accomplished in accordance with Boeing Alert Service Bulletin 767–54A0096, Revision 1, dated July 12, 2001. The commenters indicate that the proposed AD references Boeing Alert Service Bulletin 767–54A0096, Revision 2, dated December 18, 2003, as the appropriate source of information, and point out that Revision 2 states that no more work is necessary on airplanes modified in accordance with Revision 1.

We do not agree with the commenters' request. The statement in Revision 2 of the service bulletin that "No more work is necessary on airplanes changed as shown in Revision 1 of this service bulletin," is incorrect. Revision 2 of the service bulletin revises, among other changes, the bushing swage lip dimension in Figures 3 and 6 of Revision 1 of the service bulletin. Therefore, we have determined that accomplishing the rework specified in Revision 1 does not adequately address the identified unsafe condition.

In addition, since we issued the proposed AD, Boeing has issued and we have reviewed Service Bulletin Information Notice (IN) 767–54A0096 IN 03, dated April 15, 2004, which corrects an additional dimension (*i.e.*, the bushing swage groove radius dimension) in Figures 3 and 6 of Revision 2. We have reworded paragraphs (a) and (b) of this AD to

address that IN. After the effective date of this AD, no operator can be in compliance with the requirements of this AD without accomplishing the requirements of Revision 2 of the service bulletin as modified by the IN. However, an operator may request approval of an alternative method of compliance (AMOC) for the requirements of this AD as specified in paragraph (c) of this AD. The operator must submit supporting data showing that the unsafe condition of the airplane will be properly addressed.

Request To Change the Compliance Grace Period

A third commenter, another operator, requests that the compliance grace period be changed from 18 months to 24 months. The operator states that a prior AD regarding a condition with similar structural elements and failure mode in Boeing Model 767–300 and 767–300F series airplanes allows a compliance time of 24 months. The operator states this will allow modification of airplanes during regularly scheduled heavy maintenance visits and will eliminate added costs for special scheduling.

We agree. Our original intent was to allow the modification to be accomplished at a regularly scheduled heavy maintenance visit, and we are aware that such schedules vary from operator to operator. We have determined that extending the compliance time by 6 months will not adversely affect safety and have modified paragraphs (a)(2) and (b) of this final rule accordingly.

Request To Clarify Service Bulletin Requirement for Removing Engine and Strut

The same commenter requests that the proposed AD be changed regarding the service bulletin reference to Boeing 767 Airplane Maintenance Manual (AMM) Subject 54–51–01. The commenter states that AMM Subject 54–51–01 requires removal of the engine and strut to remove the diagonal brace while AMM Subject 54–51–05 does not. The commenter states that the modification required by the proposed AD can be accomplished by following AMM Subject 54–51–05 and asks that the AD be changed to permit AMM Subject 54–51–05 to be used.

We have reviewed both AMM procedures and have determined that the procedure in AMM Subject 54–51–05 is an acceptable alternative to the procedure in Subject AMM 54–51–01. We have changed paragraphs (a) and (b) of the final rule to state that either AMM Subject 54–51–05 or AMM Subject 54–51–01 may be used to accomplish the requirements of the final rule.

Request To Include Pending Revision of Service Bulletin

The same commenter requests that the proposed AD be revised to incorporate the pending Revision 3 of Boeing Service Bulletin 767–54A0096 or to have Revision 3 designated as an AMOC to this proposed AD. The commenter states that the manufacturer indicates that discrepancies noted in this and previous comments and in the previously referenced IN will be incorporated in Revision 3. The commenter suggests this will clarify any unclear or illogical sequence of work steps appearing in Revision 2 of the service bulletin.

We do not agree. Considering the urgency of the unsafe condition, we will not hold an AD for a prolonged period until a new revision of a service bulletin has been released. We also cannot designate in the AD that the new revision is an AMOC. However, when the new revision of the service bulletin has been released, we will review it and consider approving it as an AMOC. We have not changed the final rule in this regard.

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. The FAA has 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 92 airplanes of the affected design in the worldwide fleet. The FAA estimates that 53 airplanes of U.S. registry will be affected by this AD, that it will take approximately between 14 and 24 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $18,704 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be between $1,039,542 and $1,073,992, or between $19,614 and $20,264 per 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

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, the FAA is charged with promoting safety 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 AD.

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:

2004–26–06 Boeing: Amendment 39–13918. Docket 2003–NM–186–AD.

Applicability: Model 767–300 and 767–300F series airplanes, equipped with General Electric or Pratt & Whitney engines; as listed in Boeing Alert Service Bulletin 767–54A0096, Revision 2, dated December 18, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent undetected loss of the diagonal brace fuse pins of the wings and consequent increased loads in other wing-to-strut joints, which could result in separation of the struts and engines from the wings, accomplish the following:

Rework and Reinstallation

(a) Remove and rework the diagonal braces of the engine nacelles/pylons, rework the aft pitch load fittings of the wings, and reinstall the diagonal braces with new fuse pins and associated hardware by doing all actions specified in steps 3.B.1. through 3.B.11. inclusive, of the Work Instructions of Boeing Alert Service Bulletin 767–54A0096, Revision 2, dated December 18, 2003, as modified by Boeing Service Bulletin Information Notice 767–54A0096 IN 03, dated April 15, 2004. Where the service bulletin directs that the Boeing 767 Airplane Maintenance Manual (AMM) Subject 54–51–01 must be used, either AMM Subject 54–51–01 or AMM Subject 54–51–05 may be used. Do the actions at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 12,000 total flight cycles, or within 6 years after the date of issuance of the original Airworthiness Certificate or the original Export Certificate of Airworthiness, whichever occurs first.

(2) Within 24 months after the effective date of this AD.

Additional Work for Airplanes Modified per the Original Issue of the Service Bulletin

(b) For airplanes modified in accordance with the original issue of Boeing Service Bulletin 767–54–0096, dated August 31, 2000: Within 24 months after the effective date of this AD, replace the bushings of the aft pitch load fittings of the wings with new bushings, rework the aft pitch load fittings, and install new fuse pins, by doing all actions specified in steps 3.B.1. through 3.B.10. inclusive, of the Work Instructions Additional Work section of Boeing Alert Service Bulletin 767–54A0096, Revision 2, dated December 18, 2003, as modified by Boeing Service Bulletin Information Notice 767–54A0096 IN 03, dated April 15, 2004. Where the service bulletin directs that the Boeing 767 AMM Subject 54–51–01 must be used, either AMM Subject 54–51–01 or AMM Subject 54–51–05 may be used.

Alternative Methods of Compliance

(c)(1) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 767–54A0096, Revision 2, December 18, 2003, as modified by Boeing Service Bulletin Information Notice 767–54A0096 IN 03, dated April 15, 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. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(e) This amendment becomes effective on February 10, 2005.

Issued in Renton, Washington, on December 20, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–108 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19138; Directorate Identifier 2004–NM–102–AD; Amendment 39–13888; AD 2004–25–01]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP Model Gulfstream 100 Airplanes; and Model Astra SPX and 1125 Westwind Astra 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 certain Gulfstream Aerospace LP Model Gulfstream 100 airplanes; and Model Astra SPX and 1125 Westwind Astra series airplanes. This AD requires adjusting the ground contact switches of the main landing gear. This AD is prompted by two occurrences of uncommanded deployments of the ground airbrakes during descent. We are issuing this AD to prevent a false "Ground" position signal, which could result in deployment of the ground airbrakes and reduced controllability of the airplane.

DATES: This AD becomes effective February 10, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the **Federal Register** as of February 10, 2005.

ADDRESSES: For service information identified in this AD, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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–2004–19138; the directorate identifier for this docket is 2004–NM–102–AD.

FOR FURTHER INFORMATION CONTACT:

Technical information: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with an AD for certain Gulfstream Aerospace LP Model Gulfstream 100 airplanes; and Model Astra SPX and 1125 Westwind Astra series airplanes. That action, published in the **Federal Register** on October 4, 2004 (69 FR 59147), proposed to require adjusting the ground contact switches of the main landing gear.

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.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 106 airplanes of U.S. registry. The actions will take about 3 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $20,670, or $195 per airplane.

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):

2004–25–01 Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.): Amendment 39–13888. Docket No. FAA–2004–19138; Directorate Identifier 2004–NM–102–AD.

Effective Date

(a) This AD becomes effective February 10, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Gulfstream Aerospace LP Model Gulfstream 100 airplanes; and Model Astra SPX and 1125 Westwind Astra series airplanes; serial numbers 004 through 127 inclusive; certificated in any category.

Unsafe Condition

(d) This AD was prompted by two occurrences of uncommanded deployments of the ground airbrakes during descent. We are issuing this AD to prevent a false "Ground" position signal, which could result in deployment of the ground airbrakes and reduced controllability of the airplane.

Compliance

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

Corrective Action

(f) Within 250 flight hours after the effective date of this AD, adjust the ground contact switches of the left and right main landing gear, in accordance with the Accomplishment Instructions of Gulfstream Alert Service Bulletin 1125–32A–233, Revision 1, dated August 1, 2003. Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(h) Israeli airworthiness directive 32–03–08–05, dated September 4, 2003, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Gulfstream Alert Service Bulletin 1125–32A–233, Revision 1, dated August 1, 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. For copies of the service information, contact Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.* You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on December 29, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–284 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18771; Directorate Identifier 2002–NM–313–AD; Amendment 39–13890; AD 2004–25–03]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Airbus Model A320 series airplanes. That AD currently requires repetitive inspections to detect fatigue cracking in certain areas of the fuselage, and corrective action if necessary. That AD also provides for an optional terminating action for the repetitive inspections. This new AD revises the compliance threshold and repetitive intervals for the inspections required by the existing AD. This AD is prompted by a full-scale fatigue survey on the Model A320 fleet. We are issuing this AD to detect and correct fatigue cracking of the fuselage, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective February 10, 2005.

The incorporation by reference of Airbus Service Bulletin A320–53–1034, Revision 02, dated December 4, 2001, as listed in the AD, is approved by the Director of the Federal Register as of February 10, 2005.

On February 12, 1999 (64 FR 1118, January 8, 1999), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A320–53–1034, dated March 30, 1992.

ADDRESSES: For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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–2004–18771; the directorate identifier for this docket is 2002–NM–313–AD.

FOR FURTHER INFORMATION CONTACT:

Technical information: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR Part 39) with an AD to supersede AD 99–01–17, amendment 39–10985 (64 FR 1118, January 8, 1999). The existing AD applies to certain Airbus Model A320 series airplanes. The proposed AD was published in the **Federal Register** on August 5, 2004 (69 FR 47393), to require reducing the compliance threshold and repetitive intervals for the inspections required by the existing AD. The proposed AD also provides for an optional terminating action for the repetitive inspections.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment submitted on the proposed AD. The commenter supports the proposed AD.

Clarification of Certain Wording in Preamble of Proposed AD

For clarification, we are explaining an inadvertent error in certain wording in the preamble of the proposed AD, which differed from the AD requirements for the optional terminating action specified in paragraph (h) of the proposed AD. In the Summary, Relevant Service Information, and FAA's Determination and Requirements of the proposed AD sections, we specify that the proposed AD would add an allowable time for the optional terminating action (provided by the existing AD). However, in paragraph (h) of the proposed AD we did not include that "allowable time" for accomplishing the optional terminating action. This decision was based on the fact that the French airworthiness directive referenced in the proposed AD did not specify an allowable time for the optional terminating action, so it was not necessary to state that time in the proposed AD. In light of the above, we have removed the wording "* * * would add an allowable time for the optional terminating action * * *" from the new actions in the Summary section. The Relevant Service Information and FAA's Determination and Requirements of the proposed AD sections are not restated in the final rule.

In addition, certain other wording in the preamble specifies that the new AD reduces the compliance threshold, but it also extends the compliance threshold for certain airplanes. Therefore, we have changed the wording to specify that the new AD revises the compliance threshold.

Clarification of Paragraph (f)(2) of Proposed AD

For clarification, we are explaining an inadvertent error in paragraph (f)(2) of the proposed AD. Paragraph (f)(2) of the proposed AD specified doing the inspection at the later of the times specified in paragraph (f)(1)(i) and (f)(1)(ii) of the AD; the correct citation is paragraphs (f)(2)(i) and (f)(2)(ii) of the AD.

Conclusion

We have carefully reviewed the available data, including the comment that has 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 will affect about 269 airplanes of U.S. registry.

The ultrasonic inspection that is required by AD 99–01–17 and retained in this AD takes about 6 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the currently required ultrasonic inspection is $390 per airplane, per inspection cycle.

The optional terminating action specified in Airbus Service Bulletin

A320–53–1033, if done, takes about 5 work hours to do, at an average labor rate of $65 per work hour. The cost of required parts is about $75 per airplane. Based on these figures, the cost impact of the optional terminating action is $400 per airplane.

Authority for This Rulemaking

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

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

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:

2004–25–03 Airbus: Amendment 39–13890. Docket No. FAA–2004–18771; Directorate Identifier 2002–NM–313–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective February 10, 2005.

Affected ADs

(b) This AD supersedes AD 99–01–17, amendment 39–10985.

Applicability

(c) This AD applies to Airbus Model A320–111, –211, –212, and –231 series airplanes on which Airbus Modification 21202 has not been done, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a full-scale fatigue survey on the Model A320 fleet. We are issuing this AD to detect and correct fatigue cracking of the fuselage, which could result in reduced structural integrity of the airplane.

Compliance

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

Repetitive Inspections

(f) At the applicable time specified in paragraph (f)(1) or (f)(2) of this AD: Do an ultrasonic inspection to detect cracking in the bottom panels of the keel beam (both left and right), in the area of the frame 46 and stringer 37 intersection at the pressure bulkhead, using Airbus Service Bulletin A320–53–1034, Revision 02, dated December 4, 2001. Thereafter, repeat the ultrasonic inspection at intervals not to exceed 5,200 flight cycles or 10,400 flight hours, whichever is first. Accomplishment of the inspection required by this paragraph ends the requirements of AD 99–01–17.

(1) For airplanes on which the inspection specified in Airbus Service Bulletin A320–53–1034, dated March 30, 1992; or Revision 02, dated December 4, 2001; has been done as of the effective date of this AD: Do the next inspection within 5,200 flight cycles after accomplishment of the last inspection, or within 800 flight cycles after the effective date of this AD, whichever is later.

(2) For airplanes on which no inspection specified in Airbus Service Bulletin A320–53–1034, dated March 30, 1992; or Revision 02, dated December 4, 2001; has been done as of the effective date of this AD: Do the inspection at the later of the times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(i) Before the accumulation of 24,200 total flight cycles or 48,400 total flight hours, whichever is first.

(ii) Before the accumulation of 30,000 total flight cycles, or within 3,500 flight cycles after the effective date of this AD, whichever is first.

Corrective Action

(g) If any crack is found during any inspection required by paragraph (f) of this AD, before further flight, repair using Airbus Service Bulletin A320–53–1034, dated March 30, 1992; or Revision 02, dated December 4, 2001. Accomplishment of a repair using the service bulletin ends the repetitive inspection requirements for the area repaired. If any crack is found during any inspection required by this AD, and the service bulletin specifies to contact Airbus for appropriate action: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Optional Terminating Action

(h) Accomplishment of Airbus Modification 21202 using Airbus Service Bulletin A320–53–1033, Revision 03, dated July 4, 1994; or Revision 04, dated December 4, 2001; constitutes terminating action for the repetitive inspection requirements of this AD.

(i) Accomplishment of the optional terminating action specified in AD 99–01–17 before the effective date of this AD, using Airbus Service Bulletin A320–53–1033, Revision 03, dated July 4, 1994; or Revision 04, dated December 4, 2001; is considered acceptable for compliance with paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(k) French airworthiness directive 2002–260(B), dated May 15, 2002, also addresses the subject of this AD.

Material Incorporated by Reference

(l) You must use Airbus Service Bulletin A320–53–1034, dated March 30, 1992; or Airbus Service Bulletin A320–53–1034, Revision 02, dated December 4, 2001; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A320–53–1034, Revision 02, dated December 4, 2001, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On February 12, 1999 (64 FR 1118, January 8, 1999), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A320–53–1034, dated March 30, 1992.

(3) For copies of the service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. For

information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on December 29, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–283 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18773; Directorate Identifier 2002–NM–312–AD; Amendment 39–13889; AD 2004–25–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Airbus Model A320 series airplanes. That AD currently requires repetitive inspections to detect fatigue cracking in certain areas of the fuselage, and corrective action if necessary. That AD also provides for an optional terminating action for the repetitive inspections. This new AD reduces the compliance threshold and repetitive intervals for the inspections required by the existing AD. This AD is prompted by a full-scale fatigue survey on the Model A320 fleet. We are issuing this AD to detect and correct fatigue cracking of the fuselage, which could result in reduced structural integrity of the airplane.

DATES: This AD becomes effective February 10, 2005.

The incorporation by reference of Airbus Service Bulletin A320–53–1032, Revision 02, dated December 5, 2001, as listed in the AD, is approved by the Director of the Federal Register as of February 10, 2005.

On February 12, 1999 (64 FR 1114, January 8, 1999), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A320–53–1032, Revision 01, dated January 15, 1998.

ADDRESSES: For service information identified in this AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. You can examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

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–2004–18773; the directorate identifier for this docket is 2002–NM–312–AD.

FOR FURTHER INFORMATION CONTACT:

Technical information: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

Plain language information: Marcia Walters, *marcia.walters@faa.gov*.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR Part 39) with an AD to supersede AD 99–01–19, amendment 39–10987 (64 FR 1114, January 8, 1999). The existing AD applies to certain Airbus Model A320 series airplanes. The proposed AD was published in the **Federal Register** on August 5, 2004 (69 FR 47391), to require reducing the compliance threshold and repetitive intervals for the inspections required by the existing AD. The proposed AD would also continue to provide for an optional terminating action for the repetitive inspections.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment submitted on the proposed AD. The commenter supports the proposed AD.

Clarification of Certain Wording in Preamble of Proposed AD

For clarification, we are explaining an inadvertent error in certain wording in the preamble of the proposed AD, which differed from the AD requirements for the optional terminating action specified in paragraph (i) of the proposed AD. In the Summary, Relevant Service Information, and FAA's Determination and Requirements of the proposed AD sections, we specify that the proposed AD would reduce the allowable time for the optional terminating action (provided by the existing AD). However, in paragraph (i) of the proposed AD we did not include that "allowable time" for accomplishing the optional terminating action. This decision was based on the fact that the French airworthiness directive referenced in the proposed AD did not specify an allowable time for the optional terminating action, and although the existing AD did contain an allowable time, it was not necessary to restate that time in the proposed AD. In light of the above, we have removed the wording "* * * would reduce the allowable time for the optional terminating action * * *" from the new actions in the Summary section. The Relevant Service Information and FAA's Determination and Requirements of the proposed AD sections are not restated in the final rule.

Clarification of Paragraph (f)(2) of Proposed AD

For clarification, we are explaining an inadvertent error in paragraph (f)(2) of the proposed AD. Paragraph (f)(2) of the proposed AD specified doing the inspection at the earlier of the times specified in paragraphs (f)(1)(i) and (f)(1)(ii) of the AD; the correct citation is paragraphs (f)(2)(i) and (f)(2)(ii) of the AD.

Conclusion

We have carefully reviewed the available data, including the comment that has 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 269 airplanes of U.S. registry.

The inspection that is required by AD 99–01–19 and retained in this AD takes about 19 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the currently required inspection is $1,235 per airplane.

The optional terminating action specified in Airbus Service Bulletin

A320–53–1031, if done, takes about 1 work hour per fastener hole, at an average labor rate of $65 per work hour. The cost of required parts is about $4,219 (for one modification kit). Based on these figures, the cost of the optional terminating action would be a minimum of $4,284 per airplane.

Authority for This Rulemaking

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

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

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):

2004–25–02 Airbus: Amendment 39–13889. Docket No. FAA–2004–18773; Directorate Identifier 2002–NM–312–AD.

Effective Date

(a) This AD becomes effective February 10, 2005.

Affected ADs

(b) This AD supersedes AD 99–01–19, amendment 39–10987.

Applicability

(c) This AD applies to Airbus Model A320–111, –211, –212, and –231 series airplanes on which Airbus Modification 21346 has not been done, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a full-scale fatigue survey on the Model A320 fleet. We are issuing this AD to detect and correct fatigue cracking of the fuselage, which could result in reduced structural integrity of the airplane.

Compliance

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

Repetitive Inspections

(f) At the applicable time specified in paragraph (f)(1) or (f)(2) of this AD: Do a detailed inspection to find cracking on the outboard flanges around the fastener holes of frames 38 through 41, between stringers 12 and 21, using Airbus Service Bulletin A320–53–1032, Revision 02, dated December 5, 2001. Accomplishment of the inspection required by this paragraph ends the requirements of AD 99–01–19.

(1) For airplanes on which the inspection specified in Airbus Service Bulletin A320–53–1032, Revision 01, dated January 15, 1998; or Revision 02, dated December 5, 2001; has been done as of the effective date of this AD: Do the next inspection within 4,900 flight cycles after accomplishment of the last inspection, or within 1,100 flight cycles after the effective date of this AD, whichever is later.

(2) For airplanes on which no inspection specified in Airbus Service Bulletin A320–53–1032, Revision 01, dated January 15, 1998; or Revision 02, dated December 5, 2001; has been done as of the effective date of this AD: Do the inspection at the earlier of the times specified in paragraphs (f)(2)(i) and (f)(2)(ii) of this AD.

(i) Before the accumulation of 30,000 total flight cycles.

(ii) Before the accumulation of 24,800 total flight cycles, or within 3,500 flight cycles after the effective date of this AD, whichever is later.

(g) If no crack is found during the inspection required by paragraph (f)(1) or (f)(2) of this AD: Repeat the inspection thereafter at intervals not to exceed 4,900 flight cycles.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Action

(h) If any crack is found during any inspection required by paragraph (f) of this AD, before further flight, repair using Airbus Service Bulletin A320–53–1032, Revision 01, dated January 15, 1998; or Revision 02, dated December 5, 2001. Accomplishment of a repair using the service bulletin ends the repetitive inspection requirements for the area repaired. If any crack is found during any inspection required by this AD, and the service bulletin specifies to contact Airbus for appropriate action: Before further flight, repair using a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate.

Optional Terminating Action

(i) Accomplishment of Airbus Modification 21346 using Airbus Service Bulletin A320–53–1031, dated December 9, 1994; or Revision 02, dated December 5, 2001; constitutes terminating action for the repetitive inspection requirements of this AD.

(j) Accomplishment of the optional terminating action specified in AD 99–01–19 before the effective date of this AD, using Airbus Service Bulletin A320–53–1031, dated December 9, 1994; or Revision 02, dated December 5, 2001; is considered acceptable for compliance with paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(l) French airworthiness directive 2002–259(B), dated May 15, 2002, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use Airbus Service Bulletin A320–53–1032, Revision 01, dated January 15, 1998; or Airbus Service Bulletin A320–53–1032, Revision 02, dated December 5, 2001; to perform the actions that are required

by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approves the incorporation by reference of Airbus Service Bulletin A320–53–1032, Revision 02, dated December 5, 2001, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On February 12, 1999 (64 FR 1114, January 8, 1999), the Director of the Federal Register approved the incorporation by reference of Airbus Service Bulletin A320–53–1032, Revision 01, dated January 15, 1998.

(3) For copies of the service information, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. For information on the availability of this material at the National Archives and Records Administration (NARA), call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC.

Issued in Renton, Washington, on December 29, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–282 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30434; Amdt. No. 3113]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective January 6, 2005. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 6, 2005.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT

Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment 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 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on December 3, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective 17 February 2005*

Orange, MA, Orange Muni, NDB Rwy 1, Orig-A

** * * Effective 17 March 2005*

Beaver, AK, Beaver, RNAV (GPS) Rwy 5, Orig
Beaver, AK, Beaver, RNAV (GPS) Rwy 23, Orig
Marksville, LA, Marksville Municipal, RNAV (GPS) Rwy 4, Orig
Marksville, LA, Marksville Municipal, NDB Rwy 4, Amdt 2
Marksville, LA, Marksville Municipal, VOR/DME–A, Amdt 4
Marksville, LA, Marksville Municipal, GPS Rwy 4, Orig, Cancelled
Cheboygan, MI, Cheboygan County, VOR Rwy 9, Amdt 8A
Cheboygan, MI, Cheboygan County, RNAV (GPS) Rwy 9, Amdt 1
Eveleth, MN, Eveleth-Virginia Muni, VOR Rwy 27, Orig
Eveleth, MN, Eveleth-Virginia Muni, VOR Rwy 27, Amdt 11A, Cancelled
Bennettsville, SC, Marlboro County Jetport-H.E. Avent Field, RNAV (GPS) Rwy 6, Orig
Bennettsville, SC, Marlboro County Jetport-H.E. Avent Field, RNAV (GPS) Rwy 24, Orig
Bennettsville, SC, Marlboro County Jetport-H.E. Avent Field, NDB Rwy 6, Amdt 4
Bennettsville, SC, Marlboro County Jetport-H.E. Avent Field, VOR/DME–A, Amdt 4
Bennettsville, SC, Marlboro County Jetport-H.E. Avent Field, GPS Rwy 24, Orig, Cancelled
Amery, WI, Amery Muni, NDB Rwy 18, Amdt 6
Amery, WI, Amery Muni, RNAV (GPS) Rwy 18, Orig
Amery, WI, Amery Muni, RNAV (GPS) Rwy 36, Orig

[FR Doc. 05–234 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD 11–04–053]

Drawbridge Operation Regulations; Sacramento River, Sacramento, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the I Street Drawbridge across the Sacramento River, mile 59.4, at Sacramento, CA. This deviation allows the drawbridge to remain in the closed-to-navigation position during essential operating machinery repair, to prevent unexpected failure of the drawspan.

DATES: This deviation is effective from 8 a.m. on January 8, 2005 to 5 p.m. on January 13, 2005.

ADDRESSES: Materials referred to in this document are available for inspection or copying at Commander (oan), Eleventh Coast Guard District, Building 50–3, Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437–3516.

SUPPLEMENTARY INFORMATION: The Union Pacific Railroad has requested to secure the I Street Drawbridge, mile 59.4, Sacramento River, at Sacramento, CA, in the closed-to-navigation position from 8 a.m. on January 8, 2005 to 5 p.m. January 13, 2005, during essential operating machinery repair, to prevent unexpected failure of the drawspan. The drawbridge provides 109 ft. vertical clearance in the full open-to-navigation position, and 30 ft. vertical clearance above Mean High Water when closed. The drawbridge opens on signal from approaching vessels, as required by 33 CFR 117.189.

The proposed work was coordinated with waterway users. It was determined that potential navigational impacts will be reduced if the repairs are performed during January 2005, resulting in Coast Guard approval of the proposed work from 8 a.m. January 8, 2005 to 5 p.m. January 13, 2005.

During these times, the drawspan may be secured in the closed-to-navigation position and need not open for vessels.

The drawspan shall resume normal operation at the conclusion of the essential repair work. Mariners should contact the I Street Drawbridge by telephone at (916) 444–8999, in advance, to determine conditions at the bridge.

The drawspan will be unable to open during the repair. In the event of an emergency, the bridge owner would require 24-hour advance notice to open the bridge. Contact Mr. Steve Strickland at (916) 789–5249 or (916) 952–1894. Vessels that can safely pass through the closed drawbridge may continue to do so at any time. In accordance with 33 CFR 117.35(c), this work will be performed with all due speed to return the drawbridge to normal operation as soon as possible. This deviation from the operating regulations is approved under the provisions of 33 CFR 117.35.

Dated: December 23, 2004.

Kevin J. Eldridge,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 05–232 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Charleston 04–145]

RIN 1625–AA87

Security Zones; Charleston Harbor, Cooper River, SC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; request for comments.

SUMMARY: The Coast Guard is establishing a temporary fixed security zone in the waters from the Don Holt, I–526 Bridge, on the Cooper River to the entrance of Foster Creek on the Cooper River. This security zone is necessary to protect the public and port from potential subversive acts during port

embarkation operations. Vessels are prohibited from entering, transiting, anchoring, mooring, or loitering within this zone, unless specifically authorized by the Captain of the Port, Charleston, South Carolina, or the Captain of the Port's designated representative.

DATES: This rule is effective from 8 a.m. on December 16, 2004, through 8 a.m. on June 1, 2005.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Charleston 04–145 and are available for inspection or copying at Marine Safety Office Charleston, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG Matthew Meskun, Coast Guard Marine Safety Office Charleston, at (843) 720–3272.

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 contrary to public safety interests and national security. These regulations are needed to protect the public, the ports and waterways and the national security of the United States from potential subversive acts against vessels, port facilities and infrastructure during port embarkation operations. For the security concerns noted, it is in the public interest to have these regulations in effect without publishing an NPRM. Notifications will be made via marine information broadcasts to inform the public about the existence of this security zone.

For the same reasons, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

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 (COTP Charleston–04–145), 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 rule in view of them.

Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center and Pentagon, there is an increased risk that vessels or persons in close proximity to the Port of Charleston, South Carolina, may engage in subversive or terrorist acts against military installations or operations occurring within the security zone. The security zone is necessary to protect the safety of life and property on navigable waters and prevent potential terrorist threats aimed at military installations during strategic embarkation operations. The temporary security zone will encompass all waters from the Don Holt I–526 Bridge over the Cooper River to the entrance of Foster Creek on the Cooper River.

Discussion of Rule

The Charleston Captain of the Port will enforce the security zone on the Cooper River from time to time during the effective period in the interest of national security. Vessels carrying cargo for the Department of Defense need a level of security which requires the Cooper River to be closed to all traffic for short periods of time. River closures will be infrequent and for relatively short periods of time. Mariners will be given as much advance notice as possible. Marine Safety Office Charleston will notify the maritime community of periods during which this security zone will be enforced via a broadcast notice to mariners on VHF Marine Band Radio, Channel 16 (156.8 MHz), Marine Safety Information Bulletins, or by having those security assets enforcing the zone inform vessel traffic as necessary.

Regulatory Evaluation

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

The limited geographic area impacted by the security zone will not restrict the movement or routine operation of commercial or recreational vessels through the Port of Charleston. Also, an individual may request a waiver of these regulations from the Coast Guard Captain of the Port or the Captain of the Port's designated representative.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Cooper River while the security zone is in effect.

This security zone will not have a significant economic impact on a substantial number of small entities because it will only be enforced for short periods of time on an infrequent basis. Advanced notice will be provided to mariners in order to accommodate for any enforcement of the security zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and

would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and 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.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule fits within paragraph (34)(g) because it is a security zone. Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. A new temporary section 165.T07–100 is added to read as follows:

§ 165.T07–145 Security Zone; Charleston Harbor, Cooper River, South Carolina

(a) *Regulated area.* The Coast Guard is establishing a temporary fixed security zone on all waters of the Cooper River, bank-to-bank, from the Don Holt I–526 Bridge to the intersection of Foster Creek at a line on 32 degrees 58 minutes North Latitude.

(b) *Regulations.* Vessels or persons are prohibited from entering, transiting, mooring, anchoring, or loitering within the Regulated Area unless authorized by the Captain of the Port Charleston, South Carolina or his or her designated representative. Persons desiring to transit the area of the security zone may contact the Captain of the Port via VHF–FM channel 16 or by telephone (843) 720–3240 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Effective period.* This section is effective from 8 a.m. on December 16, 2004, until 8 a.m. on June 1, 2005.

Dated: December 16, 2004.

David Murk,

Lieutenant Commander, U.S. Coast Guard, Acting Captain of the Port, Charleston, South Carolina.

[FR Doc. 05–231 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[WT Docket No. 03–66; RM–10586, FCC 04–135]

Facilitating the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (FCC) is correcting a final

rule that appeared in the **Federal Register** of December 10, 2004 (69 FR 72020). This document renamed the Instructional Television Fixed Service (ITFS) as the Educational Broadband Service (EBS) and renaming the Multichannel Multipoint Distribution Service (MMDS) and the Multipoint Distribution Service (MDS) as the Broadband Radio Service (BRS). The rules restructure the 2500–2690 MHz band, designate the 2495–2500 MHz band for use in connection with the 2500–2690 MHz band, establish a plan to transition licenses to the restructured 2500–2690 MHz band, adopt licensing, service, and technical rules to govern licensees in the EBS and BRS, permit spectrum leasing for BRS and EBS licensees under the Commission's secondary markets leasing policies and procedures, and permit unlicensed operation in the 2655–2690 MHz band.

DATES: Effective January 10, 2005.

FOR FURTHER INFORMATION CONTACT: Genevieve Ross or Nancy Zaczek at 202–418–2487.

SUPPLEMENTARY INFORMATION: In FR 04–26830 appearing on page 72020 in the **Federal Register** of Friday, December 10, 2004, the following corrections are made:

PART 27—[CORRECTED]

§ 27.50 [Corrected]

■ 1. On page 72033, in the third column, section 27.50 is amended by adding paragraphs (h)(3) and (h)(4) as follows:

§ 27.50 Power limits.

* * * * *

(h) * * *

(3) For television transmission, the peak power of the accompanying aural signal must not exceed 10 percent of the peak visual power of the transmitter. The Commission may order a reduction in aural signal power to diminish the potential for harmful interference.

(4) For main, booster and response stations utilizing digital emissions with non-uniform power spectral density (*e.g.* unfiltered QPSK), the power measured within any 100 kHz resolution bandwidth within the 6 MHz channel occupied by the non-uniform emission cannot exceed the power permitted within any 100 kHz resolution bandwidth within the 6 MHz channel if it were occupied by an emission with uniform power spectral density, *i.e.*, if the maximum permissible power of a station utilizing a perfectly uniform power spectral density across a 6 MHz channel were 2000 watts EIRP, this would result in a maximum permissible power flux density for the station of 2000/60 = 33.3 watts EIRP per 100 kHz bandwidth. If a non-uniform emission were substituted at the station, station power would still be limited to a maximum of 33.3 watts EIRP within any 100 kHz segment of the 6 MHz channel, irrespective of the fact that this would result in a total 6 MHz channel power of less than 2000 watts EIRP."

* * * * *

§ 27.53 [Corrected]

■ 2. On page 72034, in the second column, section 27.53 is amended by adding paragraphs (l)(6) and (l)(7) as follows:

§ 27.53 Emission limits.

* * * * *

(l) * * *

(6) Measurement procedure. Compliance with these rules is based on the use of measurement instrumentation employing a resolution bandwidth of 1 MHz or greater. However, in the 1 MHz bands immediately outside and adjacent to the frequency block a resolution bandwidth of at least one percent of the emission bandwidth of the fundamental emission of the transmitter may be employed. A narrower resolution bandwidth is permitted in all cases to improve measurement accuracy provided the measured power is integrated over the full required measurement bandwidth (*i.e.* 1 MHz or 1 percent of emission bandwidth, as specified). The emission bandwidth is defined as the width of the signal between two points, one below the carrier center frequency and one above the carrier center frequency, outside of which all emissions are attenuated at least 26 dB below the transmitter power. With respect to television operations, measurements must be made of the separate visual and aural operating powers at sufficiently frequent intervals to ensure compliance with the rules.

(7) Alternative out of band emission limit. Licensees in this service may establish an alternative out of band emission limit to be used at specified band edge(s) in specified geographical areas, in lieu of that set forth in this section, pursuant to a private contractual arrangement of all affected licensees and applicants. In this event, each party to such contract shall maintain a copy of the contract in their station files and disclose it to prospective assignees or transferees and, upon request, to the FCC.

* * * * *

§ 27.1221 [Corrected]

■ 3. On page 72041, in the first column, section 27.1221 is amended by adding paragraphs (c), (d), and (e) as follows:

§ 27.1221 Interference protection.

* * * * *

(c) *Protection for a Receiving-Antenna not Exceeding the Height Benchmark.* A base station receive-antenna with an HAAT less than or equal to the height benchmark relative to a neighbor's transmitting base station will be protected if that station's HAAT exceeds its height benchmark. That station is required to take such measures to limit the undesired signal at the receiving base station to −109dBm or less.

(d) *No Protection from a Transmitting-Antenna not Exceeding the Height Benchmark.* A base station transmitting-antenna with an HAAT less than or equal to the height benchmark relative to a neighbor's receiving antenna is not required to protect that receiving station, regardless of the HAAT of that station.

(e) *No Protection for a Receiving-Antenna Exceeding the Height Benchmark.* A base station transmitting-antenna with an HAAT greater than the height benchmark relative to a neighbor's receiving antenna is not required to protect that receiving antenna if its HAAT is greater than its height benchmark.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–258 Filed 1–5–05; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH55

Endangered and Threatened Wildlife and Plants; Mariana Fruit Bat (*Pteropus mariannus mariannus*): Reclassification From Endangered to Threatened in the Territory of Guam and Listing as Threatened in the Commonwealth of the Northern Mariana Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), reclassify from endangered to threatened status the Mariana fruit bat (*Pteropus mariannus mariannus*) from Guam,

under the authority of the Endangered Species Act of 1973, as amended (Act), and determine the Mariana fruit bat from the Commonwealth of the Northern Mariana Islands (CNMI) to be a threatened species under the authority of the Act. This rule lists the Mariana fruit bat as threatened throughout its range.

The Mariana fruit bat was listed previously as endangered on Guam. The bat populations on the southern islands of the CNMI (Aguiguan, Tinian, and Saipan) were candidates for listing. The best available scientific information indicates that Mariana fruit bats on Guam and throughout the CNMI comprise one subspecies. The protections of the Act, therefore, apply to this subspecies throughout its known range in the Mariana archipelago.

DATES: This final rule is effective February 7, 2005.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours at the Pacific Islands Fish and Wildlife Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, HI 96850.

FOR FURTHER INFORMATION CONTACT: Gina Shultz, Assistant Field Supervisor, Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section) (telephone 808/792–9400; facsimile 808/792–9581).

SUPPLEMENTARY INFORMATION:

Background

The Mariana archipelago consists of the 15-island Commonwealth of the Northern Mariana Islands (CNMI) and the Territory of Guam, both within the jurisdiction of the United States. This archipelago extends 470 miles (mi) (750 kilometers (km)) from 13°14′ N, 144°45′ W to 20°3′ N, 144°54′ W and is approximately 900 mi (1,500 km) east of the Philippine Islands (Figure 1). Nine of the 10 northern islands (Anatahan, Sarigan, Guguan, Alamagan, Pagan, Agrihan, Asuncion, Maug, and Uracas) are volcanic in origin, and Farallon de Medinilla and the five southern islands (Guam, Rota, Aguiguan, Tinian, and Saipan) are uplifted limestone plateaus with volcanic outcrops. Mariana fruit bats have historically inhabited all of these islands except Uracas, the northernmost island (Wiles and Glass 1990). Of the largest southern islands (Guam, Rota, Tinian, and Saipan), Guam supports the majority of the human population. The northern islands (north of Saipan) are either unoccupied or support only a few families. The climate is tropical, with daily mean temperatures of 75 to 90° Fahrenheit (24 to 32° Celsius), high humidity, and average annual rainfall of 80 to 100 inches (in) (200 to 260 centimeters (cm)). Typhoons may strike the Mariana Islands during any month of the year, but are most frequent between July and October.

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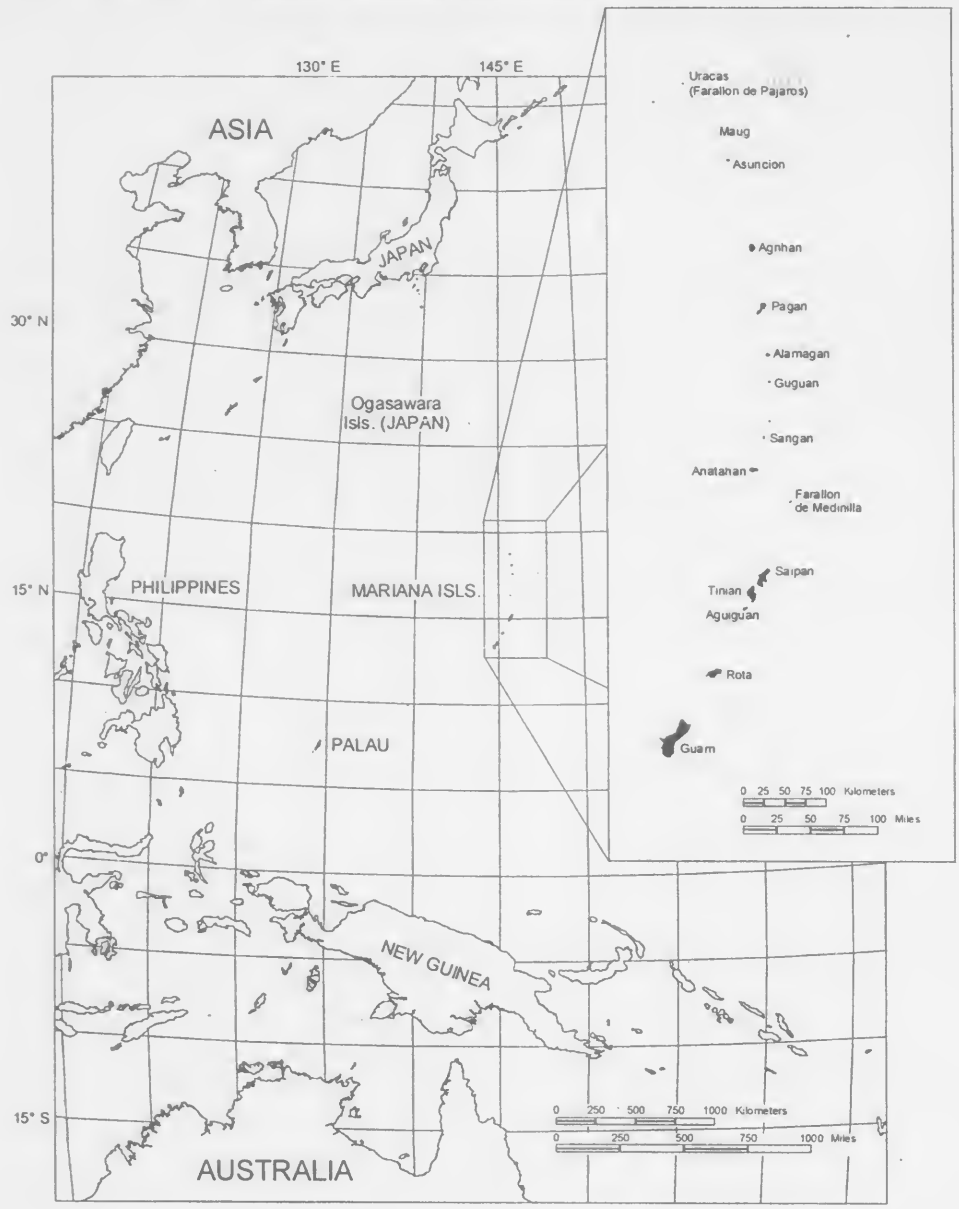

Figure 1. Map of Mariana archipelago.

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Species Description and Biology

The Mariana fruit bat is a medium-sized fruit bat in the family Pteropididae that weighs 0.66 to 1.15 pounds (330 to 577 grams) and has a forearm length ranging from 5.3 to 6.1 in (13.4 to 15.6 cm); males are slightly larger than females. The underside (abdomen) is colored black to brown, with gray hair interspersed, creating a grizzled appearance. The shoulders (mantle) and sides of the neck are usually bright golden brown, but may be paler in some individuals. The head varies from brown to dark brown. The well-formed and rounded ears and large eyes give the face a canine appearance; members of the family Pteropodidae often are referred to as flying foxes.

The Mariana fruit bat is highly colonial, forming colonies of a few to over 800 animals (Wiles 1987a; Pierson and Rainey 1992; Worthington and Taisacan 1995). Bats group themselves into harems (1 male and 2 to 15 females) or bachelor groups (predominantly males), or reside as single males on the edge of the colony (Wiles 1987a). On Guam, the average estimated sex ratio in a single colony varied from 37.5 to 72.7 males per 100 females (Wiles 1982).

Reproduction is believed to occur throughout the year in *Pteropus mariannus yapensis* on Yap (Falanruw 1988). Mating and the presence of nursing *Pteropus mariannus mariannus* young have been observed year-round on Guam (Perez 1972; Wiles 1983) with no apparent peak in births (Wiles 1987a). Glass and Taisacan (1988) suggested a similar pattern on Rota, but also indicated that a peak birthing season may occur during May and June, as has been observed in other fruit bats (Pierson and Rainey 1992). Female bats of the family Pteropodidae have one offspring per year (Pierson and Rainey 1992), pups may be born in any month of the year. Observations on Guam between July 1982 and May 1985 found 262 female bats, each with a single young (Service 1990). This reproductive rate, very low for a mammal of this size, results in a low maximum population growth rate, and thus a slow rate of recovery when a population is diminished (Pierson and Rainey 1992). Length of gestation and age of sexual maturity are unknown for the Mariana fruit bat; other related bats have a gestation period of approximately 4.6 to 6.3 months (Pierson and Rainey 1992). Age of sexual maturity is not known for the Mariana fruit bat, but *Pteropus* species typically do not breed before 18 months of age (Pierson and Rainey 1992).

Taxonomy and Interisland Movements

The fruit bats of the Mariana Islands consistently have been treated as one or more endemic subspecies or species; that is, they occur nowhere outside the archipelago (Andersen 1912; Kuroda 1938; Corbet and Hill 1980, 1986, 1991; Koopman 1982, 1993; Flannery 1995). Following the taxonomic treatments of Kuroda (1938) and Koopman (1993), which are known to be based on examination of numerous specimens, and the most recent treatment by Flannery (1995), *Pteropus mariannus* is a widely dispersed species occurring north of the equator in portions of Micronesia north to the Japanese Ryukyu Islands. Various authors have attributed different numbers of subspecies to *P. mariannus*. Kuroda (1938) and Koopman (1982, 1993) recognize seven subspecies; Flannery recognizes three.

Pteropus fruit bats are well known to be strong fliers and traverse long distances (Eby 1991; Palmer and Woinarski 1999; Nelson 2003). Evidence that Mariana fruit bats fly between islands in the archipelago supports consideration of these bats as a single subspecies made up of numerous island populations in the Marianas (Lemke 1986; Service 1990; Wiles and Glass 1990; Worthington and Taisacan 1996). The geography of the archipelago, as well as the flight capability of fruit bats, facilitates interisland exchange. Distances between islands in the Mariana archipelago range from 3 to 62 mi (5 to 100 km). Each island in the chain is visible from neighboring islands (Wiles and Glass 1990).

The August 27, 1984, Federal listing (49 FR 33881) of fruit bats resident on Guam was based on an assumption that these bats were a distinct subspecies isolated from other bat populations in the CNMI. However, current evidence exists that large numbers of bats from Rota have visited Guam for periods of months. Temporary spikes in the Guam fruit bat population were observed in 1992–1993 (from about 350 to 550 bats) and in 1998 (from about 150 to 760 bats) (Anne Brooke, Service, in litt. 2003). These temporary increases lasted for several months. More modest but equally sudden increases in the Guam population were noted 2 and 4 days following Typhoons Chataan and Pongsona, respectively, in 2002 (Dustin Janecke, University of Guam, in litt. 2003). The most likely explanation is a temporary relocation of bats from Rota, which lies 48 mi (77 km) from Guam, is visible from Guam's north shore, and harbors one of the largest fruit bat populations in the archipelago. For example, the 2002 spike on Guam after Typhoon Pongsona was concurrent with an observed dip in fruit bat numbers on Rota (Jake Esselstyn, University of Kansas (formerly CNMI Department of Fish and Wildlife (DFW)), pers. comm. 2004b). Several other instances of apparent immigrations from Rota to Guam documented in the late 1970s and 1980s are described in detail by Wiles and Glass (1990). Although we cannot be certain that "visiting" bats interbreed with resident Guam bats during their months on the island, the fact that Mariana fruit bats breed throughout the year (Wiles 1983, 1987a) leaves this possibility open. The presence of fruit bats on the islands of Tinian and Aguiguan, which are close to one another and to Saipan, is ephemeral (Worthington and Taisacan 1996), indicating that interisland travel likely occurs among these three islands as well.

An example of likely interisland movement in the northern islands of the CNMI comes from Sarigan. Fruit bat surveys on Sarigan documented a roughly stable level of approximately 125–235 bats between 1983 and 2000 (Wiles *et al.* 1989; Fancy *et al.* 1999; Wiles and Johnson 2004). In 2001, surveys estimated 300–400 bats (Wiles and Johnson 2004). Recruitment of juvenile bats alone cannot account for this increase, and Wiles and Johnson (2004) posit Anatahan, 23 mi (37 km) to the south, as the likely source for immigrants. Wiles *et al.* (1989) twice observed individual fruit bats 0.8 mi (2 km) from Guguan, flying south in the direction of Sarigan, which lies 39 mi (63 km) away. Anecdotal observations of likely transits among other northern islands are described in Wiles and Glass (1990) and by other species experts (Worthington and Taisacan 1996; Wiles and Johnson 2004).

Like fruit bats, many other highly mobile vertebrates of Pacific Islands, especially birds, are treated as a single species or subspecies inhabiting multiple islands in an archipelago (Mayr 1945; Pratt *et al.* 1987; Watling 2001). Immigration rates of perhaps one individual per generation could be necessary for an island population to maintain genetic homogeneity with the populations on other islands (Mills and Allendorf 1996; Wang 2004; Gary McCracken, University of Tennessee, pers. comm. 2004). The chances of witnessing such a low rate of immigration are slight. The evidence described above for interisland movement suggests even greater rates of movement and probable gene flow among the fruit bat populations on various islands in the Mariana

archipelago than the minimum needed to maintain genetic homogeneity.

Preliminary results of a recent study of genetic variation in a similarly gregarious (Pierson and Rainey 1992) and mobile species of fruit bat elsewhere in the Pacific provide further, if circumstantial, support for the existence of a single subspecies of fruit bats in the Marianas. Genetic material collected from the white-collared fruit bat (*Ptéropus tonganus*) in Samoa and Fiji shows a lack of genetic isolation within island groups (Utzurrum *et al.* 2000; G. McCracken, pers. comm. 2004). Little anecdotal observation of interisland movements exists for *P. tonganus*, yet apparently it experiences immigration at sufficient intervals to prevent genetic isolation.

Currently, there are two recognized subspecies restricted to the Mariana Islands: the Mariana fruit bat (*Pteropus mariannus mariannus*) and the Pagan fruit bat (*Pteropus mariannus paganensis*). Other subspecies are endemic to other archipelagos and do not occur in the Marianas. The taxonomic status of the Pagan fruit bat is questionable. Yamashina (1932) collected three male fruit bats and one female from the islands of Pagan and Alamagan in 1931, and stated: "[t]his species, as compared to the *Pteropus mariannus mariannus* that inhabit Guam, is distinctly darker in coloration, having brownish wings." He made no further comparisons, and thus the distinction of this taxon is based on a single, equivocal interpretation of the coloration of four specimens. Although future studies may confirm the existence of a distinct taxon of fruit bats in the northern islands, at this time, based on the best available science including peer reviewer comments, we do not consider *Pteropus mariannus paganensis* as distinct from *Pteropus mariannus mariannus* to represent a single taxon.

Habitat

Mariana fruit bats forage and roost primarily in native forest and forage occasionally in coconut (*Cocos nucifera*) groves and strand vegetation (Wiles 1987b; Worthington and Taisacan 1996). Wiles (1987b) described six bat roost sites on Guam, all within native limestone forest. Major roost trees included *Ficus* spp. and *Neisosperma oppositifolia*. On Rota, fruit bats used primary and secondary limestone forest for roosting and foraging (Glass and Taisacan 1988). At least nine tree species were used for roosting, including *Elaeocarpus sphaericus*, *Macaranga thompsonii*, *Guamia mariannae*, *Hernandia* spp., *Artocarpus mariannensis*, *Ficus prolixia*, *Barringtonia asiatica*, *Randia cochinchinensis*, and the introduced *Theobroma cacao* (Glass and Taisacan 1988). A small bat colony also was observed roosting in *Casuarina equisetifolia* on Aguiguan (Worthington and Taisacan 1996). At least 22 plant species are used as food sources by the Mariana fruit bat. Food items include the fruits of 17 species of plants, especially the native *Artocarpus mariannensis*, *Cycas circinalis*, *Ficus* spp., *Pandanus tectorius*, *Terminalia catappa*, and the introduced *Artocarpus altilis* and *Carica papaya*; the flowers of seven plants, including the native *Ceiba pentandra* and *Erythrina variegata*, and the introduced *Cocos nucifera*; and leaf stems and twig tips of *Artocarpus* spp. (Wiles 1987a; Service 1990). Although Mariana fruit bats have been observed to feed on and roost in cultivated, introduced food plants, nonnative species make up only a small fraction of the plants they use (Wiles 1987b; Worthington and Taisacan 1996). Fruit bats are important components of tropical forest ecosystems because they disperse plant seeds and thereby help maintain forest diversity and contribute to plant regeneration following typhoons and other catastrophic events (Cox *et al.* 1992).

CNMI Southern Islands

The relatively large size and moderate topography of the southern islands led to their being, along with Guam, the most heavily populated and intensively cultivated islands in the archipelago. All of the southern Marianas are hypothesized to have been densely forested when first settled by humans some 3,500 years ago (Mueller-Dombois and Fosberg 1998). The loss and alteration of native habitats on these islands began with prehistoric cultivation, accelerated with the 17th century introduction of livestock and mechanized agriculture by Europeans, and likely peaked during the mid-20th century with landscape-scale habitat conversion by commercial agriculture, military infrastructure, and bombardment (Bowers 1950; Fosberg 1960; Stone 1970). This long continuous and intense human disturbance is reflected by the near absence of Mariana fruit bats from Saipan, Tinian, and Guam.

On Saipan and Tinian, agriculture and free-roaming livestock had converted much of the islands' forest to fields and pastures as early as the 18th century (Barrat 1988 in Stinson *et al.* 1992). Human populations on these islands increased steadily, and virtually all arable land was used to grow cash crops or food (Bowers 1950). Sugar plantations dominated the landscapes of Saipan, Tinian, and Aguiguan prior to World War II (Fosberg 1960). Saipan and Tinian were invaded during World War II, and during and after the war, bombing and extensive military development resulted in the loss of additional fruit bat habitat (Bowers 1950; Fosberg 1960). After the war, Saipan and Tinian were estimated to retain 5 and 2 percent native forest cover, respectively (Bowers 1950), and these proportions apparently were not significantly different in 1982 (Engbring *et al.* 1986). The introduction of nonnative species such as tangantangan for erosion control has left these islands dominated by alien vegetation that inhibits the growth of native forest (Fosberg 1960; Craig 1993). Feral ungulates are present on both islands, resulting in further degradation and fragmentation. Finally, Saipan is the most heavily populated and industrialized island in the CNMI (CNMI Statistical Yearbook 2001). Aguiguan was not invaded during the war, and has retained a greater proportion of its native forest (20 percent; Bowers 1950).

Similar to Saipan and Tinian, large areas of Rota were converted to sugar plantations in the early part of the 20th century (Fosberg 1960). Rota has more rugged topography, however, and was not invaded during World War II. These two factors are thought to explain the greater amount of native forest cover (25 percent) remaining on Rota following the war (Baker 1946; Bowers 1950). Engbring *et al.* (1986) estimated that roughly 60 percent of Rota's land area supported native vegetation in 1982. It is not clear whether Engbring's estimate represents some level of native forest recovery since Bowers' (1950) post-war estimate, or is a different interpretation and measurement of forest cover.

Most of Guam's native vegetation has been replaced by land development and invasive species. Guam is the population and commercial center of the archipelago, and commercial and residential development are ongoing. Like the other southern islands, parts of Guam were seeded with tangantangan following World War II to control erosion (Fosberg 1960). Large areas of southern Guam are dominated by savannas; these landscapes are thought to have originated as a result of aboriginal burning (Fosberg 1960). In 1981, northern Guam, which supports the last extensive native forest remaining on the island, was thought to retain no more than 37 percent native forest cover (Engbring and Ramsey 1984). Feral ungulates are abundant and

widespread throughout the island and cause significant damage to all remaining native forest (Fosberg 1960; Stone 1970; A. Brooke, pers. comm. 2004). Lands owned by the U.S. Air Force (Air Force) at Andersen Air Force Base in northern Guam include the largest contiguous forested areas left in northern Guam; the Air Force permits hunting of feral ungulates on parts of the base (U.S. Air Force 2001).

CNMI Northern Islands

Compared with the history of habitat loss in the southern islands, degradation or loss of native forest in the northern islands of the CNMI is a recent phenomenon; therefore, these islands have retained more habitat to support Mariana fruit bats. Some of the northern islands have supported small human settlements, and most of these have been occupied only sporadically. Feral ungulates have been present in the northern islands only since the mid-20th century. For example, Anatahan has had feral goats and pigs for roughly 40 years (Kessler 1997), and forest degradation and erosion were observed to escalate sharply during the 1990s (Marshall *et al.* 1995; Kessler 2000a; Worthington *et al.* 2001), possibly because feral ungulate damage was exacerbated by El Nino-related drought in the late 1990s (Kessler 2000a).

Although changes in forest cover were not quantified, evidence from point photo monitoring and other land-based photography conducted on Anatahan in 1983, 1996, and 2000 documented widespread loss of forest, reduced canopy cover in remaining forest, and increased erosion resulting from feral ungulate damage (Marshall *et al.* 1995; Kessler 1997, 2000a; Worthington *et al.* 2001). An ungulate eradication project was begun in 2002, but was not completed when Anatahan volcano erupted in 2003. This eruption further compromised the island's forest habitat, and continuing volcanic activity has hindered completion of the ungulate eradication project. A large population of feral pigs still occurs on the island and some goats remain; aerial hunting for goats is ongoing (Curt Kessler, Service, pers. comm. 2004b). Some vegetation recovery has been observed as a result of goat control, but an invasive alien vine, *Mikania micrantha*, has spread rapidly and may inhibit the growth of native vegetation (C. Kessler, pers. comm. 2004b). This plant is known to smother and displace native vegetation on other Pacific islands (U.S. Department of Agriculture (USDA) 2004).

On Pagan, livestock was maintained in captivity by island residents until the volcanic eruption in 1981, when the human population was evacuated. In the subsequent 23 years, large populations of feral goats, pigs, and cattle have become established on the island and have caused significant damage (Rice and Stinson 1992; Kessler 1997). The degradation and loss of native forest on Pagan is thought to be occurring more rapidly on there than on Anatahan because of the added impact of cattle, which are absent from Anatahan (Kessler 1997). The reductions in fruit bat numbers on Pagan are attributed to feral ungulates causing major damage to the native forest and preventing its regeneration following the 1981 eruption, large areas especially in the northern part of the island being converted to grassland or devegetated and eroded (Kessler 1997), and the spread of the invasive tree *Casuarina equisetifolia* in monotypic stands (Rice and Stinson 1992; Cruz *et al.* 2000e). In 1992, *Casuarina* coverage in the upland areas of the island was estimated at roughly 60 percent (Rice and Stinson 1992). Although this tree is used for roosting by Mariana fruit bats (C. Kessler, pers. comm. 2004b), it does not provide food resources, and it likely displaces native forest, as it has done elsewhere in the Pacific (Cruz *et al.* 2000e; USDA 2004).

Vegetation surveys in 2000 on Agrihan, the third-largest of the northern islands, documented damage from feral ungulates in the 30 to 40 percent of the island that supports forest habitat (Cruz *et al.* 2000f). The extremely steep and dissected topography of Agrihan is thought to restrict the distribution of feral ungulates as well as access by humans, and keep goats and pigs geographically separated (Rice *et al.* 1990; Rice and Stinson 1992), thereby protecting roost sites and sufficient forest habitat to support foraging fruit bats.

Feral goats, pigs, and cattle are present on Alamagan and the extent of native forest remaining on the island is limited to ravines on the south and west slopes and a small plateau in the center of the island (Wiles *et al.* 1989). Rice (1992) described Alamagan as having "one of the worst feral ungulate problems in the CNMI," and during vegetation surveys in 2000, Cruz *et al.* (2000b) found the remaining forests to be in decline.

Maug, Asuncion, Guguan, and (since 1998) Sarigan are free of feral ungulates, but the small size of these islands and the limited extent of their forest habitat ultimately limits the number of fruit bats they can support. Maug is only 10 to 14 percent forested (Wiles *et al.* 1989), and thus supports little habitat for fruit bats. Forest on Asuncion and Guguan is limited to the lower western and southern areas; the northern and steep upper parts of these islands are bare volcanic ash or grassland (Wiles *et al.* 1989). Roughly 32 percent or 400 acres (ac) (162 hectares (ha)) of Sarigan is forested, but most of this is monotypic coconut forest that provides only minimal forage for fruit bats; only about 72 ac (29 ha) supports relatively diverse native forest that provides both roosting and foraging resources for fruit bats (Wiles and Johnson 2004). Although the eradication of ungulates from Sarigan and initial vegetation recovery may play a role in increased numbers of fruit bats on the island, invasive, alien plants such as tangantangan (*Leucaena leucocephala*) and *Operculina ventricosa* also are present on the island and may impede the recovery of native forest over the long term (Kessler 2000b). These plants are known to degrade native vegetation in the Mariana Islands and elsewhere in the Pacific (USDA 2004).

Landownership of Fruit Bat Habitat in the Mariana Islands

Most of the known fruit bat roost sites in the Mariana Islands are located on public lands. On Guam, the single remaining roost and most fruit bat foraging habitat is found on U.S. military lands; some foraging habitat occurs on private lands and lands belonging to the Government of Guam (Wiles 1998). The Air Force controls access to Andersen Air Force Base in northern Guam, and the high security and frequent patrols practiced on base effectively create a refugium for fruit bats (Morton 1996). The remote and relatively pristine area where the roost is located was set aside by the military in 1973 as a research natural area; access to and activities in this area are tightly restricted, but no brown treesnake control currently takes place specifically at the roost site (Air Force 2001). Service and Government of Guam wildlife biologists and authorized researchers are permitted access to the area and to the colony to monitor and conduct research on fruit bats. Similarly, the U.S. Navy (Navy) and the Service restrict access to their lands, which include native forest that provides foraging habitat for the fruit bat.

The remaining roost site is managed as part of the Guam National Wildlife Refuge (Refuge) overlay under a cooperative agreement with the Air Force. The Refuge was created on October 1, 1993, with additional lands (overlay portion) incorporated in 1994 by cooperative agreements between the

Service, the Air Force and the Navy. The establishment and management of the overlay portion of the Refuge on Navy and Air Force lands provides a commitment by the three agencies to develop coordinated programs centered on the protection of endangered and threatened species and other native flora and fauna. Active implementation of such programs by these agencies contributes to the continued survival of the Mariana fruit bat on Guam, as important foraging and roosting habitat is located within the Refuge boundaries. However, the lack of brown treesnake control in the immediate area where the fruit bats roost is a serious deficiency in existing programs to protect endangered species on the overlay refuge.

There is no U.S. Government-owned land in the CNMI, but the Navy leases Farallon de Medinilla and part of Tinian. All other public lands are administered by the CNMI government. Saipan has little public land that is not leased and developed, but a few areas still support native forest that is occasionally used by fruit bats. Tinian has large tracts of public land that contain small stands of native forest suitable for bats, and a large portion of public land on the northern end of the island is under lease to the Navy for military activities (Lusk *et al.* 1997). All of Aguiguan is owned by the CNMI government. Approximately 60 percent of the land on Rota is publicly owned, although much of this has been leased to private individuals. The primary roosting areas on Rota are on Commonwealth lands, but some private lands still retain native limestone forest that may support fruit bats. The northern islands are mostly public lands, with some land developed as small homestead lots.

Population Surveys and Status

Obtaining accurate estimates of fruit bat populations in Pacific archipelagos depends on regular monitoring, standardized survey methods, and consideration of the unique ecology and physiographic environment of bat populations in various island groups (Utzurrum *et al.* 2004). The difficult terrain of the Mariana Islands, remote location of the northern islands of the CNMI, and the high costs associated with transits of the island group by sea and aerial surveys of individual islands have hindered the establishment of a standard monitoring program for the archipelago.

No known historical records exist to document the status of the Mariana fruit bat prior to the 20th century. The history of fruit bat surveys and changes in numbers summarized below represent a variety of methods and analyses. Archipelago-wide surveys were conducted in 1983 (Wiles *et al.* 1989) and 2001 (Johnson 2001).

The relatively isolated northern islands support the majority of the fruit bats in the archipelago, but because of their remote location, these islands have not been surveyed as frequently as the southern islands. Individual surveys have been conducted on several of the southern islands at relatively frequent intervals, and comprehensive surveys of the northern islands were conducted in 1983, 2000, and 2001 (Wiles et al. 1989; Cruz et al. 2000a-f; Johnson 2001). Opportunistic surveys have also occurred sporadically throughout the archipelago. The methods used in the northern islands in 2001 were significantly different from those used in 1983 and 2000; we therefore consider only Wiles et al. (1989) and Cruz et al. (2000a–f) for purposes of comparison (Table 1). A conservative interpretation of this comparison indicates a decline between 1983 and 2000, especially on the two islands that supported the largest numbers of fruit bats in the archipelago 20 years ago (Table 1).

Two of the northern islands are not included in this table: Uracas, the most northerly, where fruit bats are not known to occur; and Farallon de Medinilla, where fruit bats have been observed on only one occasion. See text and Table 2 for information about additional and more recent surveys and observations of fruit bats on the southern islands of the CNMI and Guam, and on Farallon de Medinilla, Anatahan, Sarigan, and Pagan.

TABLE 1.—SUMMARY OF MARIANA FRUIT BAT SURVEY RESULTS: MINIMUM ESTIMATES

Island	Area Sq. mi (Sq. km)	1983[1]	2000[2]
Maug	0.8 (2.0)	<25	([3])
Asuncion	2.9 (7.4)	400	([3])
Agrihan	18.3 (47.4)	1,000	1,000
Pagan	18.4 (47.7)	2,500	1,500
Alamagan	4.3 (11.0)	0	200
Guguan	1.5 (4.0)	400	350
Sarigan	1.9 (5.0)	125	200
Anatahan	12.5 (32.3)	3,000	1,000
Total (Northern Islands)	.....	7,450	.....
[Total six islands]	.....	[7,025]	4,250
Saipan	47.5 (122.9)	<50	([3])
Tinian	39.3 (101.8)	<25	([3])
Aguiguan	2.7 (7.0)	<10	150–200
Rota	37.0 (95.7)	800–1,000	([3])
Guam	212.0 (549.0)	425–500	([3])
Total (All Islands)	.....	8,760–9,035	N/A

[1] Wiles *et al.* 1989. Dates: August 17–September 10, 1983; 1–4 days/island. Count methods: Evening dispersal counts at colonies; evening station counts of solitary fruit bats.

[2] Cruz *et al.* 2000a–f. Dates: June 4–August 16, 2000; 7–9 days/island. Count methods: Evening dispersal counts at colonies, evening and morning station counts of solitary fruit bats.

[3] Not surveyed.

Status of CNMI Southern Islands

Fruit bats on the southern islands of the CNMI, Tinian, Saipan, Aguiguan, and Rota were not surveyed prior to the 1970s, but historical accounts indicate that fruit bats once were much more common on these islands than they are now. Schnee (1911) reported that bats were commonly seen and heard on Saipan, where they were heavily hunted by local residents. The Navy restricted civilian access to the northern part of Saipan until the early 1970s, effectively providing fruit bats with protected roost sites. The fruit bat population on Saipan was observed to decline rapidly after the Navy turned over the control to the CNMI government and access to the whole island became unrestricted (Wiles *et al.* 1989). Observations during the 1980s and 1990s suggested that the Saipan population was small; typically fewer than 50 bats were observed (Lemke 1984; Wiles *et al.* 1989; Wiles 1996; Worthington and Taisacan 1996). Surveys on Saipan in 2001 estimated that roughly 50 bats were present (Johnson 2001).

Fritz (1901) reported a large number of bats on Tinian in 1900 and Fritz (1904) reported that bats were common on all the southern islands. Fruit bats are only occasionally seen on Tinian today (Marshall *et al.* 1995; Krueger and O'Daniel 1999; Johnson 2001). Observations during the 1990s suggested that the presence of bats on Tinian was intermittent and their numbers were low (Lemke 1984; Wiles 1996; Worthington and Taisacan 1996). Surveys on Tinian conducted in 2001 found no fruit bats (Johnson 2001). In 1995, between 100 and 125 bats were believed present on Aguiguan (Wiles 1996). During a 10-day visit in 2003, however, no fruit bat colonies were observed on Aguiguan despite extensive coverage, and only a few individual fruit bats were seen (J. Esselstyn, pers. comm. 2004a).

The fruit bats on Rota have been surveyed on a regular basis by a large number of workers since 1986, using methods described by Stinson *et al.* (1992): primarily evening dispersal counts (EDCs), with some station counts of solitary or extracolonial bats and direct counts of colonial roosts (Glass and Taisacan 1988; Stinson *et al.* 1992; Worthington and Taisacan 1995, 1996; Johnson 2001; J. Esselstyn in litt. 2003, pers. comm. 2004a). This monitoring effort has yielded numbers that vary widely both intra- and interannually (*e.g.*, Glass and Taisacan 1988; Worthington and Taisacan 1995, 1996). Analysis of the census data on Rota is underway (Laura Williams, CNMI DFW, pers. comm. 2004).

Fruit bat numbers declined following Typhoon Roy in 1988 from an estimated 2,400 animals to just under 1,000 (Worthington and Taisacan 1996). Prior to Typhoon Pongsona in 2002, however, the Rota bat population had risen back to approximately 2,500 (J. Esselstyn, in litt. 2003). In the months following the storm, repeated surveys indicated that numbers had again declined sharply to about 600 (J. Esselstyn, pers. comm. 2004b). Continued surveys of Rota's fruit bats indicate that the population was once again rising in 2004; in April it was estimated at roughly 1,500 animals (J. Esselstyn, pers. comm. 2004a, 2004b). The Rota population fluctuates and may be resilient, but severe storms at short intervals could erode this resilience. The most recent available estimate of fruit bat numbers on Rota is 1,100 (C. Kessler, pers. comm. 2004b). This estimate was made in May 2004, prior to Typhoon Chaba. The bats from Rota are believed to move among the southern islands, and this population thus is considered to be important to the long-term stability of fruit bats in the southern islands of the Mariana archipelago (Wiles and Glass 1990), and to the existence of the colony on Guam (Catherine Leberer, Guam Division of Aquatic and Wildlife Resources (DAWR), in litt. 2004).

Status of CNMI Northern Islands

The 1983 survey of the northern islands resulted in an estimate of 7,450 bats for Anatahan, Sarigan, Guguan, Alamagan, Pagan, Agrihan, Asuncion, and Maug (Wiles *et al.* 1989, Tables 1 and 2). Because field observation of Mariana fruit bats indicate that this species is gregarious and typically roosts in large colonies during the day, this and subsequent surveys focused on locating colonies. Wiles *et al.* (1989) located colonies by circumnavigating islands by boat, traversing portions of each island on foot, and interviewing residents on islands with human inhabitants. EDCs were conducted at each colony beginning at 1 to 3 hours before nightfall and continuing until complete darkness. These surveys were carried out by observers placed so that fruit bats departing the colony were silhouetted against the sky or the ocean. Rates of fruit bat departure from colonies were observed to be greatest between 10 and 40 minutes after sunset, but because departures continued after darkness when they are difficult to see, EDCs represent minimum counts (Wiles *et al.* 1989). In addition, evening counts of solitary or extra-colonial bats were made from vantage points determined to overlap least with the apparent dispersal trajectory of colony bats. Islandwide estimates were based on the number of fruit bats recorded, island size, extent of forest cover and abundance and diversity of food-plant species (Wiles *et al.* 1989).

Surveys of the northern islands undertaken in 2000 (Cruz *et al.* 2000a–f) employed a combination of the same methods used by Wiles *et al.* (1989) in 1983 and, on Anatahan, by Worthington *et al.* (2001) in 1995: land- and sea-based colony searches, EDCs, station-counts of extra-colonial bats, and direct day-time counts at roosts. On each island they visited, Cruz *et al.* (2000a–f) spent periods conducting fruit bat surveys equal to or greater than periods spent by Wiles *et al.* (1989) on the same six islands. The individual island-wide estimates of Cruz *et al.* (2000a–f) thus are comparable to those of Wiles *et al.* (1989), but owing to logistical and fiscal constraints, Cruz *et al.* (2000a–f) did not visit Asuncion and Maug. The 2000 surveys yielded an estimate of 4,450 fruit bats for the 6 northern islands they visited (Cruz *et al.* 2000a–f). The 1983 surveys yielded an estimate of 7,025 fruit bats for the same six islands (Wiles *et al.* 1989). A conservative interpretation of these data indicates a 37 percent decline in fruit bat numbers between 1983 and 2000 among these six northern islands.

The majority of this decline was recorded on two of the three largest northern islands, Anatahan (12.5 square mi (32.3 square km)) and Pagan (18.4 square mi (47.7 square km)), which together harbored roughly 70 percent of the archipelago's fruit bats in the 1980s (Wiles *et al.* 1989). These two islands, which were estimated to support a total of 5,500 fruit bats in 1983, were estimated to have only 2,500 fruit bats in 2000; approximately a 45 percent decline since 1983 (Cruz *et al.* 2000d, 2000e). These declines may be related to severe habitat damage caused by feral ungulates (Cruz *et al.* 2000d, 2000e; Kessler 2000a; see discussion in Background, Habitat section).

On Anatahan, surveys identified about 3,000 fruit bats in 1983 (Wiles *et al.* 1989), 1,902–2,136 individuals in 1995 (Marshall *et al.* 1995; Worthington *et al.* 2001), and roughly 1,000 in 2000 (Cruz *et al.* 2000d; Kessler 2000a). In conjunction with the ungulate eradication project, fruit bats on Anatahan have been surveyed frequently since 2002. Aerial (helicopter) surveys were conducted in May 2002; February, March, April, August, October, and December 2003; and January, February, March, July, and September 2004. These surveys are

performed over 2 days, with 4 hours spent over the island each day. Coverage of the island during each survey is complete. Fruit bat colonies are rapidly reconnoitered to verify known roost sites and identify new ones, colonies are counted and mapped, and individual bats in flight also are counted. After the volcanic eruption in May 2003, the island's state of devegetation facilitated accurate location of all colonies (C. Kessler, in litt. 2003, pers. comm. 2004c). In 2002 and early 2003, estimates of the island's bat population ranged from 950 to 1,250 (C. Kessler, in litt. 2003). Following Anatahan's volcanic eruption in May 2003, aerial surveys conducted in August, October, and December of 2003 yielded estimates of 350–700 bats, and in January and February of 2004, bat numbers were estimated at 500–600 and 550–650, respectively (C. Kessler, in litt. 2003, pers. comm. 2004c). Surveys in March, July, and September of 2004 yielded increased estimates of about 1,000–1,200 bats (C. Kessler, pers. comm. 2004c). This localized increase in fruit bat numbers over a short period of time (1 to 1.5 years) was concomitant with some vegetation recovery, and indicates that Anatahan's population may have reached its pre-eruption level, whether the source of the additional bats is immigration, recruitment of newly volant (flying) young, or both (see Summary of Factors Affecting the Species section).

On Pagan, fruit bat numbers were estimated at 2,500 in 1983 (Wiles *et al.* 1983), and at roughly 1,500 in 1999 and 2000 (Cruz *et al.* 2000e). On the third-largest northern island, Agrihan (18.3 square mi (mi²) (47.4 square km (km²)), results of surveys in 1983 and 2000 indicate that fruit bat numbers have been stable at about 1,000 individuals (Wiles *et al.* 1989; Cruz *et al.* 2000f).

The remaining northern islands with fruit bat populations, Maug, Asuncion, Alamagan, Guguan, and Sarigan, all are less than 5 square mi (13 square km) (Table 1), and harbor from 100 to 500 bats (Cruz *et al.* 2000a, b, c). Sarigan, the next island north of Anatahan, has been surveyed more frequently in recent years in conjunction with the ungulate eradication there. A 1997 survey of Sarigan estimated the population at 170 fruit bats, and a 1999 survey resulted in an estimate of 150–200 individuals (Wiles 1999). Surveys between 1983 and 2000 on Sarigan estimated populations of approximately 125–235 bats (Wiles *et al.* 1989; Fancy *et al.* 1999; Wiles and Johnson 2004). In 2001, surveys estimated 300–400 bats (Wiles and Johnson 2004). The observed increase on Sarigan may reflect a response to the recovery of forest vegetation after the eradication of feral goats and pigs from the island in 1998 (Zoology Unlimited 1998). As described above in the discussion of interislands movements, the increase in 2001 may also reflect immigration to Sarigan from Anatahan, 23 mi (37 km) to the south, as well as recruitment of newly volant young (Wiles and Johnson 2004). The potential for increase in fruit bat numbers on Sarigan is thought to be limited, however, by the island's small size (1.9 mi² (4.9 km²)), the small extent of forest habitat (as described above, in the Habitat section), and the prevalence of monotypic stands of coconut, which provide only minimal forage habitat for fruit bats (Wiles and Johnson 2004; G. Wiles, Washington Department of Fish and Wildlife (formerly CNMI DFW), pers. comm. 2004).

Guam

On Guam, the sighting of fruit bats was considered to be "not * * * uncommon" in the 1920s (Crampton 1921). However, by 1931, bats were uncommon on Guam, possibly because of the introduction of firearms (Coultas 1931). Woodside (1958) reported that in 1958, the Guam population was estimated to number no more than 3,000, although the method used to make this estimate is not known (Utzurrum *et al.* 2004). This estimate had dropped by an order of magnitude, to between 200 and 750 animals by 1995, in part because of predation by the introduced brown treesnake (Wiles *et al.* 1995; Wiles 1996). During 1998, bat populations on Guam varied from an estimated low of 210–245 to a high of 910–980 bats (Wiles 1998), and in 1999, bat numbers ranged from an estimated low of 199–235 to a high of 327–371 (Wiles 1999). The most recent surveys on Guam put the bat population at fewer than 100 individuals (D. Janecke, in litt. 2003; A. Brooke, in litt. 2003). Predation by brown treesnakes on non-volant young probably prevents recruitment of juvenile bats on Guam (Wiles *et al.* 1995; Wiles 1996; G. Wiles, in litt. 2003).

Previous Federal Action

The Mariana fruit bat (*Pteropus mariannus mariannus*) was listed as endangered in 1984 on Guam (49 FR 33881). It was listed as a subspecies found only on Guam. More recent research over the years since this subspecies was listed indicates that *Pteropus mariannus mariannus* is not a subspecies endemic only to Guam but the Guam population is part of a subspecies including populations of bats on other islands that interact with each other (movement between islands). We believe that it is appropriate to list these bat populations in Guam and CNMI as one subspecies (63 FR 14641).

All the bat populations on Guam and in the CNMI are facing a number of threats, with most populations declining. We published a proposed rule on March 26, 1998 to reclassify the Mariana fruit bat on Guam from endangered to threatened and list all the bat populations on Guam and other CNMI islands as one subspecies throughout its range as threatened (63 FR 14641, 69 FR 30277).

We proposed to list the subspecies as threatened because we wanted to: (1) Simplify actions and expenditures. We could affect a downlisting for the population on Guam with little or no additional time and expense in conjunction with proposing to list the subspecies throughout its range, instead of taking a separate action to downlist the population on Guam; and (2) acknowledge a change in taxonomy. When we originally listed the population on Guam, we believed it to be a separate subspecies endemic only to Guam with a declining population and significant threats to it which merited endangered status. However, by including the other populations in the listing, we are evaluating a larger number of bats with a wider distribution, although threats to each population remain. Hence, we proposed threatened status for the entire population, instead of having one population as endangered and the others as threatened.

In that proposed rule, we included a detailed history of Federal actions completed prior to the publication of the proposal. The public comment period closed on May 11, 1998 (63 FR 14641) and was reopened from May 29, 1998, through July 10, 1998 (63 FR 29367) to accommodate requests for public hearings. We designated critical habitat for the Mariana fruit bat on Guam in a final rule published in the **Federal Register** on October 28, 2004 (68 FR 62944). Pursuant to a settlement agreement approved by the U.S. District Court for the District of Hawaii on August 21, 2002, we must make a final listing decision on the Mariana fruit bat and submit the final rule to the **Federal Register** by December 31, 2004. See *Center for Biological Diversity* v. *Norton*, Civil No. 99–00603 (D. Haw.).

Summary of Comments and Recommendations

In the proposed rule published on March 26, 1998 (63 FR 14641), we requested that all interested parties submit written comments on the

proposal. We also contacted appropriate Federal, Territorial, and Commonwealth agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposal. Newspaper notices were published in the Marianas Variety (Saipan, CNMI) and Pacific Daily News (Guam), inviting general public comment and attendance at public hearings. We held public hearings on June 24, 1998, on Saipan and June 25, 1998, on Rota.

We reopened the public comment period on May 27, 2004 (69 FR 30277), to permit additional public review. In order to address any additional comments received during the reopened comment period, and meet the court order to submit to the **Federal Register** a final listing decision for the Mariana fruit bat no later than December 31, 2004, we reopened the comment period for 30 days, until June 28, 2004. The reopened comment period (and associated notifications in local media and via direct mailing) gave interested parties additional time to consider the information in the proposed rule and provide comments and new information.

During the first comment period in 1998, we received 13 written comments, including those submitted at the public hearings. During the reopened comment period in 2004, we received four additional written comments, including one from a Government of Guam agency, and one from a CNMI government agency. Several individuals or groups submitted comments in both the original and the reopened comment periods, or during hearings and later in writing. Of those comments received in 1998, eight opposed listing in the CNMI, one opposed listing in the CNMI and opposed downlisting on Guam, one opposed downlisting on Guam, one opposed downlisting on Guam but was in favor of listing in the CNMI, and one supported listing in the CNMI. In addition to several private citizens, the CNMI Governor, Director of the DFW, Rota DLNR Resident Director, Rota Mayor, and CNMI Senator Thomas P. Villagomez all opposed the proposal. The Air Force supported listing the fruit bat as threatened throughout the archipelago, but also stated that reclassification from endangered to threatened on Guam would be "misleading and confusing to the public," and cited an article in the local press that misrepresented a temporary influx of fruit bats from Rota as an increase in the Guam population (Thomas Churan, Air Force, in litt. 1998; also see Issue 15, below). The Air Force also expressed its belief that the Mariana fruit bat is more susceptible to extirpation on Guam than in the CNMI because of the presence of the brown treesnake there, and recommended that the fruit bat retain its status as endangered on Guam (T. Churan, in litt. 1998). The Mariana Audubon Society supported listing all bats in the Mariana archipelago as endangered rather than threatened. Three of the four parties that submitted comments during the reopened comment period in 2004 supported the listing, including the DAWR. The CNMI DFW opposed the listing.

This final rule has been revised and updated to reflect the pertinent comments and information received during the comment periods. Comments of similar nature are grouped under a single issue. In addition, we considered and incorporated into the final rule all appropriate information obtained through the public comment period.

Peer Review

In 1998, in accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited opinions from four individuals who have expertise with the species and the geographic region where the species occurs, and are familiar with conservation biology principles. We received written comments from two experts and incorporated their information into the final rule. One peer reviewer described the threats posed to the bats on Guam by brown treesnake predation and habitat destruction by feral ungulates. This reviewer did not include any professional judgment about movement of bats between islands, but has published peer-reviewed literature containing information that supports interisland exchange. The other expert expressed agreement and knowledge that there is interisland exchange.

In 2004, we solicited additional scientific peer review of the proposed rule from eight specialists, including one of the two who provided peer review in 1998. Of these, five responded and provided additional factual information, including recent survey results, the impact of typhoons and illegal hunting on fruit bats in the southern islands, and recent genetic studies of other *Pteropus* species elsewhere in the Pacific. Reviewers also provided citations for literature, corrections on minor factual issues, and input on interpretation of the existing information.

One reviewer provided a synopsis of changes in fruit bat numbers over the past 10–20 years on individual islands in the archipelago and noted declines on Guam, Anatahan, and Pagan. This synopsis was based partly on the reviewer's own research and partly on the work of others. Based on 19 years of fruit bat research, surveys, and personal observations in the Mariana Islands while employed as a Senior Biologist with the Guam Division of Aquatic and Wildlife Resources, this reviewer (who also authored the original recovery plan for the Mariana fruit bat on Guam, agency reports, and numerous peer-reviewed research papers on the Mariana fruit bat (*e.g.*, Wiles and Payne 1986; Wiles 1987a, b; Wiles *et al.* 1989; Wiles and Glass 1990; Wiles 1992; Wiles *et al.* 1995; Wiles and Johnson 2004) emphasized three major threats to Mariana fruit bats: illegal hunting (described as "chronic" on Rota), habitat destruction by feral ungulates, and brown treesnake predation. Another reviewer, a biologist who spent two years monitoring fruit bats on Rota and elsewhere in the CNMI for the CNMI DFW, provided specific information about firsthand observations and evidence of illegal hunting of fruit bats on Rota after Typhoon Pongsona, described reports received of numerous other illegal hunting, and provided survey information documenting post-typhoon decline in fruit bats on Rota and subsequent increase in numbers. Three reviewers, two of whom hold doctorates based on research on the biology and ecology of island fruit bats, and one of whom is currently conducting a graduate research project on fruit bats on Guam, expressed their professional opinions that anthropogenic disturbances such as illegal hunting and habitat loss are likely to be significant threats to the Mariana fruit bat, and that these disturbances are periodically exacerbated by severe storms.

Two reviewers cited their own observations and those of other workers that indicated likely interisland movements between Sarigan and Anatahan and between Rota and Guam, and another reviewer cited information collected by others indicating likely interisland movement in the archipelago. Three of the five reviewers provided information and professional opinion that supported our treating all fruit bats occurring in the Mariana archipelago as a single subspecies, *Pteropus mariannus mariannus*, as described in the proposed rule; the other two expressed concern about the possible occurrence of genetically isolated populations within the range of fruit bats in the Mariana Islands. Two reviewers expressed reservations about treating all fruit bats in the archipelago

as one taxon without empirical data from genetic or radio-telemetry studies. However, one of these reviewers also described unpublished genetic research on fruit bats in Polynesia that indicates a lack of within-archipelago genetic structure in a widespread species that shares social and behavioral traits with the Mariana fruit bat.

Issue 1: The Service lacks adequate data to assess the population status of Mariana fruit bats. Comprehensive surveys are required to determine the status of Mariana fruit bats in the northern islands.

Our Response: In this case, we believe existing data are adequate to assess the overall status of the Mariana fruit bat. Subsequent to listing, two additional multi-island surveys of bats in the Mariana Islands have been conducted. One of these included six of the 10 northern islands (Cruz *et al.* 2000a–f) and yielded data comparable to those collected in 1983 by Wiles *et al.* (1989). The other conducted in 2001 (Johnson 2001) included all of the islands in the archipelago but employed methods that precluded direct comparison with other surveys. A conservative interpretation of these data indicate that bat numbers have declined on the two islands, which historically had large numbers of fruit bats in the archipelago.

Issue 2: The Service's evidence of bats moving between islands was inadequate or only anecdotal, and without empirical evidence of interisland movement, a determination that all fruit bats in the Mariana Islands belong to the same subspecies is premature. Fluctuations in bat numbers, particularly on Guam, may be caused by births.

Our Response: Evidence for the movement of bats between islands in the Mariana archipelago is discussed in the Background subsection above. The large fluctuations in the Guam bat population over a short period of time (Wiles 1998; A. Brooke, in litt. 2003) coupled with a low reproductive rate make it unlikely that changes in the Guam population reflect recruitment from births. Predation by brown treesnakes largely precludes the recruitment of young bats into the Guam population (Pierson and Rainey 1992; Wiles 1987a; G. Wiles in litt. 2003).

Issue 3: Long term survey data from Rota indicate natural fluctuations in fruit bat numbers on various timescales. Archipelago-wide surveys and the apparent decline they document may not account for these natural fluctuations.

Our Response: To date, we are aware of no analysis of survey data from Rota that: (1) Demonstrates a correlation between variation in fruit bat numbers and some other natural cycle, or (2) controls for the hunting and other human disturbance.

Issue 4: CNMI government agencies feel the Service overstated the illegal hunting problem, and stated that the CNMI DFW is instituting law enforcement reforms, and the CNMI government is committed to the enforcement of wildlife regulations. In contrast, most peer reviewers identified illegal hunting and lack of enforcement as a significant threat to the Mariana fruit bat, especially in the CNMI, and an official from Guam DAWR expressed concern that recruitment of immigrant bats to Guam is threatened by illegal hunting on Rota.

Our Response: We appreciate the CNMI DFW's commitment to law enforcement. We acknowledge that data on illegal hunting is difficult to obtain and assess, and that most of the information regarding illegal hunting is anecdotal. We have numerous documented observations and reports of illegal hunting incidents in the CNMI (*e.g.*, Arnold Palacios, CNMI DWF, in litt. 1990; T. Eckhardt, Service, in litt. 1998; J. Esselstyn, pers. comm. 2004a; C. Kessler, pers. comm. 2004a). We address the threat to the Mariana fruit bats from illegal hunting in Factor B in the Summary of Factors Affecting the Species section.

Issue 5: The Service was selective in its presentation of the impacts of feral animals on Mariana fruit bats, presenting it in a poor light to justify listing. The Service did not consider the feral animal eradication project on Sarigan, and failed to note that the CNMI DFW has an existing federally funded program addressing feral animal damage (Feral Animal Monitoring and Management (Project No. W–1–R–1–11; Job number 2)).

Our Response: We have incorporated the results of the Sarigan Feral Animal Control Project (Zoology Unlimited 1998) into this final rule and discuss the threats posed to fruit bats by feral animals (see discussion in the Background section, and Factor A in the Summary of Factors Affecting the Species section). Although DFW's Feral Animal Monitoring and Management Program has included survey of feral animals on many of the northern islands and involvement in several other projects, current DFW projections indicate that sufficient funding will not be available to complete the eradication of feral ungulates from Anatahan, and lack of material support will prevent the implementation of plans for feral animal control in the CNMI (L. Williams, pers. comm. 2004).

Issue 6: Present CNMI Coastal Resources Management (CRM) and DLNR land use regulations adequately protect Mariana fruit bat habitat (limestone forest) from development, as exemplified by the modifications required for construction of the Rota Resort and Country Club. Habitat is also being protected through island-wide master planning and through implementation of habitat conservation plans (HCPs) on Saipan and Rota.

Our Response: We support the use of local land use regulations to promote the conservation of the Mariana fruit bat and its habitat. However, the best measure of their past effectiveness in protecting the Mariana fruit bat is the success of these regulations in maintaining the integrity of native limestone forest systems in the CNMI, particularly in the southern islands where development pressures are greatest. Direct and secondary effects of human activity continue to cause alteration of native forest areas despite these protections.

Through the Act's section 10 and HCP planning process, listed species may be lawfully taken and measures implemented to reduce activity impacts on the species and its habitat. Two HCPs are currently under development on CNMI and, if completed and implemented, should contribute to fruit bat conservation. The successful completion of these HCP projects in the CNMI is not sufficiently certain to consider them in making this listing decision. See our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE policy) (68 FR 15100, March 28, 2003).

Issue 7: The Service did not account for actions by the CNMI government to control the brown treesnake, thereby decreasing the threat of this factor to the Mariana fruit bat.

Our Response: We recognize that ongoing actions on Guam, Saipan, Tinian, and Rota are important and reduce the threat of accidental introduction of the brown treesnake. The U.S. Department of the Interior (DOI) Office of Insular Affairs (OIA), U.S. Department of Defense (DOD), USDA Wildlife Services, Service, Government of Guam. CNMI, and State of Hawaii are working together regionally to control brown treesnakes, particularly around transport centers (OIA 1999). The OIA and DOD actively fund research into methods of controlling snakes on Guam, in part to reduce the threat of introduction to other Pacific islands (OIA 1999). Both the CNMI DFW and Guam DAWR conduct brown treesnake public awareness educational campaigns

consisting of school presentations, news releases, workshops, and poster/pamphlet distribution (Perry *et al.* 1996), and the CNMI maintains a snake reporting hotline (Nate Hawley, CNMI DFW, pers. comm. 2004a). In 1996, the CNMI became a signatory of the Memorandum of Agreement (MOA) between the governments of Hawaii, Guam, and the CNMI, and individual Federal government agencies concerned with brown treesnake eradication and control (DOI *et al.* 1993; DOI *et al.* 1996). This MOA commits the CNMI to a proactive brown treesnake program and allows the CNMI to apply for funding from the allotment of money appropriated by the U.S. Congress each year for brown treesnake control and eradication (OIA 1999).

Despite ongoing efforts, evidence exists that treesnakes are present on Saipan. A concrete barrier completed in 2004 at the commercial port on Saipan aids in the prevention of new introductions from Guam, but this barrier does not address the problem of the treesnakes already present on the island. The presence of brown treesnakes on Saipan poses a threat to the recovery of the fruit bat population there until the treesnakes are controlled throughout the island or are eradicated.

On Tinian, brown treesnakes, have been documented and are not thought to be established (Hawley 2002). The upcoming construction of a concrete snake barrier on Tinian will aid in the prevention of treesnake introductions to the island.

On Rota, two dead brown treesnakes were found in a cargo container in 1991, and in another, a live treesnake was sighted (N. Hawley, pers. comm. 2004a). The fence surrounding Rota's port was retrofitted with a snake barrier subsequent to the discovery of the two dead treesnakes, but damage and maintenance difficulties have resulted in deterioration of the barrier, and it was disassembled in 2002 (Gad Perry, U.S. Geological Survey-Biological Resource Division, in litt., 1998; N. Hawley, pers. comm. 2004b). CNMI DFW recommended replacing the fence with a concrete barrier around the cargo area; however, the barrier has not yet been constructed. These efforts were considered in the Summary of Factors Affecting the Species section below.

Issue 8: Existing regulations of the CNMI government are satisfactory for protecting the Mariana fruit bat so Federal listing is not necessary. The Mariana fruit bat is listed as threatened or endangered by the CNMI, and the Service was incorrect in stating that the CNMI lifted the moratorium on hunting of Mariana fruit bats. Therefore, the threat of legalized hunting is non-existent.

Our Response: We acknowledge that the CNMI has regulations protecting the Mariana fruit bat, but we have concluded that these regulations either do not contain sufficient protections or have not been adequately enforced to protect bat populations (see Factor D below).

In the proposed rule, we stated that the moratorium on the taking of Mariana fruit bats on all islands (Public Law 5–21, September 1977) had been lifted. We based this on a memo from the CNMI Assistant Attorney General for DLNR to our Law Enforcement (LE) office on Guam which stated that the hunting moratorium was no longer in effect (Richard Folta, Office of the Governor, Guam, in litt. 1996). In a subsequent letter to the Service, the Assistant Attorney General stated that the previous communication had been in error, and that the moratorium was still in effect (R. Folta, in litt. 1996). This new information has been incorporated into this final rule.

Issue 9: Listing the bat will not improve law enforcement, due in part, to the resource limitations of the Service's Division of Law Enforcement. No Service LE personnel are stationed in the CNMI, so the Service will be unable to enforce Federal regulations associated with the listing.

Our Response: The Service does have a wildlife inspector stationed in the Marianas who provides some enforcement of regulations associated with the Act. Declines in illegal fruit bat imports to Guam and the CNMI have been associated with the presence of LE personnel stationed on Guam and efforts of LE personnel based in Honolulu (Sheeline 1991; George Phocas, Service, pers. comm. 2004). We work in cooperative partnerships with Territorial, Commonwealth, State, local, and Federal agencies to further our interdiction and enforcement efforts. In the Mariana Islands, Service personnel are presently assisted by local customs officers, conservation officers, and quarantine officials in the enforcement of the Act. It is important to note that the Act provides an additional set of enforcement tools for the protection of listed species than are currently available for the fruit bat in the CNMI.

Issue 10: The listing of the Mariana fruit bat in the CNMI may result in severe harassment to the species.

Our Response: There has been no evidence to suggest that harassment of fruit bats is likely to occur as a result of listing. We understand that hunting of fruit bats takes place on a regular basis in the CNMI despite their protection under CNMI law, but all of the information we have received indicates that this hunting is motivated by local tradition, not by malicious intent in response to CNMI laws and regulations. Whatever the motivations for harassment or illegal hunting of Mariana fruit bats, their listing under the Act can provide additional protection through the enforcement of Federal law. In sum, we believe that the protections afforded to Mariana fruit bats by their being listed as threatened throughout their range will aid in their conservation and recovery.

Issue 11: Increased funding to the CNMI for endangered species recovery is unlikely. Listing the bat as threatened instead of endangered has the potential to restrict funding opportunities to conduct research and management because the Service's funding system places higher priority on species designated as endangered as compared to those listed as threatened.

Our Response: Under their cooperative agreement with us, DFW can apply for funding under section 6 of the Act for projects specifically related to Mariana fruit bat conservation. We do not categorically assign higher priority for funding or recovery actions to species that are listed as endangered over those that are listed as threatened.

Issue 12: Protection for the Mariana fruit bat on Farallon de Medinilla should come from the Service through the consultation process under section 7 of the Act. Listing the Mariana fruit bat in the CNMI will provide no additional protection with regard to military activities.

Our Response: Prior to the publication of this final rule, the Mariana fruit bat was not federally listed in the CNMI. Federal agencies, therefore, have not been required to consult on the effects of their actions in the CNMI on the fruit bat. Conversely, 30 days after the publication of this rule, the Mariana fruit bat becomes federally listed as threatened in the CNMI and throughout its range, and Federal agencies will be responsible for consulting with us when their activities may affect the fruit bat on Farallon de Medinilla or other islands in the CNMI.

Issue 13: The Service misinterpreted the data and conclusions of Morton (1996) in stating that military aircraft training activities on Guam cause or create the potential for abandonment of roosting areas.

Our Response: Current air traffic patterns and volume do not pose a threat. There is the potential for roost abandonment if air traffic patterns or volume increase significantly (Morton 1996). Significant changes could

include more frequent departures and arrivals, and larger or noisier aircraft.

Issue 14: The rule is politically motivated, biased, based on assumptions and broad, unsubstantiated statements, speculative observations, and anecdotal evidence.

Our Response: We used the best scientific information available in our determination to list the Mariana fruit bat as threatened in the CNMI and reclassify from endangered to threatened on Guam. Threats to the Mariana fruit bat are documented in the Summary of Factors Affecting the Species section of this final rule. We did not rely solely on anecdotal information in making a decision to list this species as threatened. The rule includes citation to more than 70 published references, more than 40 scientific reports prepared for government agencies and universities, and numerous personal communications from scientists and others knowledgeable about fruit bats and the Mariana Islands and/or closely involved in natural resources management in the archipelago. The anecdotal information we did use is consistent with the body of scientific reports.

Issue 15: Some commenters felt that listing the Mariana fruit bat in the CNMI is justified, but many thought that reclassifying the fruit bat from endangered to threatened on Guam, and listing the fruit bat as threatened rather than endangered in the CNMI, was incorrect. Some of these commenters believe that reclassifying the Mariana fruit bat on Guam has already sent the wrong message to the public because media reports have misinterpreted the proposal as evidence of recovery. Some also expressed concern that reclassification of the fruit bat on Guam could undermine conservation funding. They suggest that the Service either leave the Guam population listed as endangered, or list all bats in the Mariana Islands as endangered rather than threatened.

Our Response: We define an endangered species as one which is in danger of extinction throughout all or a significant portion of its range. Threatened species are defined as those which are likely to become endangered within the foreseeable future throughout all or a significant portion of their range. Because we consider the fruit bats on all individual islands in the Mariana archipelago as part of a single, archipelago-wide subspecies, *Pteropus mariannus mariannus*, we now are evaluating a larger number of bats with a more widespread distribution than was evaluated for the original listing in 1984, which included only the fruit bat population on Guam. Listing *Pteropus mariannus mariannus* as threatened throughout its range, including bats in both the CNMI and Guam, retains an appropriate level of protection for this bat on Guam while increasing overall protection to the Mariana fruit bat throughout the Mariana Islands, and it does not undermine potential funding for fruit bat conservation on Guam.

Issue 16: The Service did not properly take into account the cultural importance of the Mariana fruit bat in its listing decision. For example, some commenters suggested that information from the document "Cultural Significance of Pacific Fruit Bats (*Pteropus*) to the Chamorro People of Guam" (Sheeline 1991) should have been incorporated into the proposed rule.

Our Response: We incorporated information contained in Sheeline (1991) into this final rule in the section Summary of Factors Affecting the Species, subsection B.

Issue 17: If listing occurs, the people of the CNMI deserve the same consideration that the Federal government has given to Native Americans, such as Alaskan natives, through inclusion of a provision to provide for limited take of Mariana fruit bats for cultural use.

Our Response: We recognize the importance of traditional values to native cultures. This is reflected in our close collaboration with agencies in the CNMI to develop HCPs. However, the Act specifically exempts only Alaskan natives from the take prohibitions if such take is primarily for subsistence purposes and meets certain other conditions (16 U.S.C.§ 1539 (e)), but subsistence take by other groups is not exempted by the Act.

Issue 18: One commenter stated that disease is the cause of decline of Mariana fruit bats on Rota.

Our Response: We are unaware of any evidence of disease affecting populations of Mariana fruit bats on Rota or elsewhere in the Mariana Islands.

Issue 19: The Service should clear up taxonomic questions surrounding the Mariana fruit bat and determine exactly how many taxa inhabit the Mariana Islands before listing is considered. Several peer reviewers expressed concern about the taxonomic uncertainties within western Pacific *Pteropus*, and that there may be more than one taxon endemic to the Marianas.

Our Response: Both the proposed and final rules address taxonomic questions in detail (see the Background subsection under **SUPPLEMENTARY INFORMATION**). If new information such as results from genetic studies of fruit bats in the Mariana Islands indicate the presence of additional subspecies, we will take appropriate action.

Issue 20: One commenter disagreed with the Service's proposed determination that designation of critical habitat for the Mariana fruit bat would not be prudent because the identification of specific locations as critical habitat would lead to increased illegal hunting, and would thus increase the threats to the species.

Our Response: Since publication of the proposed rule in 1998, several key court decisions have given us new guidance on making our "not prudent" critical habitat determinations. Furthermore, we now have designated critical habitat for the Mariana fruit bat on Guam (69 FR 62944). We have reexamined the prudency of designating critical habitat for the Mariana fruit bat based on these considerations and now determine that such a designation would be prudent. Our reasoning is presented in the Critical Habitat section below.

Issue 21: Why is the Service concerning itself with a listing priority tier ¾ activity when other species are in greater need of attention? The Service published the proposed rule based on fiscal and timing reasons rather than biological reasons.

Our Response: This final rule was prepared under the terms of a Federal court-approved settlement agreement that stipulated we submit a final listing determination for the Mariana fruit bat to the **Federal Register** no later than December 31, 2004 (*Center for Biological Diversity* v. *Norton, Civil No. 99–00603* (D. Haw.)).

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors, and their application to the Mariana fruit bat (*Pteropus mariannus mariannus*) in the Mariana Islands are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Mariana fruit bats have been observed to feed on the fruits, flowers, and leaves of at least 22 plants, all but three of which are native to the Mariana Islands; fruit bats also have been documented to establish roosts primarily in mature

native trees within landscapes dominated by native forest (Wiles 1983, 1987a). The Mariana fruit bat depends on native forest trees for food and colonial roost sites where mating, parturition, and other important social and biological functions take place. Although Mariana fruit bats have been observed to feed on cultivated food plants such as *Artocarpus altilis* and *Carica papaya* (Wiles 1987a), and have been observed to roost in *Theobroma cacao* (Glass and Taisacan 1988), nonnative plants make up a very small fraction of the resources used by the subspecies (Wiles 1987b; Worthington and Taisacan 1996) (*see* Habitat section above). The degradation and loss of native forest, therefore, deprives fruit bats of essential resources for survival and reproduction. The southern islands in the Mariana archipelago have lost most of their original native forest, primarily over several centuries of large-scale agriculture, growing human populations, economic development, and military activities (Bowers 1950; Fosberg 1960; *see* discussion). Few Mariana fruit bats occur today on Saipan, Tinian, and Guam, the islands that have sustained the greatest human disturbance and habitat loss.

Mariana fruit bats have evolved with, and are dependent for food and shelter on, trees and other plants that occur in native forests in the Mariana Islands. The degradation or loss of these forests is a key threat to the survival of this subspecies. The loss of native forests in the Marianas has various sources. The foraging of feral ungulates such as goats and pigs prevent forest regeneration because they eat ground-layer vegetation and seedlings of understory and canopy species; the rooting and stereotypical path-making of ungulates promote erosion and facilitate the invasion of native forests by alien plants (Marshall *et al.* 1995; Kessler 1997; Service 1998a,b). These invasive alien plants displace or smother native vegetation and prevent its regeneration (Kessler 2000b). In the southern islands of the CNMI and on Guam, where human influence has the longest continuous history, outright conversion of forests for agriculture or other development, as well as feral ungulates and alien plant species, historically has been a major source of loss of the Mariana fruit bat's forest habitat.

Throughout the archipelago, feral ungulates have caused severe damage to native forest vegetation by browsing directly on plants, causing erosion (Marshall *et al.* 1995; Kessler 1997; Service 1998a,b), and retarding forest growth and regeneration (Lemke 1992b). The remaining native forest habitat for fruit bats on many of these islands continues to be threatened by the fragmentation and degradation associated with feral ungulates. Mariana fruit bats are dependent on native plants for food and native forest for roost sites. Soil erosion and chronically retarded forest regeneration, the concomitant loss of native forests caused by the browsing and rooting of feral ungulates, and subsequent invasion by nonnative plant species, collectively represent a significant threat to fruit bats. These vegetation and landscape changes deprive the fruit bats of the native plant species on which they depend for food, shelter, and places to conduct their social activities. The diminished quality and extent of native forest thus leads to an associated reduction in the number of fruit bats that the remaining habitat is able to support. The northern islands, for the most part, have escaped the effects of millennia of continuous human settlement, WWII, and post war activities that caused extensive habitat loss and fragmentation of native forest habitat (see Table 2). However, the introduction of feral ungulates to some of these islands as recently as 40 years ago has resulted in rapid degradation and loss of native forest cover, notably on Anatahan and Pagan, two of the largest islands that have supported relatively large numbers of fruit bats (Kessler 1997, 2000a).

Island by Island Summary

Table 2 provides a synopsis of the numbers and status of fruit bats on each island in the archipelago.

TABLE 2.—ISLAND SUMMARY OF FACTORS AFFECTING THE MARIANA FRUIT BAT.

[See text for full discussion]

Island	Area Mi² (km²)	Historical factors	Key current factors	Estimated fruit bat numbers and status
Guam	212.0 (549.0)	Hunting, habitat loss (development, agriculture, feral ungulates), brown treesnakes.	Brown treesnakes, habitat loss	<100; declining.[10]
Rota	37.0 (95.7)	Hunting, habitat loss (development, agriculture, feral ungulates).	Hunting, habitat loss (development, feral ungulates).	1,100; fluctuating.[9]
Aguiguan	2.7 (7.0)	Small island, feral ungulates	Small island, feral ungulates	Few individuals; possibly declining.[8]
Tinian	39.3 (101.8)	Hunting, habitat loss (development, agriculture, feral ungulates).	Habitat loss	Low numbers; intermittent presence.[7]
Saipan	47.5 (122.9)	Hunting, habitat loss (development, agriculture, feral ungulates).	Habitat loss, possibly brown treesnakes.	No colonies, few individuals.[6]
Farallon de Medinilla.	0.8 (2.0)	Small size, limited habitat, vegetation loss, erosion, fires.	Small size, limited habitat, vegetation loss, erosion, fires.	2 fruit bats observed in 1996.[5]
Anatahan	12.5 (32.3)	Feral ungulates	Feral ungulates, invasive plants	1,000–1,200; decline since 1983; recovering from eruption.[4]
Sarigan	1.9 (5.0)	Feral ungulates; little habitat	Invasive plants; habitat limited to 72 ac (29 ha).	300–400; increasing since ungulate eradication.[3]
Guguan	1.5 (4.0)	Small island, little habitat	small island, little habitat	350; stable.[2]
Alamagan	4.3 (11.0)	Feral ungulates	Feral ungulates	200; possible increase since 1983.[2]
Pagan	18.4 (47.7)	Feral ungulates	Feral ungulates	1,500; decline since 1983.[2]
Agrihan	18.3 (47.4)	Feral ungulates	Feral ungulates (potential)	1,000; stable.[2]
Asuncion	2.9 (7.4)	Small island; little habitat	Small island; little habitat	400[1]; stable or increasing.

TABLE 2.—ISLAND SUMMARY OF FACTORS AFFECTING THE MARIANA FRUIT BAT.—Continued

[See text for full discussion]

Island	Area Mi² (km²)	Historical factors	Key current factors	Estimated fruit bat numbers and status
Maug	0.8 (2.0)	Small island; little habitat	Small island; little habitat	<25[1], unknown.

[1] Wiles *et al.* 1989.
[2] Cruz *et al.* 2000f (Agrihan); 2000e (Pagan); 2000b (Alamagan), 2000a (Guguan).
[3] Wiles and Johnson 2004.
[4] C. Kessler, pers. comm. 2004b.
[5] T. Sutterfield, in litt. 1997.
[6] L. Williams, pers. comm. 2004.
[7] Krueger and O'Daniel 1999; Johnson 2001.
[8] G. Wiles, pers. comm. 2004.
[9] C. Kessler, pers. comm. 2004b.
[10] A. Brooke, in litt. 2003.

Habitat loss and degradation pose a significant threat to the Mariana fruit bat because it deprives them of foraging and sheltering resources that are necessary for survival and reproduction. The largest and most heavily populated southern islands in the archipelago have suffered the greatest habitat loss, primarily in the form of land conversion for agriculture, and military, commercial, and residential development and infrastructure. The most severely altered of these islands, Saipan, Tinian, and Guam, today support very few Mariana fruit bats. About half of the northern islands of the CNMI, including the three largest, harbor large populations of feral ungulates. These animals have caused severe damage to, and in parts, of some islands, a complete loss of native forest habitat.

Qualitative observations through time document increasing feral ungulate damage to native forest particularly on Pagan, Anatahan, and Alamagan (Wiles *et al.* 1989; Rice 1992; Kessler 1997, 2000a; Service 1998a, b; Zoology Unlimited 1998; Cruz *et al.* 2000b, d, e, f). Feral goats and pigs have been present on Anatahan for about 40 years, and observations indicate that, more recently, the severe ungulate damage on Anatahan apparently has been rapid. Thomas Lemke (Montana Department of Fish, Wildlife, and Parks, in litt. 1995) did not note significant erosion or large numbers of goats in the early 1980s. In 1992, Rice and Stinson (1992) did not see many feral animals but noted some areas where goat- and pig-caused damage was severe and warned that ungulate control was needed. In 1995, Marshall *et al.* (1995) observed many groups of goats, several pigs and widespread pig sign, and extensive loss of forest understory, devegetation, and erosion especially on the southern end of the island. Approximately 3,000 to 4,000 feral goats and 500 to 1,000 feral pigs were rapidly destroying the island's forests, and forest decline was directly associated with this decline in fruit bat numbers (Marshall *et al.* 1995; Kessler 2000a; Worthington *et al.* 2001). Photographic documentation provides evidence of rapid habitat alteration and loss between 1996 and 2000 (Kessler 2000a). Cruz *et al.* (2000d) described the feral ungulate damage they saw on Anatahan in 2000 as "an ecological disaster in progress."

A program initiated in 2002 to eradicate goats from Anatahan has been resumed; however, not all goats have been removed and pigs are still present. Ground-based goat and pig eradication programs will have to wait until volcanic activity subsides (C. Kessler, pers. comm. 2004b). On Pagan, where domestic livestock was released from captivity in 1981, rapidly growing populations of feral goats, pigs, and cattle already have caused severe damage to native forest and conversion of forest to grassland (Kessler 1997; Cruz *et al.* 2000e). No projects are currently underway to remove ungulates or restore habitat on Pagan, Agrihan, or Alamagan. However, the eradication of feral goats from Sarigan (Zoology Unlimited LLC 1998) has been successful; it has resulted in some recovery of native vegetation and habitat for fruit bats on that island, although this habitat is limited in extent to roughly 72 acres (29 ha), and the island probably cannot support more than a few hundred fruit bats (Wiles and Johnson 2004).

The eradication of feral ungulates alone may not be sufficient to restore native habitat for fruit bats on the northern islands. The removal of grazing and browsing pressure apparently benefits invasive, alien plants, such as tangantangan and the vines *Operculina ventricosa* and *Mikania micrantha,* which are known to be significant threats to native vegetation on Pacific Islands (USDA 2004). These plants already have been observed to be increasing in abundance and alien vines are smothering other vegetation on Sarigan (where ungulates have been eradicated) and Anatahan (where goat numbers have been significantly reduced) (Kessler 2000a,b; C. Kessler, pers. comm. 2004b). Tangantangan forms dense, monotypic stands that exclude other vegetation, and the two climbing vines form mats that smother shrub and forest vegetation and prevent its regeneration. Without an effective control program, invasive alien vegetation may become a significant threat to fruit bat habitat on islands where ungulates have been removed.

DFW's Feral Animal Monitoring and Management Program has included surveys of feral animals on many of the northern islands. More recently, DFW's feral animal control efforts have included close involvement in the Sarigan goat eradication and subsequent monitoring, a 2001 survey of feral goats on Aguiguan, and vegetation monitoring and aerial control of feral goats on Anatahan (volcanic activity has interfered with plans to conduct ground-based goat and pig hunting on Anatahan) (L. Williams, pers. comm. 2004). These activities have been conducted with significant material and logistical assistance from the Navy and Service, and DFW is working with the Tinian Lands and Resources agency to increase feral goat hunting on Aguiguan. Currently, however, DFW anticipates that funding will not be available to complete the eradication of feral ungulates from Anatahan, and lack of material support will hinder realization of other existing plans for feral animal control in the CNMI (L. Williams, pers. comm. 2004).

The use of Farallon de Medinilla in the CNMI by U.S. armed forces as a bombardment range has limited vegetation, increased erosion that

impedes regeneration of vegetation, and caused wildfires that destroyed habitat (Lusk *et al.* 1998). Together, these effects limit the habitat for fruit bats on this island.

The southern islands of the archipelago have historically been the most densely populated (Bowers 1950), and they have therefore sustained the greatest anthropogenic changes to the landscape and proportionally the greatest losses of Mariana fruit bats. Feral ungulates were well established by the 18th century. Tinian, for example, harbored as many as 10,000 cattle, and by mid-century the island's landscape included extensive pastureland and the remaining forest had no understory (Barrat 1988 in Stinson *et al.* 1992), and today the island has very few bats. Significant habitat conversion on these islands took place during the 20th century, and resulted from large-scale agriculture, human population growth, wholesale destruction from bombing (especially on Saipan and Tinian) during World War II, and the introduction of invasive alien plants (Bowers 1950; Fosberg 1960).

Between 1914 and 1944, extensive removal of native forests for development of sugar cane was greatly accelerated on the southern islands. Sugar cane fields covered almost all of Tinian and much of Aguiguan, Saipan, and Rota (Fosberg 1960). During and after World War II, military activities resulted in further dramatic reductions in fruit bat habitat on the southern islands. During this period, open agricultural fields and other areas prone to erosion on Saipan, Tinian, and Guam were seeded with tangantangan (Fosberg 1960). Tangantangan, which has a low to moderate stature and as described above grows in single-species stands with no substantial understory, provides no foraging resources or roost sites for fruit bats and is not suitable habitat for this species. Native forest cannot take root and grow where this alien tree has become established (Craig 1993), thus tangantangan effectively prevents regeneration of fruit bat habitat. After World War II, the extent of native forest remaining was estimated at 5 percent on Saipan, 2 percent on Tinian, 25 percent on Rota, and about 20 percent on Aguiguan (Bowers 1950). A report in 1986 estimated that Rota has 60 percent native forest cover (Engbring *et al.* 1986), but whether this indicates some forest recovery since World War II is not clear. Although there has been some regeneration of native forest on Rota, there has been little or none on Saipan or Tinian (Engbring *et al.* 1986). About 20 percent of the native forest persists on Aguiguan (Engbring *et al.* 1986) and these areas are occupied by feral goats.

On Guam, land development and feral ungulates have altered most of the native vegetation on the island. The pre-settlement extent of forest habitat on the island is unknown, but Guam was likely to have been densely forested prior to human settlement (Mueller-Dombois and Fosberg 1998). People first settled on Guam at least 3,500 years ago, and beginning in the 16th century, hundreds of years of foreign colonization and trade brought additional livestock and agricultural technology to Guam (and to the other southern islands in the archipelago) that resulted in increased landscape-scale habitat alteration (Fosberg 1960; Stone 1970). A U.S. Forest Service survey in 2002 estimated that approximately 63,830 ac (25,851 ha) or 48 percent of Guam's land area is under some type of forest (Donnegan *et al.* 2004). A map of forest and non-forest cover types on Guam produced by the same study clearly shows that the largest contiguous forest tracts are in northern Guam (Donnegan *et al.* 2004), on lands that belong primarily to the U.S. Air Force (Air Force) but that also include 50 ac (20 ha) that belong to the Service. Generally describing this pattern of contiguous forest in the north and fragmentation in the south, Donnegan *et al.* (2004) notes that "limestone soils in the north are covered with forest in areas not cultivated or urbanized," and volcanic soils on the southern half of Guam are covered primarily by grassland, with some ravine forest occurring in sheltered and leeward sites." Feral ungulates are abundant and widespread on the island and cause significant damage to the remaining native forest (Fosberg 1960; Stone 1970; A. Brooke, Service, pers. comm. 2004).

Lands owned by the Air Force at Andersen Air Force Base include the largest contiguous forested areas in northern Guam. Restricted access to Andersen Air Force Base, and to the Service's Guam National Wildlife Refuge at Ritidian Point, provides protection from poaching and other human disturbance of the single remaining fruit bat roost on Guam and significant foraging habitat in the northern part of the island. Other Federal, Government of Guam, and some private lands also have forested areas that include adequate habitat for bats (Wiles *et al.* 1995; 68 FR 62944).

Currently, the Air Force is proposing to expand development and operations at Andersen Air Force Base, and has initiated review of its proposal under the National Environmental Policy Act (NEPA) (Jeff Newman, Service, pers. comm. 2004). We do not have the details of the Air Force proposal at this time, nor do we know what effect this expansion may have on fruit bat habitat.

As on Guam, development and other human activities on Saipan and Tinian eliminated all but 5 percent of each island's native forest by 1982 (Engbring *et al.* 1986). On Saipan, the native forest has been replaced with mixed secondary growth forests, savanna grasslands, and dense thickets of tangantangan (Falanruw *et al.* 1989). Much of this habitat loss took place during World War II, when both islands were invaded (Baker 1946; Bowers 1950). The remaining forests on both islands continue to be threatened by planned development.

Rota experienced extensive agricultural development prior to World War II. The fact that Rota was not invaded and occupied during the war, combined with the island's rugged topography, resulted in Rota retaining a greater proportion of its native forest than Saipan or Tinian (Baker 1946). However, Rota's commercial and agricultural development poses a threat to the island's limestone forest. One 18-hole golf resort has been completed on Rota, another 1,025 ac (415 ha) are proposed to be developed into golf courses in the CNMI (CNMI Statistical yearbook 2001), and plans for additional large-scale development, together with smaller developments, continue to threaten the remaining limestone forest with destruction, fragmentation, and degradation.

In summary, loss of native forest habitat resulting from a variety of causes is a factor in the decline of the Mariana fruit bat. This loss restricts the availability of resources that fruit bats need to survive and reproduce, *i.e.*, the native plants fruit bats feed on and the mature native forest trees where they roost, and thus limits the capacity of any island to support fruit bats. Saipan, Tinian, and Guam, the most severely altered islands, today harbor very few fruit bats. The ongoing loss and degradation of forest habitat in the archipelago continues to be a threat to the species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Mariana fruit bats have been used as food since humans first arrived on the islands (Lemke 1992a), and consumption of bats represents a significant cultural tradition. Social events and cultural status in the Mariana Islands are often enhanced by a variety of foods, and the fruit bat is a highly prized delicacy. Because of their scarcity, bats are often reserved for the elderly and other respected guests, and

one bat may be shared among several people (Lemke 1992a). In a survey of Chamorros on Guam, 53 percent of the respondents indicated that they enjoyed eating fruit bat (Sheeline 1991). It is clear that the Marianas fruit bat is an important cultural symbol in the Mariana Islands, as 82 percent of the respondents to the same survey believed that fruit bats had cultural value. However, 85 percent of the respondents also believed people should stop hunting and eating fruit bats if such activity would lead to the species extinction (Sheeline 1991).

Traditionally, fruit bats were captured with limited success using nets, traps, thorny branches on poles, or stone projectiles (Lemke 1992a). Today, bats are mostly taken with shotguns fired at roosting and feeding sites or along flyways. It is important to note that gregarious fruit bats such as the Mariana fruit bat are particularly vulnerable to hunting at their roost sites. One shotgun blast may kill several bats or knock them to the ground, and a successful raid can glean up to 50 bats (Wiles 1987b; Lemke 1992a). Once fruit bats are on the ground, they are unable to take flight and are essentially helpless. Hunting at nursery colonies can also result in direct mortality and abandonment of infant and juvenile bats (Lemke 1992a). In Sheeline's (1991) survey, 45 percent of the respondents believed overhunting was the primary reason for the decline of fruit bats on Guam.

From 1975 to 1981, prior to listing of the Mariana fruit bats as endangered on Guam (49 FR 33881), approximately 15,800 fruit bats were shipped to Guam from Rota and Saipan for human consumption (Wiles and Payne 1986). This number could be twice the total number of Mariana fruit bats in existence today. During the last two decades, thousands of fruit bats have been shipped annually into the Mariana Islands from other Pacific islands for human consumption. Most of these shipments were the subspecies *Pteropus mariannus* pelewensis from the Republic of Palau. A single fruit bat can sell for U.S. $50–$75 in the CNMI (Worthington and Taisacan 1996; C. Kessler, in litt. 2003), where hunting of fruit bats has been illegal since 1977.

Overhunting, along with habitat loss, is cited as a causal factor in the initial fruit bat declines on Guam, Saipan, and Tinian (Perez 1972; Wheeler 1980; Wiles 1987b). Hunting-related declines on Guam, where hunting of fruit bats had been illegal since 1973, led to Federal listing as endangered on Guam in 1984 (49 FR 33881). Numerous documented reports indicate that hunting continues to be a threat to the Mariana fruit bat (Glass and Taisacan 1988; Lemke 1992b; Marshall *et al.* 1995; Worthington and Taisacan 1996; Stan Taisacan, CNMI DFW, pers. comm. 1997a, b; Rainey 1998; Nathan Johnson, CNMI DFW, pers. comm. 2000; G. Wiles, in litt. 2003; J. Esselstyn, pers. comm. 2004a; C. Kessler, pers. comm. 2004a; Arlene Pangelinan, Service, pers. comm. 2004). This long history of observations by CNMI biologists on Rota indicates some level of illegal hunting is occurring.

Illegal hunting of fruit bats on the northern islands is occasionally reported. In 1996, it was reported to be an increasingly significant problem in the CNMI (Worthington and Taisacan 1996). On Anatahan, which lies only 94 mi (151 km) from heavily-populated Saipan, remains of recently cooked fruit bats were found in the main campsite area in 1995 (Marshall *et al.* 1995). Also in 1995, a team of DFW biologists on the island observed residents of Anatahan cooking and eating fruit bats (Ann Marshall, Service (formerly CNMI DFW), pers. comm. 2004).

In 1998, 14 poached Mariana fruit bats were confiscated from a CNMI vessel returning from the northern islands (T. Eckhardt, in litt. 1998), and illegal hunting of Mariana fruit bats was reported on the island of Sarigan (Zoology Unlimited LLC 1998). On Pagan, 7 recently expended .410 (very small bore) shotgun shells were found in 1999, 4 more were found in 2000, and a .410 shell and fresh remains of cooked fruit bat were found during a helicopter refueling stop in 2001 (Cruz *et al.* 2000e; Johnson 2001). This size of ammunition is too small for hunting goats, pigs, or other ungulates, but can be used for birds as well as fruit bats. That expended shells were found in conjunction with fruit bat remains points to this ammunition being used to hunt fruit bats. Although the frequency of illegal hunting in the Northern Islands is likely low and difficult to quantify, this evidence supports that it does occur.

In 1987, between three and eight bats were reported to be illegally hunted from a small colony on Saipan (Glass and Taisacan 1988). In 1997, there was a report of nearly 90 bats that were illegally hunted on Tinian from a colony that roosted on the island briefly (Tim Sutterfield, Navy, pers. comm. 1998). Following supertyphoon Roy in 1988, defoliation and other damage caused by the storm forced bats on Rota to forage during the day in areas close to human habitation (Lemke 1992b; see Factor E). As a result, extensive illegal hunting occurred, contributing to a reduction of the total Rota population by more than half (A. Palacios, in litt. 1990). Although bat numbers on Rota had risen again to more than 2,000 before supertyphoon Pongsona in December 2002, the population again declined by more than half following this storm. With illegal hunting as a contributing factor, this decline was documented by monthly surveys conducted by the same individuals using the same techniques (evening colony departures, direct colony counts, and searches for solitary bats). These surveys yielded estimates of fewer than 750 animals for most of the 15 months following the supertyphoon (J. Esselstyn, in litt. 2003, pers. comm. 2004b). Similar sharp increases in hunting of fruit bats following severe storms has been documented in American Samoa as well as in the Mariana Islands (Craig *et al.* 1994; see Factor D).

Continued illegal hunting on Rota is reported to diminish the fruit bat population's rate of recovery to pre-storm abundance as observed by CNMI biologists (Worthington and Taisacan 1996). Hunter interviews indicated that hunting pressure on fruit bats has increased by roughly 31 percent in the year since Pongsona (J. Esselstyn, pers. comm. 2004a). As recently as July 2004, we received reports from members of the community on Rota that one or more illegal hunting incidents in June and July killed at least 40 fruit bats, resulting in the abandonment of the largest colony on the island, and another smaller colony had been abandoned as well (C. Kessler, pers. comm. 2004a). On August 22–23, 2004, 21 months after supertyphoon Pongsona, supertyphoon Chaba hit the Mariana Islands, and Rota sustained severe damage. Information that we received indicates that this storm may have defoliated as much as 60 to 75 percent of the island (A. Pangelinan, pers. comm. 2004). Fruit bats were seen foraging near and on the ground; frequent gun-shots and cooking of fruit bats were noted following the storm (A. Pangelinan, pers. comm. 2004). This level of illegal hunting, characteristic of the post-typhoon period, taking place again so soon after previous typhoons, is likely to compound the effects.

C. *Disease or predation.* The brown treesnake, which has caused the extinction of several bird species on Guam (Savidge 1987), is probably responsible for the lack of recruitment in the single remaining Mariana fruit bat colony on that island (Wiles 1987a; Pierson and Rainey 1992). Although only two cases of treesnake predation on Guam bats have been reported (Wiles 1983), the brown treesnake is

considered capable of preying on non-volant young bats at their roosts (Service 1990). Wiles (1987b) and Wiles *et al.* (1995) suggested that the nocturnal brown treesnake will prey on young bats that have become too large to be carried by their mothers and are left at the roosts at night. In 1982, 46.6 percent of all juvenile Mariana fruit bats counted in northern Guam were judged to be in this size class, but between 1984 and 1986, after brown treesnakes had spread into the area, no bats of this size class were observed (Service 1990).

The brown treesnake was accidentally introduced to Guam between 1945 and 1952, probably in ship cargo (Rodda *et al.* 1992). By 1986, the treesnake had reached the extreme northern end of the island (Savidge 1987), and was probably present throughout the island. Because of a variety of historical and ecological factors associated with the treesnake, along with Guam's location and role as a major transportation hub in the Pacific, the probability is high that human activities will disperse brown treesnakes from Guam to other Pacific islands (Fritts 1988).

Reports of treesnakes found in the CNMI, especially on the island of Saipan, have increased since 1982 (Brown Treesnake Control Plan 1996). As of July 2004, on Saipan there have been 62 credible brown tree snake sightings resulting in the capture of 11 live brown treesnakes (N. Hawley, pers. comm. 2004a). The frequency of treesnake sightings on Saipan reported from 1982 through 2004 indicates that brown treesnakes are present on the island (Brown Treesnake Control Plan 1996; N. Hawley, pers. comm. 2004a) leading to increased predation risks. No reports of brown treesnakes exist from other islands in the archipelago.

D. *The inadequacy of existing regulatory mechanisms.* Prompted by severe declines in fruit bat numbers, the CNMI legislature in 1977 passed a moratorium on the taking of fruit bats on all islands (Pub. L. 5–21, September 1977). However, no agency possessed authority to enforce the law until the CNMI DFW was created in 1981 (Lemke 1992a). The bat has since been listed as threatened or endangered (the CNMI makes no specific distinction between the threatened and endangered categories) by the CNMI government on Rota, Saipan, Tinian, and Aguiguan (CNMI 1991). The CNMI's designation of threatened or endangered species does not include prohibition on take (K. Garlick, Service, in litt. 1997) or any other protection (A. Palacios, in litt. 1990; Worthington and Taisacan 1996). However, current CNMI hunting regulations (Part 4, Section 10.7.i (Commonwealth Register Vol. 23, August 16, 2001, p. 18266)) prohibit the hunting, killing, or possessing of threatened, endangered, and protected species. DFW has statutory authority to promulgate and enforce such regulations to protect fruit bats and impose fines for violations (L. Williams, pers. comm. 2004).

However, it has been reported that there is little enforcement of the hunting ban, and few investigations or convictions have taken place (Lemke 1992a; Tina de Cruz, CNMI DFW, pers. comm. 2003). In addition, following supertyphoon Pongsona, a CNMI biologist on Rota reported observing at least two individuals illegally hunting fruit bats from a colony, received a report from a conservation officer of five hunting parties in the vicinity of the same colony, and received anecdotal reports of illegal hunting at least two additional colonies, but no one was apprehended or cited for illegal hunting (J. Esselstyn, in litt. 2003). Also, although the Mariana fruit bat season is currently closed under DFW regulations (CNMI 1986), the DFW has, in the past, authorized special bat hunts on Rota and Anatahan. In light of this, there is the possibility that DFW will authorize special bat hunts on Rota in the future.

The Mariana fruit bat also is listed as an endangered species by the Government of Guam and take is prohibited under this designation (Wiles 1982). On Guam, the bat is legally protected from hunting by its endangered status under U.S. and Guam laws, and it is physically protected because the primary colony is in a remote location on Air Force lands where access is restricted.

On October 22, 1987, *Pteropus mariannus* was included in Appendix II of the Convention on International Trade in Endangered Species (CITES), a treaty established to prevent international trade that may threaten the survival of plant and animal species. Continuing declines in fruit bat populations resulted in the reclassification of *P. mariannus* to Appendix I of CITES on January 18, 1990, as well as the listing of all other species of *Pteropus* under Appendix II of CITES (except those species already listed under Appendix I), in an effort to control shipments and to encourage exporting countries to conserve their bat populations. All subspecies of *P. mariannus* are now protected under Appendix I of CITES (50 CFR part 23).

Generally, both import and export permits are required from countries before a CITES Appendix I species may be shipped, and Appendix I species may not be imported for primarily commercial purposes. CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired. However, CITES does not itself regulate take or domestic trade of wildlife between islands in the Mariana archipelago, as they are not separate countries.

The Republic of Palau became subject to the CITES restrictions for trade with the Mariana Islands when it established its independence from the United States in October 1994. However, small numbers of fruit bats from Palau continue to be intercepted in the Mariana Islands (G. Phocas, pers. comm. 2004; J. Esselstyn, pers. comm. 2004c). Reports suggest that Appendix I fruit bat species continue to be smuggled into the Mariana Islands from points as diverse as Samoa, the Federated States of Micronesia, and the Philippines, although with far less frequency than in the 1980s. An integrated approach of regulation, enforcement, and outreach, began in the 1990s by the Service on Guam, sought out a variety of agencies and other parties. Importation records suggest that these efforts, along with an export inspection program in Palau, may have slowed a region-wide harvest of *Pteropus* fruit bats; importation into the Marianas has dropped from tens of thousands each year to small "personal" shipments (G. Phocas, pers. comm. 2004). Experts and Federal law enforcement personnel are concerned that the demand for fruit bats will remain high, and that the reduction of international smuggling may have increased illegal hunting pressure on Rota and the northern islands (Worthington and Taisacan 1995; Wiles 1996; G. Phocas, pers. comm. 2004). Despite existing regulatory mechanisms for the protection of the Mariana fruit bat, illegal hunting and international trafficking in fruit bats continues to occur leading to reductions in fruit bat populations.

E. *Other natural or manmade factors affecting its continued existence.* Military training activities in areas used by fruit bats could disrupt the behavior of these bats. In general, military training activities including live-fire exercises and aircraft overflights, in or near areas on any of the islands that support fruit bats, are likely to disrupt fruit bat behavior and may result in mortalities. A study of the effects of aircraft overflights on the Mariana fruit bat at Andersen Air Force Base, Guam, found that current levels of air traffic appear to be within levels that are tolerable to the colony at Pati Point. Higher levels of aircraft traffic, particularly low-level field carrier

landing practices (FCLPs), would have the potential to cause partial or complete abandonment of the Pati Point roost (Morton 1996). Nocturnal FLCPs and other air traffic pose an even greater risk to fruit bats because animals are in the air, traveling between the roost and various foraging areas at night; under these circumstances it is possible that low-flying aircraft may even strike bats (Morton 1996). An increase in air traffic at Andersen Air Force Base has been proposed and is currently under NEPA review (J. Newman, pers. comm. 2004).

The small number of Mariana fruit bats remaining on some islands (*e.g.*, Guam, Saipan, and Aguiguan) may place bats on these islands at risk of extirpation from natural disturbances, environmental changes, and other chance events to which small populations typically are vulnerable (Meffe and Carroll 1997). Typhoons, in particular, could eliminate bats on one or more of these islands, although with sufficient time and suitable remaining habitat, these islands could be recolonized by immigrants.

Typhoons can drastically reduce or alter forested areas that constitute fruit bat habitat; under natural or prehistoric conditions, the size of fruit bat populations and the extent of forest habitat were sufficient for the species to coexist with this natural disturbance. Today, however, such storms can exacerbate the anthropogenic pressures on the Mariana fruit bat. In 1988, supertyphoon Roy defoliated or altered almost all of the forested areas on Rota (Fancy and Snetsinger 1996). Another typhoon that hit the northern island of Maug in 1981 also had similar devastating effects on fruit bat habitat (Lemke 1992b). Rota was hit hard most recently by supertyphoons Pongsona (December 2002) and Chaba (August 2004), and the island's forest habitat was further damaged.

The impacts of severe storms on fruit bat habitat can change fruit bat foraging and roosting behavior by temporarily modifying forest structure, changing tree species composition (by facilitating encroachment of nonnative species), and decimating important food resources (Lemke 1992b). The latter condition is particularly important, because when typical food resources are not available, fruit bats may seek forage in places and at times that increase their vulnerability to illegal hunting (Craig *et al.* 1994; Pierson *et al.* 1996). There is no evidence that direct mortality of fruit bats caused by the supertyphoons Roy and Pongsona was significant (Lemke 1992b; J. Esselstyn, in litt. 2003). However, defoliation and other damage caused by storms forces bats to forage during the day in areas close to human habitation (Lemke 1992b). Fruit bats were illegally hunted on Rota after both Roy and Pongsona, contributing to an observed reduction in numbers (A. Palacios, in litt. 1990; J. Esselstyn, in litt. 2003, in litt. 2004b).

The northern islands of the CNMI were formed by volcanic activity on the Mariana trench. This trench is a subduction zone, where one tectonic plate of the Earth's lithosphere is moving beneath another. The northern islands thus all have the potential for volcanic activity, and eruptions are another natural disturbance that may alter fruit bat habitat in the northern islands. Pagan last erupted in 1981 and a lava flow covered a part of the island. Anatahan erupted in May 2003, and much of the island was denuded. As described previously in "Status of CNMI Northern Islands," the fruit bat population on Anatahan declined from more than 1,000 prior to the eruption to 350–450 individuals in December of 2003 (C. Kessler, in litt. 2003), but the population appeared to be recovering by March 2004, when more than 1,000 bats were recorded (C. Kessler, pers. comm. 2004c). Few humans have visited the island since the May 2003 eruption, and illegal hunting there is thus unlikely to have confounded the response of Anatahan's bat population to this natural disturbance.

Conclusions

The loss of native forest, predation (on Guam and possibly on Saipan) by the brown treesnake, and illegal hunting (especially on Rota) are the most significant threats to the survival of this species. Feral ungulates continue to severely degrade fruit bat forest habitat on some of the northern islands. Few bats occur on Guam, Saipan, Tinian, Aguiguan, and Maug, and such small numbers are highly vulnerable to severe storms and other climate events that can effect the vital rates of a population and to biotic changes within a population (such as sex ratio, age structure, and other demographic parameters) that can affect reproduction and survival of individual animals (Meffe and Carroll 1997). A significant number of fruit bats persist on Rota, and numbers there have shown some rebound following a documented decline after Typhoon Pongsona. Rota's fruit bats remain at risk from illegal hunting and loss of forest habitat. Fruit bats from Rota are believed to move among the southern islands, and this population is considered to be critical to the long-term stability of fruit bats in the Mariana Islands (Wiles and Glass 1990). The brown treesnake adversely impacts recruitment of bats on Guam, and there have been a significant number of sightings of this predator on Saipan. Therefore, listing the Mariana fruit bat as threatened in the CNMI is warranted.

The evidence of interisland movement between the islands of the Mariana archipelago (Wiles and Glass 1990; Wiles and Johnson 2004) indicates that the Mariana fruit bats in the Mariana Islands be viewed and managed as one taxon. In developing this rule, we have assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Mariana fruit bat. Based on this information, we believe that it is biologically appropriate to consider fruit bats on each island on Guam and the CNMI as part of one population, and the appropriate action is to, reclassify the Mariana fruit bat from endangered to threatened on Guam, and list the Mariana fruit bat as threatened throughout its range in the CNMI.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species, and (II) that may require special management considerations or protection, and (ii) specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which protection under the Act is no longer necessary.

Section 4(a)(3) of the Act and implementing regulations (50 CFR 424 part 12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be threatened or endangered. Our implementing regulations (50 CFR 424.12(a)) state that the designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

On October 15, 2002, we published a proposed rule designating critical

habitat for the Mariana fruit bat and two other species on Guam (67 FR 63738). The final rule was published on October 28, 2004 (68 FR 62944).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and encourages conservation actions by Federal, State, Tribal, and local agencies, non-governmental conservation organizations, and private individuals. The Act provides for possible land acquisition and cooperation with States and requires that recovery actions be carried out for listed species. Recovery planning and implementation, the protection required by Federal agencies, and the prohibitions against certain activities involving listed animals are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Subsection 4(f) of the Act requires the Service to develop and implement plans for the conservation of endangered and threatened species ("recovery plans"). The recovery process involves halting or reversing the species' decline by addressing the threats to its survival. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems, thus allowing delisting.

Recovery planning, the foundation for species recovery, includes the development of a recovery outline shortly after a species is listed, and later, preparation of draft and final recovery plans, and revision of the plan as significant new information becomes available. The recovery outline—the first step in recovery planning—guides the immediate implementation of urgent recovery actions, and describes the process to be used to develop a recovery plan. The recovery plan identifies site-specific management actions that will achieve recovery of the species, measurable criteria that determine when a species may be downlisted or delisted, and methods for monitoring recovery progress. Recovery teams, consisting of species experts, Federal and State agencies, non-government organizations, and stakeholders, are often established to develop recovery plans. When completed, a copy of the recovery outline, draft recovery plan, or final recovery plan will be available from our Web site (*http://endangered.fws.gov*), or if unavailable or inaccessible, from our office (*see* **FOR FURTHER INFORMATION CONTACT** section). We issued a recovery plan for the fruit bat on Guam (Service 1990); this listing rule will trigger a new recovery planning process for the Mariana fruit bat.

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, states, non-governmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.*, restoration of vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private lands as many occur primarily or solely on private lands.

The funding for recovery actions can come from a variety of sources, including Federal budgets, State programs, and cost share grants for non-Federal landowners, the academic community, and non-governmental organizations. In addition, pursuant to section 6 of the Act, we would be able to grant funds to the CNMI and Government of Guam for management actions that promote the protection and recovery of the Mariana fruit bat. Information on our grant programs that are available to aid species recovery can be found at: *http://endangered.fws.gov/grants/index.html*. In the event that our internet connection is inaccessible, please check *www.grants.gov* or check with our grant programs contact at U.S. Fish and Wildlife Service, Ecological Services, 911 NE 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–6241; facsimile 503/231–6243).

Please let us know if you are interested in participating in recovery efforts for the Mariana fruit bat. Additionally, we invite you to submit any further information on the species whenever it becomes available and any information you may have for recovery planning purposes (*see* **FOR FURTHER INFORMATION CONTACT** section).

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies, including the Service, to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat if any has been designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal agency actions that may require consultation for the Mariana fruit bat include, but are not limited to actions within the jurisdiction of the U.S. Army Corps of Engineers, Federal Emergency Management Agency, Federal Highways Administration, Federal Aviation Administration, U.S. Department of Housing and Urban Development, Natural Resources Conservation Service, and branches of the DOD. Parts of Guam, Tinian, and Farallon de Medinilla are used as, or are under consideration for use as, military bases or training areas by U.S. armed forces. Parts of Guam are federally owned by the DOD and Service, and three-fourths of Tinian and all of Farallon de Medinilla are leased by the Navy. Activities on these lands will trigger consultation under section 7 if they may affect the Mariana fruit bat. Federally supported activities that could affect the Mariana fruit bat or its habitat in the future include, but are not limited to, the following: Helicopter over-flights, bombardment and live-fire exercises, troop movements, agricultural projects, and construction or improvement of roads, airports, firebreaks, radio towers, and housing and other buildings.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered and threatened wildlife. The prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.21 and 17.31 for endangered and threatened species, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Further, it is illegal for any person to attempt to commit, to solicit another person to commit, or to cause to be committed, any of these acts.

Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened animal species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. Requests for copies of the regulations regarding listed wildlife and inquiries about permits and prohibitions may be addressed to U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, OR 97232–4181.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to 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 Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the range of the species. We believe that, based on the best available information, that most scientific or recreational activities (other than capturing or hunting fruit bats) that do not damage habitat within forested areas that support Mariana fruit bats would not likely result in violations of section 9.

We believe the following activities could potentially result in a violation of section 9, but possible violations are not limited to these actions alone:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries;

(2) Intentional introduction of exotic species that compete with or prey on bats, such as the introduction of the predatory brown treesnake to islands that support bat colonies;

(3) Activities that disturb Mariana fruit bats at roost sites and feeding areas; and

(4) Unauthorized destruction or alteration of forested areas that are required by the bats for foraging, roosting, breeding, or rearing young.

We do not consider these lists to be exhaustive, and provide them as information to the public. You should direct questions regarding whether specific activities would constitute a violation of section 9 to the Pacific Islands Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations concerning listed animals and general inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, OR 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from our Pacific Islands Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Author

The primary author of this document is Holly Freifeld, Pacific Islands Fish and Wildlife Office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below.

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.11(h), the table entry for "Bat, Mariana fruit" under MAMMALS is revised to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	*
MAMMALS							
*	*	*	*	*	*	*	*
Fruit Bat, Mariana (=fanihi, Mariana flying fox)	*Pteropus mariannus mariannus.*	Western Pacific Ocean—U.S.A. (GU, MP).	Entire	T	156	Guam 17.95(a).	NA

Dated: December 30, 2004.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 05–240 Filed 1–5–05; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 70, No. 4
Thursday, January 6, 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. 2000–NM–360–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 777–200, and 777–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 747–400, 777–200, and 777–300 series airplanes, that would have required, for certain airplanes, replacement of the cell stack of the flight deck humidifier with a supplier-tested cell stack, or replacement with an end plate and subsequent deactivation of the flight deck humidifier. For other airplanes, that proposed AD would have required replacement of the cell stack with a blanking plate or a new cell stack, or replacement of the blanking plate with a supplier-tested cell stack. This new action revises the proposed AD by adding airplanes to the applicability; adding new inspections to determine certain part numbers; requiring replacement of the blanking plate with a supplier-tested cell stack if necessary; and changing certain words to clarify the intent of the proposed AD. The actions specified by this new proposed AD are intended to prevent an increased pressure drop across the humidifier and consequent reduced airflow to the flight deck, which could result in the inability to clear any smoke that might appear in the flight deck. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 31, 2005.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–360–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–360–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Palmer, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6481; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–360–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–360–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 747–400, 777–200, and 777–300 series airplanes, was published as a notice of proposed rulemaking (NPRM) (hereafter referred to as the "original NPRM") in the **Federal Register** on September 19, 2003 (68 FR 54874). The original NPRM would have required, for certain airplanes, replacement of the cell stack of the flight deck humidifier with a supplier-tested cell stack, or replacement with an end plate and subsequent deactivation of the flight deck humidifier. The original NPRM also would have required, for other airplanes, replacement of the cell stack with a blanking plate or a new cell stack, or replacement of the blanking plate with a supplier-tested cell stack. The original NPRM was prompted by reports of sagging cell stack membranes of the flight deck humidifiers. That condition, if not corrected, could result in the

inability to clear any smoke that might appear in the flight deck.

Comments

Due consideration has been given to the comments received in response to the original NPRM. Some of the comments, as discussed below, have resulted in changes to the original NPRM.

Request To Withdraw the Proposed AD

One commenter, the parts manufacturer, requests that the proposed AD be withdrawn. The commenter contends that all affected humidifiers have been screened for the suspect cell stacks. The commenter also notes that it had no ability to track some of the cell stack serial numbers.

The FAA does not agree to withdraw the proposed AD. We have not received confirmation that all Model 747–400, 777–200, 777–300 series airplanes equipped with Hamilton Sundstrand flight deck humidifiers have been screened for the suspect cell stacks. Even if the airplanes specified in Boeing Alert Service Bulletin 747–21–A2414, Revision 1, dated October 26, 2000, and Boeing Service Bulletin 777–21A0048, Revision 1, dated September 7, 2000 (referenced as the appropriate sources of service information for accomplishing the proposed actions), were verified not to have a defective cell stack, a defective cell stack could have been installed on certain other airplanes with a Hamilton Sundstrand humidifier. If an airplane not listed in the service bulletin was originally delivered with an acceptable cell stack, it is possible that, through maintenance or replacement actions, a defective cell stack could have been installed on any Model 747–400, 777–200, or 777–300 airplane with a Hamilton Sundstrand humidifier having part number (P/N) 821486–1 or P/N 816086–1.

Based on further review, we have determined that there were approximately 100 flight deck humidifiers produced with the defective cell stack and that 114 airplanes could be fitted with the defective cell stack.

Due to the possibility that a defective cell stack could have been installed on any Model 747–400, 777–200, or 777–300 series airplane equipped with a Hamilton Sundstrand humidifier having P/N 821486–1 or P/N 816086–1, we have added an inspection of Model 747–400, 777–200, and 777–300 series airplanes equipped with Hamilton Sundstrand flight deck humidifiers to determine if P/N 821486–1 or P/N 816086–1 is installed, and as applicable, an inspection to determine if the cell stack has P/N 821482–1 or P/N 822976–2. We have added inspections or records reviews to paragraphs (a) and (d) of the supplemental NPRM and revised the other paragraphs accordingly.

The applicability of the supplemental NPRM has also been revised to "Model 747–400, 777–200, 777–300 series airplanes, equipped with Hamilton Sundstrand flight deck humidifiers." In addition, the cost table has been revised to include the cost of the additional inspections and we have revised the number of affected airplanes to 114 worldwide and 29 of U.S. registry.

Request To Revise Number of Affected Airplanes of U.S. Registry

One commenter, the airplane manufacturer, requests that the number of airplanes of U.S. registry be revised from 12 to none. The commenter notes that the original NPRM specifies there are "35 airplanes of the affected design in the worldwide fleet. The FAA estimates that 12 airplanes of U.S. registry would be affected by this AD." The commenter states that it has delivered 103 airplanes in production that could be fitted with the cell stack with excessive pressure drop (although only 23 may have been delivered in that configuration). The commenter notes that only one domestic operator has airplanes equipped with Hamilton Sundstrand humidifiers and that this operator cannot have any Model 777 series airplanes having cell stacks with excessive pressure drop. The commenter states the first Model 777 series airplane equipped with a Hamilton Sundstrand humidifier for this operator was the airplane on which the pressure drop discrepancy was discovered, and it was outfitted with a humidifier with an acceptable pressure drop. The commenter goes on to state that this operator's flight deck humidifier stock is known, and it can be shown that no affected cell stacks exist within that operator's fleet. Consequently, the commenter believes no airplanes of U.S. registry would be affected by this proposed AD.

We do not agree with the commenter's request to revise the number of airplanes of U.S. registry from 12 to none. As stated in the previous paragraph "Request to Withdraw the Proposed AD," there is a possibility that a defective cell stack could have been installed on any Model 747–400, 777–200, or 777–300 series airplane equipped with a Hamilton Sundstrand humidifier having P/N 821486–1 or P/N 816086–1. Because we have not received confirmation that all Model 747–400, 777–200, 777–300 series airplanes equipped with Hamilton Sundstrand flight deck humidifiers have been screened for the suspect cell stacks, the applicability of the supplemental NPRM has been revised and the number of airplanes of U.S. registry has been revised to 29.

Request To Remove "Replacement of the Blanking Plate With a Supplier Tested Cell Stack" Text From Summary and Cost Table

One commenter, the airplane manufacturer, requests that in the Summary of the original NPRM, the text "or replacement of the blanking plate with a supplier tested cell stack" be removed and the final row of the cost table in the Cost Impact section be removed. The commenter notes that to mitigate the risk of reduced flight deck airflow the original NPRM requires "For other airplanes, replacement of the cell stack with a blanking plate or a new cell stack, or replacement of the blanking plate with a supplier-tested cell stack." The commenter states that a risk of reduced airflow to the flight deck does not exist when a blanking plate is installed.

We agree that if a blanking plate is installed, reduced airflow to the flight deck will not occur. However, the text "or replacement of the blanking plate with a supplier-tested cell stack" is intended to prevent a discrepant part from being installed on an airplane on which an installed blanking plate is removed and a cell stack is installed. Therefore, in the summary of the supplemental NPRM, for the reasons we are revising the proposed AD, we have added the text "requiring replacement of the blanking plate with a supplier-tested cell stack if necessary" in order to clarify the intent of the proposed AD. We have not changed the cost table.

Request To Clarify Referenced Requirements

The same commenter states that it is unclear which four requirements of paragraph (a)(1) of the original NPRM are being referenced in paragraph (a)(2) of the original NPRM that states "Replacement of the cell stack with a supplier-tested cell stack in accordance with the 4 requirements of paragraph (a)(1) of this AD * * *"

We agree that paragraph (b)(2) (specified as paragraph (a)(2) of the original NPRM) should be clarified. The "4" in the "Replacement of the cell stack * * *" sentence was a typographical error. The sentence also should have specified that it was a replacement of the "end plate" and not the "cell stack." The intent of the sentence was to indicate that the humidifier could be reactivated if the end plate was replaced with a supplier-

tested cell stack. In addition, the sentence references Part 1 of Boeing Alert Service Bulletin 747–21A2414, Revision 1, dated October 26, 2000, as the relevant source of service information for the replacement. However, Part 1 of the service bulletin does not include procedures for the replacement of the end plate. The replacement of the end plate must be done in a method approved by the FAA. We have revised paragraphs (b) and (b)(2) of the supplemental NPRM and added paragraph (b)(3) of the supplemental NPRM to clarify that there is an option to replace the end plate with a supplier-tested cell stack.

Request To Remove Paragraph (c)(3) of the Original NPRM

The same commenter also requests removing paragraph (c)(3) of the original NPRM. The commenter states that paragraph (c)(3) concerns replacing a blanking plate with a cell stack. However, the commenter believes this is not necessary, as a humidifier with a blanking plate does not restrict flight deck airflow. The commenter states that this action is not necessary since the risk of reduced airflow to the flight deck does not exist when a blanking plate is installed.

We agree with the commenter that reduced airflow to the flight deck does not exist when a blanking plate is installed. However, the purpose of paragraph (e)(3) (specified as paragraph (c)(3) of the original NPRM) of the supplemental NPRM is to prevent a discrepant part from being installed on an airplane if the operator chooses to remove a blanking plate and install a cell stack in its place. Thus, while we do not agree to remove paragraph (e)(3) (specified as paragraph (c)(3) of the original NPRM) of the supplemental NPRM, we have revised the wording in paragraph (e)(3) of the supplemental NPRM to, "If a blanking plate is removed, and a cell stack installed, the cell stack installation must be done in accordance with Part 3 of the service bulletin."

Request to Revise "Dehumidifier" to "Humidifier"

The same commenter requests the word "dehumidifier" be revised to "humidifier." The commenter notes that paragraph (e) of the original NPRM specifies "flight deck dehumidifier cell stack." The subject of the original NPRM is a humidifier cell stack.

We agree with the commenter. Paragraph (g) (specified as paragraph (e) of the original NPRM) of the supplemental NPRM has been revised to specify "flight deck humidifier cell stack."

Request To Revise Reason Given for Sagging Cell Problem

The same commenter requests that the cause of the sagging cell problem be changed to "insufficient rigidity in the cell frame." The commenter notes that the "Discussion" section of the original NPRM states, "The sagging has been attributed to difficulties encountered during the membrane welding process." The commenter states that the sagging is actually a result of the cell frame material not being rigid. The action taken to correct the sagging cell problem is to change the cell frame material in order to make it more rigid.

We agree with the commenter that the sagging is actually a result of the cell frame material not being rigid. However, since the wording from the original NPRM "the sagging has been attributed to difficulties encountered during the membrane welding process" is not restated in the supplemental NPRM, no change is made.

Request To Clarify Reason for Increased Pressure

The same commenter requests that we clarify when there is an increased pressure drop across the humidifier. The commenter notes that the Discussion section of the original NPRM states "The result of the sagging membrane is an increased pressure drop across the humidifier (if it is activated)." The commenter states that the increased pressure drop would exist regardless of whether the humidifier is activated or not.

We agree that the increased pressure drop would exist regardless of whether the humidifier is activated or not. Boeing Alert Service Bulletins 747–21A2412 and 777–21A0048 do not state that the pressure drop occurs only when the humidifier is activated. However, since the Discussion section of the original NPRM is not restated in the supplemental NPRM, no change is made.

Conclusion

Since these changes expand the scope of the originally proposed rule, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Changes to Delegation Authority

Boeing has received a Delegation Option Authorization (DOA). We have revised this supplemental NPRM to delegate the authority to approve an alternative method of compliance for any repair required by this AD to the Authorized Representative for the Boeing DOA Organization rather than the Designated Engineering Representative (DER).

Cost Impact

There are approximately 114 airplanes of the affected design in the worldwide fleet. The FAA estimates that 29 airplanes of U.S. registry would be affected by this proposed AD. The following cost estimates would vary depending on the actions chosen by the operator.

Model/series	Action	Work hours	Hourly rate	Parts cost	Cost per airplane
747–400 777–200 777–300	Inspect flight deck humidifier for part number and inspect flight deck humidifier cell stack for part number.	1	$65	$0	$65
747–400	Replace cell stack with supplier-tested cell stack	5	65	5,100	5,425
747–400	Replace cell stack with end plate and deactivate humidifier	6	65	0	390
777–200 777–300	Replace cell stack with blanking plate	5	65	0	325
777–200 777–300	Replace cell stack with supplier-tested cell stack	5	65	6,053	6,378
777–200 777–300	Replace blanking plate with supplier-tested cell stack	3	65	6,053	6,248

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2000–NM–360–AD.

Applicability: Model 747–400, 777–200, and 777–300 series airplanes, equipped with a Hamilton Sundstrand flight deck humidifier; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an increased pressure drop across the humidifier and consequent reduced airflow to the flight deck, which could result in the inability to clear any smoke that might appear in the flight deck, accomplish the following:

Inspections/Records Review: Model 747–400 Series Airplanes

(a) For Model 747–400 series airplanes: Within 90 days after the effective date of this AD, inspect the flight deck humidifier to determine whether part number (P/N) 821486–1 is installed. Instead of inspecting the flight deck humidifier, a review of airplane maintenance records is acceptable if the P/N of the flight deck humidifier can be positively determined from that review.

(1) If a P/N other than P/N 821486–1 is installed, no further action is required by this paragraph.

(2) If P/N 821486–1 is installed, before further flight, inspect the flight deck humidifier cell stack to determine whether P/N 821482–1 is installed and "DEV 13433" is not marked next to the cell stack part number. Instead of inspecting the flight deck humidifier cell stack, a review of airplane maintenance records is acceptable if the P/N, including whether "DEV 13433" is marked next to the P/N, of the flight deck humidifier cell stack can be positively determined from that review. If "DEV 13433" is marked next to P/N 821482–1, no further action is required by this paragraph.

Cell Stack Replacement: Model 747–400 Series Airplanes

(b) If during the inspection required by paragraph (a)(2) of this AD, it is determined that the flight deck humidifier cell stack has P/N 821482–1 and does not have "DEV 13433" marked next to the cell stack part number: Before further flight, do the actions specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD.

(1) Replace the cell stack of the flight deck humidifier with a supplier-tested cell stack, in accordance with Part 1 of Boeing Alert Service Bulletin 747–21A2414, Revision 1, dated October 26, 2000.

(2) Replace the cell stack with an end plate and before further flight deactivate the flight deck humidifier, in accordance with Part 2 of Boeing Alert Service Bulletin 747–21A2414, Revision 1, dated October 26, 2000.

(3) If an end plate is removed, and a supplier-tested cell stack installed, the replacement must be done in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a replacement method to be approved, the approval must specifically reference this AD. Replacement of the end plate with a supplier-tested cell stack terminates the requirement to deactivate the flight deck humidifier specified in paragraph (b)(2) of this AD.

Note 1: Boeing Alert Service Bulletin 747–21A2414, Revision 1, dated October 26, 2000, refers to Boeing Service Bulletin 747–21–2405, Revision 4, dated July 29, 1999, as an additional source of service information for deactivating the humidifier.

Note 2: Boeing Alert Service Bulletin 747–21A2414, Revision 1, dated October 26, 2000, refers to Hamilton Sundstrand Service Bulletins 821486–21–01, dated March 15, 2000, as an additional source of service information for the cell stack replacement.

(c) Replacement of the cell stack before the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–21A2414, dated April 13, 2000, is acceptable for compliance with the applicable requirements of paragraphs (b)(1) and (b)(2) of this AD.

Inspections/Records Review: Model 777–200 and –300 Series Airplanes

(d) For Model 777–200 and 777–300 series airplanes: Within 90 days after the effective date of this AD, inspect the flight deck humidifier to determine if it is P/N 816086–1. Instead of inspecting the flight deck humidifier, a review of airplane maintenance records is acceptable if the part number P/N of the flight deck humidifier can be positively determined from that review.

(1) If a P/N other than P/N 816086–1 is installed, no further action is required by this paragraph.

(2) If P/N 816086–1 is installed, before further flight, inspect the flight deck humidifier cell stack to determine whether P/N 822976–2 is installed and "DEV 13433" is not marked next to the cell stack part number. Instead of inspecting the flight deck humidifier cell stack, a review of airplane maintenance records is acceptable if the P/N, including whether "DEV 13433" is marked next to the P/N, of the flight deck humidifier cell stack can be positively determined from that review. If "DEV 13433" is marked next to P/N 822976–2, no further action is required by this paragraph.

Cell Stack Replacement: Model 777–200 and –300 Series Airplanes

(e) If during the inspection required by paragraph (d)(2) of this AD, it is determined that the flight deck humidifier cell stack has P/N 822976–2 and does not have "DEV 13433" marked next to the cell stack part number: Before further flight, do the actions specified in paragraph (e)(1), (e)(2), or (e)(3) of this AD, in accordance with Boeing Service Bulletin 777–21A0048, Revision 1, dated September 7, 2000.

(1) Replace the cell stack with a blanking plate, in accordance with Part 1 of the service bulletin; and deactivate the humidifier system before further flight in accordance with a method approved by the Manager, Seattle ACO, FAA; or according to data meeting the certification basis of the airplane approved by an Authorized Representative for the Boeing Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a deactivation method to be approved, the approval must specifically reference this AD.

(2) Replace the cell stack with a supplier-tested cell stack, in accordance with Part 2 of the service bulletin.

(3) If a blanking plate is removed, and a cell stack installed, the cell stack installation must be done in accordance with Part 3 of the service bulletin.

Note 3: Boeing Service Bulletin 777–21A0048, Revision 1, dated September 7, 2000, refers to Hamilton Sundstrand Service Bulletin 816086–21–01, dated March 15, 2000, as an additional source of service information for the cell stack replacement.

Parts Installation

(f) On Model 747–400 series airplanes: As of the effective date of this AD, no person may install a flight deck humidifier cell stack having P/N 821482–1, unless "DEV 13433" is also marked next to the cell stack part number.

(g) On Model 777–200 and 777–300 series airplanes: As of the effective date of this AD, no person may install a flight deck humidifier cell stack having P/N 822976–2, unless "DEV 13433" is also marked next to the cell stack part number.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on December 29, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–286 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18038; Directorate Identifier 2004–NE–01–AD]

Notice of Public Meeting

SUMMARY: The Federal Aviation Administration (FAA) will hold a public meeting to gather additional comment and data on a proposed Airworthiness Directive published as a Notice of Proposed Rulemaking (NPRM), Docket Number FAA–2004–18038, (Directorate Identifier 2004–NE–01–AD), in the **Federal Register** on June 16, 2004. This public meeting will follow the procedure provided in § 11.53 of Title 14 of the Code of Federal Regulations (14 CFR 11.53).

DATES: The FAA public meeting will be held February 8, 2005, from 1 p.m. to 5 p.m.

ADDRESSES: The FAA public meeting will be held at the Anaheim Convention Center, 800 West Katella Avenue, Anaheim, California, 92802.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone: (562) 627–5245, fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 2004, the FAA published in the **Federal Register** a Notice of Proposed Rulemaking, Docket Number FAA–2004–18038, (Directorate Identifier 2004–NE–01–AD), that proposed a new Airworthiness Directive (AD) Honeywell International Inc., (formerly AlliedSignal, Inc., formerly Textron Lycoming) T5309, T5311, T5313B, T5317A, T5317A–1, and T5317B series turboshaft engines, installed on, but not limited to, Bell 205 and Kaman K–1200 series helicopters, and T53–L–9, T53–L–11, T53–L–13B, T53–L–13BA, T53–L–13B S/SA, T53–L–13B S/SB, T53–L–13B/D, and T53–L–703 series turboshaft engines, installed on, but not limited to, Bell AH–1 and UH–1 helicopters, certified under § 21.25 or 21.27 of the Code of Federal Regulations (14 CFR 21.25 or 14 CFR 21.27). As a result of that Notice of Proposed Rulemaking, we received a number of written comments. One commenter requested that we hold a public meeting for the FAA to hear additional information. While the FAA does not generally hold public meetings for proposed Airworthiness Directives, in this case we believe that a non-adversarial, fact-finding proceeding will benefit us. Therefore, we find that the written comments we have received will not allow us to make a fully informed decision on whether to issue a Final Rule, and that a public meeting to hear additional comment on the proposed AD is appropriate. We invite interested persons to attend and present their views to us on specific issues related to this Notice of Proposed Rulemaking. We are particularly interested in hearing from operators of aircraft using T53 turboshaft engines what life limits they are observing for the life-limited rotating components of T53 series turboshaft engines, what cycle counting methods are they practicing, and what mission profile (*i.e.*, logging operation, fire fighting) are they flying.

Agenda

The purpose of this meeting is to:

- (Item 1) Conduct a presentation on the background leading to the Notice of Proposed Rulemaking (NPRM), Docket Number FAA–2004–18038, (Directorate Identifier 2004–NE–01–AD), published in the **Federal Register** on June 16, 2004. The subject of the NPRM is FAA-approved life limits for the life limited rotating components including those made of D979 material, installed in Honeywell (formerly AlliedSignal, formerly Lycoming) T53 series turboshaft engines.
- (Item 2) Invite the interested persons to present their views to the FAA regarding the NPRM.
- (Item 3) Ask the operators of T53 series turboshaft engine powered helicopters what life limits they are observing for the life-limited rotating components of T53 series turboshaft engines, what cycle counting methods are they practicing; and what mission profile (*i.e.*, logging operation, fire fighting) are they flying.

Procedure

The meeting will be held using the procedure provided in § 11.53 of Title 14 of the Code of Federal Regulations (14 CFR 11.53). The meeting will be open to the public, non-adversarial, and be conducted by a representative of the FAA. In addition, each person desiring to make a presentation must either notify us in advance of the meeting by contacting Robert Baitoo (*see* **FOR FURTHER INFORMATION CONTACT**), or by signing the registers that will be available immediately preceding the meeting at the meeting location. Those persons who have registered in advance or at the door will be invited to speak first. If any time remains after all

persons who have pre-registered to speak have had an opportunity to present their views, then other persons who have not pre-registered may be invited to speak. When registering to speak, you must indicate whether you intend to speak in favor of the proposed AD, against the proposed AD, or wish only to present data. You may both present data and speak either in favor or against the AD. The time available for each person to speak may be limited depending on the number of persons who desire to present data and information. It is our desire to allow as many persons as possible to present their views and data.

Accommodation

The meeting will be accessible to persons with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Robert Baitoo (*see* **FOR FURTHER INFORMATION CONTACT**) before January 25, 2005.

Costs

There is no cost to the public for attending the FAA public meeting. Each attendee must, however, bear any cost of vehicle parking.

Dated: December 30, 2004.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 05–272 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 710 Through 729

[Docket No. 99061158–4361–04]

RIN 0694–AB06

Chemical Weapons Convention Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends until February 7, 2005, the deadline for public comments on the proposed rule that would amend the Chemical Weapons Convention Regulations (CWCR) by updating them to include additional requirements identified in the implementation of the Chemical Weapons Convention (CWC) and to clarify other CWC requirements. This extension of time would allow the public additional time to comment on the rule.

DATES: Comments on this rule must be received by February 7, 2005.

ADDRESSES: You may submit comments, identified by RIN 0694–AB06, by any of the following methods:

- *E-mail: wfisher@bis.doc.gov.* Include "RIN 0694–AB06" in the subject line of the message.
- *Fax:* (202) 482–3355. Please alert the Regulatory Policy Division, by calling (202) 482–2440, if you are faxing comments.
- *Mail or Hand Delivery/Courier:* Willard Fisher, U.S. Department of Commerce, Bureau of Industry and Security, Regulatory Policy Division, 14th St. & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694–AB06.

FOR FURTHER INFORMATION CONTACT: For questions of a general or regulatory nature, contact the Regulatory Policy Division, telephone: (202) 482–2440. For program information on declarations, reports, advance notifications, chemical determinations, recordkeeping, inspections and facility agreements, contact the Treaty Compliance Division, Office of Nonproliferation and Treaty Compliance, telephone: (703) 605–4400; for legal questions, contact Rochelle Woodard, Office of the Chief Counsel for Industry and Security, telephone: (202) 482–5301.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2004 (69 FR 70754), the Bureau of Industry and Security (BIS) published a proposed rule that would amend the Chemical Weapons Convention Regulations (CWCR) by updating them to include additional requirements, which were identified as necessary for the implementation of the Chemical Weapons Convention (CWC) provisions, and to clarify other CWC requirements. The deadline for the comment period on the proposed rule was January 6, 2005. The Bureau is now extending that deadline to February 7, 2005, to allow the public additional time to comment on the rule.

Dated: January 3, 2005.

Eileen Albanese,

Director, Office of Exporter Services.

[FR Doc. 05–287 Filed 1–5–05; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AU05

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D: 2006–07 Subsistence Taking of Fish and Shellfish Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for fishing seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2006–07 regulatory year. The rulemaking is necessary because subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the fish and shellfish taking regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart D: 2005–06 Subsistence Taking of Fish and Wildlife Regulations," which expire on March 31, 2006. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board and the General Regulations related to the taking of fish and shellfish.

DATES: The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than March 25, 2005. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule on dates ranging from February 21, 2005, through March 25, 2005. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings.

ADDRESSES: Please submit proposals electronically to *Subsistence@fws.gov.* See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. You may also submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. The public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for

additional information on locations of the public meetings.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Public Review Process—Regulation Comments, Proposals, and Public Meetings

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

Region 1—Southeast Regional Council, Petersburg, February 21, 2005
Region 2—Southcentral Regional Council, Anchorage, March 15, 2005
Region 3—Kodiak/Aleutians Regional Council, Port Lions, March 21, 2005
Region 4—Bristol Bay Regional Council, Naknek, February 24, 2005
Region 5—Yukon-Kuskokwim Delta Regional Council, Toksook Bay, February 24, 2005
Region 6—Western Interior Regional Council, Allakaket, March 8, 2005
Region 7—Seward Peninsula Regional Council, Nome, February 23, 2005
Region 8—Northwest Arctic Regional Council, Kotzebue, March 9, 2005
Region 9—Eastern Interior Regional Council, Venetie, March 2, 2005
Region 10—North Slope Regional Council, Barrow, March 2, 2005

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings.

Electronic filing of comments (preferred method): Please submit electronic comments (proposals) and other data to *Subsistence@fws.gov*. Please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

During May 2005, we will compile and distribute for additional public review the written proposals to change subpart D fishing regulations and in subpart C the customary and traditional use determinations. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period, which is presently scheduled to end on June 30, 2005.

We will hold a second series of Regional Council meetings in September and October 2005, to assist the Regional Councils in developing recommendations to the Board. You may also present comments on published proposals to change fishing and customary and traditional use determination regulations to the Regional Councils at those fall meetings.

The Board will discuss and evaluate proposed changes to the subsistence taking of fish and shellfish regulations during a public meeting to be held in Anchorage in January 2006. You may provide additional oral testimony on specific proposals before the Board at that time. The Board will then deliberate and take final action on proposals received that request changes to this proposed rule at that public meeting.

Please Note. The Board will not consider proposals for changes relating to hunting or trapping regulations at this time. The Board will be calling for proposed changes to those regulations in August 2005.

The Board's review of your comments and fish and shellfish proposals will be facilitated by your providing the following information: (a) Your name, address, and telephone number; (b) the section and/or paragraph of the proposed rule for which your change is being suggested; (c) a statement explaining why the change is necessary; (d) the proposed wording change; (e) any additional information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § __.24 subpart C, and §§ __.25, __.27, or __.28, subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members, and on the basis of least harm to the subsistence user and the resource involved. Proposals should be specific to customary and traditional use determinations or to subsistence fishing seasons, harvest limits, and/or methods and means.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA.

However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114). Consistent with subparts A, B, and C of these regulations, as revised October 14, 2004 (69 FR 60957), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, and the annual subpart D regulations.

All Board members have reviewed this proposed rule and agree with its substance. Because this proposed rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public

Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this proposed rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 would apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (2004) and 50 CFR 100.11 (2004), and for the purposes identified therein, we divide Alaska into 10 subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in January 2006.

Proposed Changes From 2005–06 Seasons and Harvest Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations (§ __.24 of subpart C) are also subject to an annual review process providing for modification each year. The text of the 2004–05 subparts C and D final rule, as modified by Federal Subsistence Board actions during its January 11–13, 2005, public meeting, serves as the foundation for the 2006–07 subparts C and D proposed rule. Please see the 2004–05 subparts C and D final rule published in the February 3, 2004 (69 FR 5018), issue of the **Federal Register**. The modifications for 2005–06 made by the Board during its January 2005 meeting may be viewed on the Office of Subsistence Management Web site at *http://www.alaska.fws.gov/asm/home.html*. The regulations contained in this proposed rule would take effect on April 1, 2006, unless elements are changed by subsequent Board action following the public review process outlined herein.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance—A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture—Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, subparts A, B, and C (57 FR 22940, published May 29, 1992), implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available from the office listed under **FOR FURTHER INFORMATION CONTACT.** The Secretary of the Interior with the concurrence of the Secretary of Agriculture determined that the expansion of Federal jurisdiction did not constitute a major Federal action, significantly affecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance with Section 810 of ANILCA—A Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

During the environmental assessment process, an evaluation of the effects of this rule was also conducted in accordance with Section 810. This evaluation supports the Secretaries' determination that the rule will not reach the "may significantly restrict" threshold for notice and hearings under ANILCA Section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act—The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018—0075, which expires August 31, 2006. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a current valid OMB control number.

Economic Effects—This rule is not a significant rule subject to OMB review under Executive Order 12866. This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport or commercial fishery on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. The exact number of businesses and the amount of trade that will result from this Federal land—related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as tackle, boat, and gasoline dealers. The number of small entities affected is unknown; however, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon [Note: $3.00 per pound is much higher than the current commercial value for salmon] and $0.58 per pound for other fish, would equate to about $34 million in food value Statewide.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The Departments certify based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

Drafting Information: William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Bob Gerhard, Alaska Regional Office, National Park Service; Dr. Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs; Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; and Steve Kessler, USDA-Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR 242 and 50 CFR 100 for the 2006–07 regulatory year. The text of the amendments would be the same as the final rule for the 2004–05 regulatory year (69 FR 5018) as modified by Federal Subsistence Board actions January 11–13, 2005.

Dated: November 30, 2004.

Steve Kessler,

Subsistence Program Leader, USDA-Forest Service.

Dated: November 30, 2004.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board.

[FR Doc. 05–270 Filed 1–5–05; 8:45 am]

BILLING CODE 4310–55–P; 3410–11–P

Notices

Federal Register
Vol. 70, No. 4
Thursday, January 6, 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

Forest Service

North Bridgers Grazing Allotment Management Plan Update; Bozeman Ranger District; Gallatin National Forest; Gallatin County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to update the allotment management plans for eleven cattle and horse grazing allotments. The allotments are located in the northern end of the Bridger Mountain Range approximately 20 miles north of Bozeman Montana.

DATES: Initial comments concerning this project must be received 45 days after publication of this Notice of Intent. The draft environmental impact statement is expected April 2006 and the final environmental impact statement is expected September 2006.

ADDRESSES: Send written comments to John Councilman, 3710 Fallon Street Suite C, Bozeman, Montana 59718. Send e-mail comments to: *comments-northern-gallatain@fs.fed.us.* Please include the name of the project on the e-mail subject line.

FOR FURTHER INFORMATION CONTACT: John Councilman, Resource Assistant, Bozeman Ranger District, Gallatin National Forest, USDA Forest Service (406) 522–2533 (see **ADDRESSES** above).

Responsible Official: José Castro, District Ranger, Bozeman Ranger District, 3710 Fallon Street Suite C, Bozeman, Montana 59718.

SUPPLEMENTARY INFORMATION: The Gallatin National Forest includes approximately 1.9 million acres of public land adjacent the northern boundary of Yellowstone National Park. Local communities include Bozeman, Big Sky, West Yellowstone, Livingston, Big Timber, Gardiner, and Cooke City, Montana. The eleven allotments scheduled for review include approximately 63,000 acres of National Forest and private lands within boundaries of the allotments.

The purpose and need of this proposal, in part, is to comply with Public Law 104–19, Section 504(a): Establish and adhere to a schedule for the completion of National Environmental Policy Act (NEPA of 1969 (42 U.S.C. 4321 et seq.) analysis and decisions on all grazing allotments within the National Forest System unit for which NEPA is needed (Pub. L. 104–19, General Provision 1995). Upon completion of the NEPA analysis and decisions for the allotments, the terms and conditions of existing grazing permits will be modified, as necessary, to conform to the NEPA analysis. In addition, the purpose of the action is to improve conditions of riparian plant communities, reduce stream-side trampling by livestock, and achieve desirable vegetative conditions on those areas grazed by livestock within the project area.

The proposed action is to continue grazing the current numbers of livestock. Current permitted numbers include about 921 cow/calf pairs and 4 horses on National Forest Land plus 1126 cow/calf pairs, 10 yearlings and 6 horses grazed on the private land portions within the allotments. Adaptive management strategies would be implemented. Adaptive management allows flexibility in how the livestock are grazed and would allow managers to make adjustments and corrections to management based on monitoring. Also, changes in the current riparian grazing standards are proposed. Modification, additions or removal or allotment improvements such as fences and water developments may be proposed.

No Grazing and No Action alternatives will be analyzed during the NEPA process. The No Grazing alternative would eliminate domestic livestock grazing on the allotments. The No Action alternative would allow continued livestock grazing as it is currently being managed. Other alternatives, arising from issues identified through scoping, could be analyzed as well.

Comments from the public and other agencies on this proposal will be used in preparation of a Draft Environmental Impact Statement (DEIS). More specifically, comments will be used to modify and refine the alternatives and identify potential resource issues (environmental effects) that should be considered in the analysis.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in April in 2006. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register.** The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** The Final EIS is scheduled for completion in September 2006.

The notice of intent initiated the scoping process which guides the development of the environmental impact statement. Substantive comments and objections to the proposed action will be considered during this analysis.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements 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, 533 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement 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 during comment periods provided so that substantive comments and objections are made available to the Forest Service at a time when they can meaningfully consider them. To assist the Forest Service in identifying and considering issues, comments should be specific to concerns associated with the management of livestock grazing within the northern Bridger Mountains of the

Gallatin National Forest. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in structuring comments.

I am the responsible official and the deciding officer for the North Bridgers Grazing Allotment Management Plan Update. My address is District Ranger, Bozeman Ranger District, 3710 Fallon Street Suite C, Bozeman, MT 59718.

Dated: December 8, 2004.

José Castro

District Ranger

[FR Doc. 05–280 Filed 1–5–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lower Granite Area Mining Projects; Umatilla National Forest, Grant County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The Forest Service published a document in the **Federal Register** on March 9, 2000, providing notice that the Umatilla National Forest was intending to prepare an Environmental Impact Statement (EIS) on a proposed action to approve Proposed Plans of Operation on mining claims located in the Granite Area, within the Granite Creek Watershed, a tributary of the North Fork John Day River. The project area is located on the North Fork John Day Ranger District, approximately 35 air miles southeast of Ukiah, Oregon. The notice of availability for the Draft EIS for this project was published in the **Federal Register** on July 26, 2002. The decision has been made to issue a supplemental EIS for this project. The supplemental draft EIS will include on additional Plan of Operation and will update the analysis; including the cumulative effects analysis.

DATES: The formal scoping period opened with publication of the original Notice of Intent to produce an EIS first appeared in the **Federal Register** on March 9, 2000. Notification of the Draft EIS was printed in the **Federal Register** on July 26, 2002. The comment period was extended to October 21, 2002 in an amended notice published in the **Federal Register** September 20, 2002. Comments regarding the draft EIS should have been received by October 21, 2002. The Forest Service expects to file the supplemental draft impact statement with the Environmental Protection Agency and make it available for public comment by February 2005 and the final environmental impact statement is expected May 2005.

ADDRESSES: Send written comments and suggestions to: District Ranger, North Fork John Day Ranger District, P.O. Box 158, Ukiah, OR 97880.

FOR FURTHER INFORMATION CONTACT: Ralph Hartman, Project Team Leader, North Fork John Day Ranger District. Phone: (541) 427–5336.

SUPPLEMENTARY INFORMATION: The formal scoping period opened with publication of the Notice of Intent to produce an EIS, which first appeared in the **Federal Register** on March 9, 2000 (Vol. 65, No. 47, pages 12503–12505). Notification of the draft EIS was printed in the **Federal Register** on July 26, 2002 (Vol. 67, No. 144, page 48895). The comment period was extended to October 21, 2002 in an Amended Notice published in the **Federal Register** on September 20, 2002 (Vol. 67, No. 183, page 59285). Since publication of the draft EIS several changes have occurred. First, one additional new mining proposal has been received within the analysis area and will be added to the proposed action. The name of the EIS has been changed from Granite Area Mining Projects to Lower Granite Area Mining Projects; and in response to comments received during the draft EIS comment period, a more detailed cumulative effects analysis will be completed. In response to the proposed changes, the decision has been made to issue a supplemental draft EIS. The scope of the project has not changed; therefore, this revised Notice of Intent does not initiate a second scoping period for the proposal. The supplemental draft EIS is expected to be released in February 2005 and the final EIS is expected to be released in May 2005.

Responsible Official: The responsible official for this EIS is Craig Smith Dixon, District Ranger, North Fork John Day Ranger District, Umatilla National Forest.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A supplemental draft EIS will be prepared for comment. The comment period on the supplemental draft EIS will be 45 days from the date the Environmental Protection Agency published the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS 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. *NRDS*, 435 U.S. 519, 553 (1978). also environmental objections that could be raised at the draft 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.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS 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 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 the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: December 22, 2004.

Jeff D. Blackwood,

Forest Supervisor.

[FR Doc. 05–273 Filed 1–5–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Province Advisory Committee will meet in

Newport, OR, January 20, 2005. The theme of the meeting is Introduction/Overview/Business Planning. The agenda includes: RAC project discussion, overview of Salem RAC past/ongoing projects, overview of Eugene RAC past/ongoing projects, coast PAC recommendations for RAC projects they would like to see approved, overview of FY05 plan of work for each agency, public comment and round robin.

DATES: The meeting will be held January 20, 2005, beginning at 9 a.m.

ADDRESSES: The meeting will be held at the Hallmark Resort in Newport Oregon, 744 SW Elizabeth St. Newport, Oregon.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, 541–750–7075, or write Siuslaw National Forest Supervisor, P.O. Box 1148, Corvallis, OR 97339.

SUPPLEMENTARY INFORMATION: The meeting is open to the public, council Discussion is limited to Forest Service/BLM staff and Council Members. Lunch will be on your own. A public input session will be at 2:45 p.m. for fifteen minutes. The meeting is expected to adjourn around 3 p.m.

Dated: December 30, 2004.

Mary Zuschlag,

Supervisory Wildlife Biologist.

[FR Doc. 05–269 Filed 1–5–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Alpine County, CA, Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–462) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Alpine County Resource Advisory Committee (RAC) will meet on Monday, January 24, 2005 at 1800 at the Diamond Valley School for business meetings. The purpose of the meeting is to discuss issues relating to implementing the Secure Rural Schools and Community Self-Determination Act of 2000 (Payment to States) and expenditure of Title II funds. The meetings are open to the public.

DATES: Monday, January 24, 2005 at 1800 hours.

ADDRESSES: The meeting will be held at the Diamond Valley School, 35 Hawkside Drive, Markleeville, California 96120. Send written comments to Franklin Pemberton, Alpine County RAC coordinator, c/o USDA Forest Service, Humboldt-Toiyabe N.F., Carson Ranger District, 1536 So. Carson Street, Carson City, NV 89701.

FOR FURTHER INFORMATION CONTACT: Alpine Co. RAC Coordinator, Franklin Pemberton at (775) 884–8150; or Gary Schiff, Carson District Ranger and Designated Federal Officer, at (775) 884–8100, or electronically to *fpemberton@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The Meeting is open to the public. Council discussion is limited to Forest Service staff and Council members. However, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before and after the meeting.

Dated: December 28, 2004.

Robert L. Vaught,

Forest Supervisor.

[FR Doc. 05–249 Filed 1–5–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Meeting of the Agricultural Air Quality Task Force

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Agricultural Air Quality Task Force (AAQTF) will meet to continue discussions on critical air quality issues in relation to agriculture. Special emphasis will be placed on obtaining a greater understanding about the relationship between agricultural production and air quality. This will be the first meeting of the renewed Task Force and its newly appointed members.

DATES: The meeting will convene on Thursday, January 27, 2005, at 8 a.m. to 5 p.m.; resume Friday, January 28, 2005, from 8:15 a.m. to 4 p.m. Individuals with written materials, and those who have requests to make oral presentations, should contact the Natural Resources Conservation Service (NRCS) at the address below, on or before January 14, 2005.

ADDRESSES: The meeting will be held at the Hyatt Regency Crystal City Hotel, 2799 Jefferson Davis Highway, Arlington, Virginia; telephone (703) 418–1234. Written material and requests to make oral presentations should be sent to Elvis L. Graves, Acting Designated Federal Official, NRCS, 200 East Northwood Street, Suite 410, Greensboro, North Carolina 27401.

FOR FURTHER INFORMATION CONTACT: Questions or comments should be directed to Elvis L. Graves, Acting Designated Federal Official; telephone: (336) 370–3331, extension 421; fax: (336) 370–3376; e-mail: *elvis.graves@gnb.usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information concerning the AAQTF, may be found on the World Wide Web at *http://aaqtf.tamu.edu/.*

Draft Agenda of the January 27–28, 2005, Meeting of the AAQTF

A. *Welcome to Washington, DC*
   1. USDA and NRCS officials
B. *Discussion of Minutes from Meeting of Previous Task Force*
C. *Update of Task Force Responsibilities:*
   1. Federal Advisory Committee Act (FACA)
   2. Charter
D. *Accomplishments of Previous Task Force (Subcommittee Presentations)*
   1. Emerging Issues Committee Report
   2. Research Committee Report
   3. Policy Committee Report
   4. Education/Technology Transfer Committee Report
E. *Federal Agency Presentations*
   1. Natural Resources Conservation Service
   2. Agricultural Research Service
   3. Cooperative State Research, Education, and Extension Service
   4. Forest Service
   5. Environmental Protection Agency
F. *Establishing AAQTF Priorities for the Task Force*
G. *Next Meeting, Time and Place*
H. *Public Input*

(Time will be reserved before lunch and at the close of each daily session to receive public comment. Individual presentations will be limited to 5 minutes).

Procedural

This meeting is open to the public. At the discretion of the Chair, members of the public may give oral presentations during the meeting. Persons wishing to make oral presentations should notify Mr. Graves no later than January 14, 2005. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 30 copies to Mr. Graves no later than January 14, 2005.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Mr. Graves. USDA prohibits discrimination in its programs and activities on the basis of race, color, national origin, gender, religion, age, sexual orientation, or disability. Additionally, discrimination on the basis of political beliefs and marital or family status is also prohibited by statutes enforced by USDA (not all prohibited bases apply to all programs). Persons with disabilities who require alternate means for communication of program information (braille, large print, audio tape, etc.) should contact the USDA's Target Center at (202) 720–2000 (voice and TDD). USDA is an equal opportunity provider and employer.

Signed in Washington, DC on December 21, 2004.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 05–268 Filed 1–5–05; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–25–003]

Texas Eastern Transmission, LP; Notice of Compliance Filing

December 30, 2004.

Take notice that on December 15, 2004, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing further explanation regarding the calculation of its TIME Project Applicable Shrinkage Adjustment (ASA) surcharge, initially set forth in the October 17, 2003 annual ASA filing. Texas Eastern states that the instant filing is made pursuant to the "Order On Compliance Filing," issued by the Commission on November 23, 2004 in the captioned docket (November 23 Order, 109 FERC ¶ 61,212 (2004)).

Texas Eastern states that ordering paragraph "C" of the November 23 Order directs it to provide additional explanation that supports the proposed exclusion of system ASA cost elements from the TIME Project ASA Surcharge rate. Texas Eastern states that it is including Attachment II, Schedule B of the October 17 Filing, as well as that of the 2004 ASA tracker filing, which lists the cost elements used in determining the system ASA Surcharge rate, in Appendix A to the filing.

Texas Eastern states that copies of the filing have been served upon all parties on the official service list.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. Eastern Time on January 10, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–9 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR05–5–000]

ConocoPhillips Company Complainant v. SFPP, L.P., Respondent; Notice of Complaint

December 30, 2004.

Take notice that on December 29, 2004, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) and the Procedural Rules Applicable to Oil Pipeline Proceedings (18 CFR 341.1(a)), ConocoPhillips Company (ConocoPhillips) filed a Complaint in the above-referenced proceeding. ConocoPhillips alleges that SFPP, L.P. (SFPP) has violated and continued to violate the Interstate Commerce Act, 48 U.S.C. app. 1 *et seq.* by charging unjust and unreasonable rates for all of SFPP's jurisdictional interstate services associated with its East, West, North and Oregon Lines and its charge for drain-dry service at its Watson Station as more fully set forth in the Complaint.

ConocoPhillips requests that the Commission: (1) Examine the rates and charges of SFPP challenged in this complaint; (2) determine that the challenged rates are unjust and unreasonable; (3) establish just, reasonable, and nondiscriminatory rates to replace the challenged rates; (4) order reparations and/or refunds to ConocoPhillips, including interest, for the applicable reparations and/or refund period; (5) award ConocoPhillips reasonable attorneys' fees and costs; and (6) order such other relief as may be appropriate.

ConocoPhillips states that it has served the Complaint on SFPP.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call

(866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: January 28, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–8 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 30, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12551–000.

c. *Date Filed:* October 12, 2004.

d. *Applicant:* Mansfield Hollow Hydro.

e. *Name of Project:* Mansfield Hollow Project.

f. *Location:* On the Natchaug River, in Tolland County, Connecticut. The dam is administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Salvatore Shifrin, Mansfield Hollow Hydro, 78 Bricktop Road, Windham, CT 06280, (860) 423–3731.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) Proposed intake, (2) a proposed 12-foot-wide, 8-foot-high stone line canal 330 feet long, (3) an existing powerhouse containing three generating units having a total installed capacity of 500 kilowatts, (4) an existing 100-foot-long, 5-foot-wide, 7-foot-high concrete conduit tailrace, (5) a proposed 275-foot-long, transmission line; and (6) appurtenant facilities. The project would have an annual generation of 2.407 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file

comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–1 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted For Filing and Soliciting Motions To Intervene, Protests, and Comments

December 30, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12519–000.

c. *Date Filed:* July 12, 2004, and supplemented on November 1, 2004.

d. *Applicant:* Florida Hydro, Inc.

e. *Name of Project:* Gulf Stream Energy Project.

f. *Location:* On Gulf Stream in the Atlantic Ocean, near Palm Beach County, Florida. No Federal land or facilities would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael J. Hoover, Florida Hydro, Inc., 171 Comfort Road, Palatka, FL 33177, (386) 328–2368.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for Filing Comments, Protests, and Motions To Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) A generation farm containing up to 8 submerged two-counter rotating fiberglass blades and integrated turbine generating units having a total installed capacity of 2 to 3 megawatts, (2) a proposed 3-mile-long, sub marine transmission line, and (3) appurtenant facilities.

The project would have an annual generation of 17.52 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file

comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–2 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

December 30, 2004.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary permit (competing).

b. *Applicants, Project Numbers, and Dates Filed:* Birch Power Company filed the application for Project No. 12536–000 on September 9, 2004.

Hydrodynamics, LLC filed the application for Project No. 12547–000 on September 22, 2004.

c. Name of the project is Mill Coulee Lower Project. The project would be located on the Mill Coulee Canal in Cascade County, Montana. It would use the U.S. Bureau of Reclamation's existing Greenfield Irrigation District canal system.

d. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

e. *Applicants Contacts:* For Birch Power Company: Mr. Ted Sorenson, Birch Power Company, 5203 South 11th Avenue E, Idaho Falls, ID 83404, (208) 522–8069. For Hydrodynamics, LLC: Mr. Roger Kirk, Hydrodynamics, LLC, P.O. Box 1136, Bozeman, MT 59771–1136, (406) 587–5086.

f. *FERC Contact:* Robert Bell, (202) 502–6062.

g. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects:* The project proposed by Birch Power Company would use the irrigation Canal system owned by the Greenfield Irrigation District and operate in a run-of-river mode and would consist of: (1) A Diversion structure, crest elevation of 3,893 feet, on the Mill Coulee Canal, (2) a proposed 480-foot-long, 54-inch-diameter penstock, (3) a proposed powerhouse containing one generating unit with a total installed capacity of 370 kilowatts, (4) a proposed ¼-mile-long, 69-KV transmission line; and (5) appurtenant facilities. The Birch Power Company project would have an average annual generation of 1.6 gigawatt-hours.

The project proposed by Hydrodynamics, LLC would use the irrigation Canal system owned by the Greenfield Irrigation District and operate in a run-of-river mode and would consist of (1) a Diversion structure, crest elevation of 3,893 feet, on the Mill Coulee Canal, (2) a proposed 480-foot-long, 54-inch-diameter penstock, (3) a proposed powerhouse containing one generating unit with a total installed capacity of 370 kilowatts, (4) a proposed ¼-mile-long, 69-KV transmission line; and (5) appurtenant facilities. The Hydrodynamics, LLC project would have an average annual generation of 1.6 gigawatt-hours.

i. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

j. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

k. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

l. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

m. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

n. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR

385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

p. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–3 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

December 30, 2004.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary permit (competing).

b. *Applicants, Project Numbers, and Dates Filed:* Birch Power Company filed the application for Project No. 12537–000 on September 9, 2004.

Hydrodynamics, LLC filed the application for Project No. 12546–000 on September 22, 2004.

c. Name of the project is Mill Coulee Upper Project. The project would be located on the Mill Coulee Canal in Cascade County, Montana. It would use the U.S. Bureau of Reclamation's existing Greenfield Irrigation District canal system.

d. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

e. *Applicants Contacts:* For Birch Power Company: Mr. Ted Sorenson, Birch Power Company, 5203 South 11th Avenue E, Idaho Falls, ID 83404, (208) 522–8069. For Hydrodynamics, LLC: Mr. Roger Kirk, Hydrodynamics, LLC, P.O. Box 1136, Bozeman, MT 59771–1136, (406) 587–5086.

f. *FERC Contact:* Robert Bell, (202) 502–6062.

g. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects:* The project proposed by Birch Power Company would use the irrigation Canal system owned by the Greenfield Irrigation District and operate in a run-of-river mode and would consist of: (1) A Diversion structure, crest elevation of 4,010 feet, on the Mill Coulee Canal, (2) a proposed 800-foot-long, 54-inch-diameter penstock, (3) a proposed powerhouse containing one generating unit with a total installed capacity of 1 megawatts, (4) a proposed ¾-mile-long, 69-KV transmission line, and (5) appurtenant facilities. The Birch Power Company project would have an average annual generation of 4.4 gigawatt-hours.

The project proposed by Hydrodynamics, LLC would use the irrigation Canal system owned by the Greenfield Irrigation District and operate in a run-of-river mode and would consist of: (1) A Diversion structure, crest elevation of 4,010 feet, on the Mill Coulee Canal, (2) a proposed 800-foot-long, 54-inch-diameter penstock, (3) a proposed powerhouse containing one generating unit with a total installed capacity of 1 megawatts, (4) a proposed ¾-mile-long, 69-KV transmission line, and (5) appurtenant facilities. The Hydrodynamics, LLC project would have an average annual generation of 4.4 gigawatt-hours.

i. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

j. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

k. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

l. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

m. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

n. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit

would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

p. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

December 30, 2004.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary permit (competing).

b. *Applicants, Project Numbers, and Dates Filed:* Birch Power Company filed the application for Project No. 12539–000 on September 10, 2004.

Hydrodynamics, LLC filed the application for Project No. 12543–000 on September 22, 2004.

c. Name of the project is Lower Turnbull Project. The project would be located on the Spring Valley Canal in Teton County, Montana. It would use the U.S. Bureau of Reclamation's existing Greenfield Irrigation District canal system.

d. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

e. *Applicants Contacts:* For Birch Power Company: Mr. Ted Sorenson, Birch Power Company, 5203 South 11th Avenue E, Idaho Falls, ID 83404, (208) 522–8069. For Hydrodynamics, LLC: Mr. Roger Kirk, Hydrodynamics, LLC, P.O. Box 1136, Bozeman, MT 59771–1136, (406) 587–5086.

f. *FERC Contact:* Robert Bell, (202) 502–6062.

g. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects:* The project proposed by Birch Power Company would use the irrigation Canal system owned by the Greenfield Irrigation District and operate in a run-of-river mode and would consist of: (1) A proposed Diversion structure, crest elevation of 4,219 feet, on the Spring Valley Canal, (2) a proposed 2500-foot-long, 8-foot-diameter penstock, (3) a proposed powerhouse containing one generating unit with a total installed capacity of 6 megawatts, (4) a proposed 2-mile-long, 69-KV transmission line, and (5) appurtenant facilities. The Birch Power Company project would have an average annual generation of 25 gigawatt-hours.

The project proposed by Hydrodynamics, LLC would use the irrigation Canal system owned by the Greenfield Irrigation District and operate in a run-of-river mode and would consist of: (1) A proposed Diversion structure, crest elevation of 4,219 feet, on the Spring Valley Canal, (2) a proposed 2500-foot-long, 8-foot-diameter penstock, (3) a proposed powerhouse containing one generating unit with a total installed capacity of 6 megawatts, (4) a proposed 2-mile-long transmission line, and (5) appurtenant facilities. The Hydrodynamics, LLC project would have an average annual generation of 23.7 gigawatt-hours.

i. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

j. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

k. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

l. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a

specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

m. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

n. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

o. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under "e-filing" link. The Commission strongly encourages electronic filing.

p. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–5 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 30, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12540–000, 12542–000, 12544–000, 12545–000, 12548–000, and 12549–000.

c. *Date Filed:* September 22, 2004.

d. *Applicant:* Hydrodynamic, LLC.

e. *Name of Project:* Woods, Upper Turnbull, Knights, Johnson, Greenfield, and A-Drop Projects.

f. *Location:* All of these projects would be located on the U.S. Bureau of Reclamation's existing Greenfield Irrigation District canal system, using irrigation diversions from the Sun River below Gibson Dam, at the canal and drop structure identified in item K below, in Teton and Cascade Counties, Montana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Roger Kirk, Hydrodynamics, LLC, P.O. Box 1136, Bozeman, MT 59771–1136, (406) 587–5086.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for Filing Comments, Protests, and Motions To Intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12540–000, P–12542–000, P–12544–000, P–12545–000, P–12548–000, or P–12549–000) on any comments, protest, or motions filed.

k. *Description of Project:* The name of each project identifies the drop structure at which it would be located. All of the described works are proposed:

(1) The Woods Project No. 12540 would consist of a diversion structure, crest elevation 3,972 feet, on the Greenfield Main Canal, a 750-foot-long, 8-foot Diameter penstock, a powerhouse containing one generating unit having an installed capacity 1.25 megawatts, a tailrace returning flows to the canal at elevation 3,919 feet, and a 0.1-mile-long, 69-KV transmission line and appurtenant facilities. The applicant estimates the project would have an average annual generation of 4.7 gigawatt-hours.

(2) The Upper Turnbull Project No. 12542 would consist of a diversion structure, crest elevation 4,322 feet, on the Spring Valley Canal, a 1400-foot-long, 8-foot Diameter penstock, a powerhouse containing one generating unit having an installed capacity 1.25 megawatts, a tailrace returning flows to the canal at elevation 3,818 feet, and a ¼-mile-long, 69-KV transmission line and appurtenant facilities. The applicant estimates the project would have an average annual generation of 16.2 gigawatt-hours.

(3) The Knights Project No. 12544 would consist of a diversion structure, crest elevation 3,878 feet, on the Greenfield Main Canal, a 1200-foot-long, 8-foot Diameter penstock, a powerhouse containing one generating unit having an installed capacity 4 megawatts, a tailrace returning flows to the canal at elevation 4,220 feet, and a 2-mile-long, 12-KV transmission line and appurtenant facilities. The applicant estimates the project would have an average annual generation of 3.4 gigawatt-hours.

(4) The Johnson Project No. 12545 would consist of a diversion structure, crest elevation 4,018 feet, on the Greenfield South Canal, a 900-foot-long, 8-foot Diameter penstock, a powerhouse containing one generating unit having an installed capacity 1 megawatts, a

tailrace returning flows to the canal at elevation 3,972 feet, and a ⅓-mile-long, 69-KV transmission line and appurtenant facilities. The applicant estimates the project would have an average annual generation of 3.4 gigawatt-hours.

(5) The Greenfield Project No. 12548 would consist of a diversion structure, crest elevation 3,918 feet, on the Greenfield Main Canal, a 650-foot-long, 7-foot Diameter penstock, a powerhouse containing one generating unit having an installed capacity 0.8 megawatts, a tailrace returning flows to the canal at elevation 3,880 feet, and a 0.1-mile-long, 12-KV transmission line and appurtenant facilities. The applicant estimates the project would have an average annual generation of 2.8 gigawatt-hours.

(6) The A-Drop Project No. 12549 would consist of a diversion structure, crest elevation 4,054 feet, on the Greenfield Main Canal, a 570-foot-long, 8-foot Diameter penstock, a powerhouse containing one generating unit having an installed capacity 1.25 megawatts, a tailrace returning flows to the canal at elevation 4,020 feet, and a 0.05-mile-long, 12-KV transmission line and appurtenant facilities. The applicant estimates the project would have an average annual generation of 4.9 gigawatt-hours.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary link." Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under "efiling" link. Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–6 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

December 30, 2004.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* Preliminary permit (competing).

b. *Applicants, Project Numbers, and Dates Filed:* Hydrodynamics, LLC filed the application for Project No. 12541–000 on September 22, 2004. Birch Power Company filed the application for Project No. 12550–000 on September 29, 2004.

c. Name of the project is Mary Taylor Project. The project would be located on the Greenfield Main Canal in Teton County, Montana. It would use the U.S. Bureau of Reclamation's existing

Greenfield Irrigation District canal system.

d. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

e. *Applicants Contacts:* For Hydrodynamics, LLC: Mr. Roger Kirk, Hydrodynamics, LLC, P.O. Box 1136, Bozeman, MT 59771–1136, (406) 587–5086. For Birch Power Company: Mr. Ted Sorenson, Birch Power Company, 5203 South 11th Avenue E, Idaho Falls, ID 83404, (208) 522–8069.

f. *FERC Contact:* Robert Bell, (202) 502–6062.

g. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

h. *Description of Projects:* The project proposed by Hydrodynamics, LLC would use the irrigation Canal system owned by the Greenfield Irrigation District and operate in a run-of-river mode and would consist of: (1) An existing Diversion structure, crest elevation of 4,019 feet, on the Greenfield Main Canal, (2) a proposed 630-foot-long, 8-foot-diameter penstock, (3) a proposed powerhouse containing one generating unit with a total installed capacity of 1.25 megawatts, (4) a proposed ⅓-mile-long transmission line, and (5) appurtenant facilities. The Hydrodynamics, LLC project would have an average annual generation of 5 gigawatt-hours.

The project proposed by Birch Power Company would use the irrigation Canal system owned by the Greenfield Irrigation District and operate in a run-of-river mode and would consist of: (1) A proposed Diversion structure, crest elevation of 4,219 feet, on the Spring Valley Canal, (2) a proposed 2500-foot-long, 8-foot-diameter penstock, (3) a proposed powerhouse containing one generating unit with a total installed capacity of 6 megawatts, (4) a proposed ¼-mile-long, 12.47-KV transmission line; and (5) appurtenant facilities. The Birch Power Company project would have an average annual generation of 6.6 gigawatt-hours.

i. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

j. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

k. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

l. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

m. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

n. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

o. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

p. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 30, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12553–000.

c. *Date Filed:* October 22, 2004.

d. *Applicant:* NatEl America.

e. *Name of Project:* Mississippi River Lock and Dam No. 4 Project.

f. *Location:* On the Mississippi River, in Calhoun County, Illinois and Pike County, Missouri. The Mississippi River Lock and Dam No.4 is administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Daniel Schneider, NatEl America, 331 W. FM 407, Justin, TX 76247, (817) 488–7436.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) 16 proposed 70-foot-long, 60-foot-wide, 20-foot-high rectangular penstocks, (2) a proposed powerhouse containing 16 generating units having a total installed capacity of 56 megawatts, (3) 16 proposed 120-foot-long, 60-foot-wide, 20-foot high rectangular tailraces, (4) a proposed transmission line, and (5) appurtenant facilities. The project would have an annual generation of 400 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit. if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–10 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 30, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12555–000.

c. *Date Filed:* November 1, 2004.

d. *Applicant:* Mahoning Creek Hydroelectric Company, LLC.

e. *Name of Project:* Mahoning Creek Project.

f. *Location:* On Mahoning Creek, in Armstrong County, Pennsylvania. The dam is administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Clifford Phillip, Mahoning Creek Hydroelectric Company, LLC, 150 North Miller Road, Suite 450C, Fairlawn, OH 44333, (330) 869–8451.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for Filing Comments, Protests, and Motions To Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) Proposed intake, (2) a proposed 280-foot-long, 7.5-foot-diameter pentstock, (3) an existing powerhouse containing two generating units having a total installed capacity of 2 megawatts, (4) an existing 100-foot-long, 5-foot wide, 7-foot-high concrete conduit tailrace, (5) a proposed 400-foot-long, 14.y kilovolt transmission line, and (6) appurtenant facilities. The project would have an annual generation of 10.5 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file

comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–11 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 30, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12557–000.

c. *Date Filed:* November 12, 2004.

d. *Applicant:* SBER Royal Mills, LLC.

e. *Name of Project:* Royal Mills Project.

f. *Location:* On the South Branch Pawtuxet River, in Kent County, Rhode Island. No federal land or facilities would be used.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Paul V. Nolan, 5515 North 17th Street, Arlington, VA 22205, (703) 534–5509.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for Filing Comments, Protests, and Motions To Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of: (1) An existing 1100-foot-long, 21-foot-high granite block gravity dam, (2) an existing reservoir having a surface area of 3.8 acres with a storage capacity of 15.2 acre-feet and a maximum water surface elevation of 79.1 feet National Geographic Vertical Datum, (3) an existing power canal intake, (4) an existing 150-foot-long, 40-foot-wide power canal, (5) three proposed 66-inch diameter riveted steel penstocks 80, 110, and 120 feet long, (6) an existing powerhouse containing three proposed generating units having a total installed capacity of 200 kilowatts, (7) an existing 280-foot-long, 40-foot wide tailrace, (8) a proposed 660-foot-long, 23 kilovolt underground transmission line; and (9) appurtenant facilities. The project would have an annual generation of 1.071 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–12 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

December 30, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12558–000.

c. *Date Filed:* November 17, 2004.

d. *Applicant:* Choctaw County, Alabama.

e. *Name of Project:* Coffeeville Project.

f. *Location:* The proposed project would be located at the U.S. Army Corps of Engineer's (Corps) Coffeeville Lock and Dam, on the Tombigbee River in Choctaw County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contacts:* Janis Millett, Baker, Donaldson, Bearman, Caldwell, & Berkowitz, PC, Lincoln Square, 555 Eleventh Street, NW., Sixth Floor, Washington, DC 20004, phone (202) 508–3415.

i. *FERC Contact:* Mr. Robert Bell, (202) 502–6062.

j. *Deadline for Filing Motions To Intervene, Protests and Comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12558–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12523–000, Date Filed: July 20, 2004, Date Issued: September 23, 2004, Due Date: November 22, 2004.

l. *Description of Project:* The run-of-river project proposes to use the Corp's existing Coffeeville Lock and Dam would consist of: (1) Retrofit the tainter gates for power generation with eight generating units with a total installed capacity of 20 MW, (2) a proposed transmission line, and (3) appurtenant facilities. The project would have an annual generation of 100 GWh.

m. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

p. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

q. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

r. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

s. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

t. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT

TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

u. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–13 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

December 30, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12561–000.

c. *Date Filed:* November 19, 2004.

d. *Applicant:* Town of Trenton, NY.

e. *Name of Project:* Delta Dam Project.

f. *Location:* The proposed project would be located at Delta Dam, on the Mohawk River in Oneida County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contacts:* Mr. Mark Scheidelman, Town of Trenton, NY, P.O. Box 206, Barneveld, NY 13304.

i. *FERC Contact:* Mr. Robert Bell, (202) 502–6062.

j. *Deadline for Filing Motions To Intervene, Protests and Comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–12561–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12529–000, Date Filed: August 13, 2004, Date Issued: September 23, 2004, Due Date: November 22, 2004.

l. *Description of Project:* The proposed Delta Dam would consist of: (1) The existing 1,016-foot-long, 76-foot-high Delta dam, (2) an existing impoundment having a surface are of 2,700 acres and a storage capacity of 63,200 acre-feet and normal water surface elevation of 550 feet mean sea level, (3) a proposed 70-foot-long penstock, (4) a proposed powerhouse containing a generating unit with an installed capacity of 2.1 megawatts, (5) a proposed 500-foot-long, 13.2 kilovolt transmission line, and (6) appurtenant facilities. The project would have an annual generation of 11.18 GWh.

m. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

p. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

q. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

r. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering

plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

s. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

t. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

u. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–14 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 30, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12562–000.

c. *Date Filed:* November 29, 2004.

d. *Applicant:* Warmsprings Irrigation District.

e. *Name of Project:* Warmsprings Dam Project.

f. *Location:* On the Malheur River, in Malheur County, Oregon. Would utilize the existing U.S. Bureau of Reclamation's Warmsprings Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Dave Castleberry, Manager, Warmsprings Irrigation District, 334 Main Street North, Vale, OR 97918, (541) 473–3951 and Mr. Brent L. Smith, President, Northwest Power Services, Inc., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for Filing Comments, Protests, and Motions to Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The project proposes to use the U.S. Bureau of Reclamation's Warmsprings Dam and would consist of: (1) A proposed intake structure; (2) a proposed 100-foot-long, 60-inch-diameter steel penstock; (3) a proposed powerhouse containing a generating unit having an installed capacity of 2.2 MW; (4) a proposed 6-mile-long, 15-kV transmission line; and (5) appurtenant facilities. The project would have an annual generation of 6.6 GWh that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include

an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–15 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

December 30, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary permit.

b. *Project No.:* 12552–000.

c. *Date Filed:* October 12, 2004.

d. *Applicant:* Marseilles Land and Water Company.

e. *Name of Project:* MLWC Project.

f. *Location:* On the Illinois River, in La Salle County, Illinois. The Marseilles Lock and Dam is administered by the U.S. Army Corps of Engineers. This project is for additional capacity to the already licensed Marseilles Project FERC No. 12020 to the Marseilles Hydro Power, LLC.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Lee W. Mueller, President, Marseilles Land and Water Company, 4132 S. Rainbow Blvd., #247, Las Vegas, NV 89103, (702) 367–7302.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for Filing Comments, Protests, and Motions To Intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of (1) two existing intake canals: (a) the 3,100-foot long, north Channel 200 feet wide at intake narrowing to 80 feet wide where it becomes the north headrace at intersection with Main Street, (b) the south channel 110 feet wide at the intake narrowing to 50 feet as it becomes the south headrace, (2) a proposed powerhouse containing two generating units having a total installed capacity of 6.4 megawatts, (3) a proposed 400-foot-long, 34 kilovolt transmission line, and (4) appurtenant facilities. The project would have an annual generation of 28.2 gigawatt-hours that would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely

notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions To Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments*—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–16 Filed 1–5–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0405; FRL–7692–2]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 4–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review a set of four major issues associated with the N-methyl carbamate pesticide cumulative risk assessment: pilot cumulative analysis. On February 15–16, 2005, the FIFRA SAP will meet to review issues associated with hazard assessment and pharmacokinetic/pharmacodynamic modeling; and on February 17–18, 2005, to review ground water models and drinking water exposure assessment and the integration of hazard and exposure information.

DATES: The meeting will be held on February 15–18, 2005, from 8:30 a.m. to approximately 5 p.m., eastern time.

Comments: For the deadlines for the submission of requests to present oral comments and the submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION.**

Nominations: Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before January 18, 2005.

Special seating. Requests for special seating arrangements should be made at least 5 business days prior to the meeting.

ADDRESSES: The meeting will be held at the Holiday Inn, Reagan National Airport, 2650 Jefferson Davis Highway, Arlington, VA 22202. The telephone number for the Holiday Inn – Reagan National Airport is (703) 684–7200.

Comments. Written comments may be submitted electronically (preferred), through hand delivery/courier, or by mail. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Nominations, requests to present oral comments, and special seating. To submit nominations for ad hoc members of the FIFRA SAP for this meeting, requests for special seating arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT.** To ensure proper receipt by EPA, your request must identify docket ID number OPP–2004–0405 in the subject line on the first page of your request.

FOR FURTHER INFORMATION CONTACT: Myrta R. Christian for the hazard assessment and pharmacokinetic/pharmacodynamic modeling sessions and Joseph E. Bailey for the drinking water exposure assessment and the integration of hazard and exposure assessment sessions. DFOs, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8450; fax number: (202) 564–8382; e-mail addresses: *christian.myrta@epa.gov* or *bailey.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFOs listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2004–0405. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

EPA's position paper, charge/questions to FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting) and the meeting agenda will be available as soon as possible, but no later than (early February 2005). In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically (preferred), through hand delivery/courier, or by mail. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0405. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0405. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2 or mail to the address provided in Unit I.C.3. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2004–0405. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail.* Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0405.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPP–2004–0405 in the subject line on the first page of your request.

1. *Oral comments.* Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although, requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to FIFRA SAP is strongly advised to submit their request to the appropriate DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, February 8, 2005, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to FIFRA SAP at the meeting.

2. *Written comments.* Although, submission of written comments are accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I.C., no later than noon, eastern time, February 1, 2005, to provide FIFRA SAP the time necessary to consider and review the written comments. The DFOs listed under **FOR FURTHER INFORMATION CONTACT** should be notified that comments have been submitted to the docket or a courtesy copy of the comments should be provided to the DFOs. There is no limit on the extent of written comments for consideration by FIFRA SAP.

3. *Seating at the meeting.* Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access and assistance for the hearing impaired, should contact the appropriate DFO at least 5 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP for this meeting.* As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicit the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Pharmacokinetic/pharmacodynamic modeling, toxicology and risk assessment, hazard assessment, exposure assessment (particularly drinking water), ground water modeling/monitoring and integration of hazard and exposure. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name, occupation, position, address, and telephone number. Nominations should be provided to the appropriate DFO listed under **FOR FURTHER INFORMATION CONTACT**on or before January 18, 2005. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Though financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 12 ad hoc scientists.

If a prospective candidate for service on the FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch

Financial Disclosure, as supplemented by EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at EPA Form 3110–48 [5–02]) which shall fully disclose, among other financial interests, the candidate's employment, stocks, and bonds, and where applicable, sources of research support. EPA will evaluate the candidate's financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality and no prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP.

Those who are selected from the pool of prospective candidates will be asked to attend the public meetings and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel or reclassify pesticide registrations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of regulations pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP also, shall make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

The Food, Quality Protection Act of 1996 amended the Federal Insecticide, Fugicide, and Rodenticide Act and the Federal Food, Drug, and Cosmetic Act. One of the major changes is the requirement that EPA consider risk posed by pesticides acting by a common mechanism of toxicity. For such groups of pesticides, EPA's Office of Pesticide Programs (OPP) has treated cumulative risk, under FQPA, as the risk of a common toxic effect associated with concurrent exposure by all relevant pathways and routes. EPA has determined that the group of pesticides known as the N-methyl carbamate pesticide share a common mechanism of toxicity, and should be treated as a common mechanism group. Therefore, EPA is conducting a cumulative risk assessment that will include the chemicals comprising this group.

At the meeting being announced by this notice, EPA plans to discuss key issues related to development of the cumulative risk assessment for the N-methyl carbamate pesticides. Those issues are as follows: Hazard assessment, pharmacokinetic/pharmacodynamic (PBPK/PD) modeling of carbaryl, drinking water exposure assessment, and the integration of hazard and exposure information.

C. Hazard assessment

EPA acknowledges that there are toxicological characteristics unique to the N-methyl carbamates which need to be considered in a cumulative risk assessment for this group. Specifically, the mechanism of action for this group of pesticides is carbamylation of the acetylcholinesterase (AChE) active site. This chemical change is reversible, allowing for relatively rapid recovery from inhibition. OPP is collaborating with laboratory scientists and statisticians from EPA's National Health and Environmental Effects Research Laboratory (NHEERL) to evaluate biological and empirical aspects of recovery. EPA expects to solicit comment from the SAP on specific issues related to dose-response modeling of AChE data, empirical estimation of time to recovery, and the impact of the laboratory method used to measure AChE inhibition on estimates of relative potency.

1. *PBPK/PD modeling for carbaryl.* OPP is collaborating with scientists from EPA's National Exposure Research Laboratory (NERL) to develop a PBPK/PD model for carbaryl within the Exposure Related Dose Estimating Model (ERDEM) Platform (Blancato et al., 2002; Okino et al. 2004). The carbaryl model will form the basic structure of a generalized model for the N-methyl carbamates. A Quantitative Structure Activity Relationship (QSAR) database of physicochemical descriptors and provisional PK and PD parameter values has been assembled for selected N-methyl carbamates. The completeness and representativeness of the QSAR database will influence the application of the PBPK/PD model for use in the cumulative risk assessment of the N-methyl carbamates. EPA will solicit comment from the SAP on specific aspects of the appropriate use of ERDEM for this cumulative risk assessment.

2. *Drinking water exposure assessment.* Unlike the organophosphate (OP) cumulative risk assessment where the only anticipated exposure to OP pesticides in drinking water was expected to be from surface water sources, EPA must consider both surface water and ground water sources of drinking water for the N-methyl carbamates. OPP will solicit comment from the SAP on the use of one or more existing ground water models to provide a pilot drinking water exposure assessment for the N-methyl carbamates. OPP also expects to request feedback from the Panel on approaches for refining regional drinking water exposures in the event that such exposure from surface water and/or ground water sources contributes substantially to the cumulative exposure in one or more regions.

3. *Integration of hazard and exposure assessment.* EPA will present to the SAP a pilot cumulative analysis of food, water, and residential exposure using three different exposure models: LifeLine, CARES, and Calendex. The presentation will also include a discussion of the unique challenges related to rapid recovery from AChE inhibition posed by this group of pesticides and different approaches for considering these characteristics in the quantitative estimates of cumulative risk. EPA expects to request the panel to provide comment on potential approaches for integrating hazard and exposure for this group and specifically characterizing recovery in risk estimates.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 60 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 28, 2004.

Joseph J. Merenda, Jr.,

Director, Office of Science Coordination and Policy.

[FR Doc. 05–263 Filed 1–5–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7857–9]

Science Advisory Board Staff Office Notification of Advisory Meeting of the Science Advisory Board Regulatory Environmental Modeling (REM) Guidance Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Science Advisory Board (SAB) Regulatory Environmental Modeling (REM) Guidance Review Panel will hold two public advisory meetings, one teleconference and one face-to-face meeting, to provide the Agency advice on their Draft Guidance and Models Knowledge Base related to modeling activity within the EPA.

DATES: January 21, 2005 and February 7–9, 2005.

January 21, 2005 Public Conference call: The SAB REM Guidance Review Panel will meet on January 21, 2005, via teleconference from 1 p.m. to 3 p.m. (eastern standard time).

February 7–9, 2005 Public meeting: The SAB REM Guidance Review Panel will meet on February 7–9, 2005, in Washington, DC. The meeting will commence at 9 a.m. (eastern standard time) on February 7, 2005, and adjourn no later than 2:30 p.m. on February 9, 2005.

ADDRESSES: The public teleconference will take place via teleconference only. The face-to-face public meeting will take place at the SAB Conference Center, 1025 F Street, NW., Suite 3700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in numbers and access codes, would like to submit written or brief oral comments (5 minutes or less for the public face-to-face meeting, and 3 minutes or less for the public teleconference meeting), or who wants further information concerning these public meetings should contact Dr. Jack Kooyoomjian, Designated Federal Officer (DFO), EPA SAB, 1200 Pennsylvania Avenue, NW., (MC 1400F), Washington, DC 20460; via telephone/voice mail: (202) 343–9984; fax: (202) 233–0643; or e-mail at: *kooyoomjian.jack@epa.gov*. General information concerning the SAB can be found on the SAB Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act, Pub. L. 92–463, the SAB Staff Office hereby gives notice of two public meetings of the SAB REM Guidance Review Panel. The EPA's Office of Research Development (ORD) requested that the SAB review the Agency's draft guidance entitled, "Draft Guidance on the Development, Evaluation, and Application of Regulatory Environmental Models," dated November 2003 (referred to here also as the Draft Guidance) and "Models Knowledge Base." The Draft Guidance is for those who develop, evaluate, and apply environmental models. It does not impose legally binding requirements and, depending on the circumstances, may not apply to a particular situation. The EPA retains the discretion to adopt approaches that differ from the guidance on a case-by-case basis. The Models Knowledge Base is an inventory of EPA's environmental models. It contains information about model use and model science and is intended to be a useful tool for environmental modelers and managers. Additional background information on this review activity, such as the **Federal Register** notice (68 FR 46602, August 6, 2003) soliciting nominations for Panel membership can be found on the SAB Web site at: *http://www.epa.gov/sab/panels/cremgacpanel.html*.

Purpose of the January 21, 2005 Public Teleconference: The purpose of this public teleconference meeting is to discuss the charge to the SAB REM Guidance Review Panel; discuss available materials and background materials as they pertain to the charge, discuss assignments to the Panelists, and plan for the February 7–9, 2005 face-to-face public advisory meeting.

Purpose of the February 7–9, 2005 Public Face-to-Face Meeting: The purpose of this meeting is to conduct a peer review of the Agency's Draft Guidance and Models Knowledge Base and any other supplemental materials in response to the charge questions.

Availability of Meeting Materials: Copies of the meeting agendas, the roster of the SAB Review Panel, and the charge to the SAB described in this notice will be posted on the SAB Web site at: *http://www.epa.gov/sab/panels/cremgacpanel.html* prior to each meeting. Persons who wish to obtain copies of the Agency's Draft Guidance, the Models Knowledge Base or other materials pertinent to this advisory activity may obtain these materials at *http://www.epa.gov/crem*, or *http://www.epa.gov/crem/sab*.

For further information regarding the Agency's Draft Guidance or Models Knowledge Base or other relevant background materials, please contact Mr. Pasky Pascual of the U.S. EPA, Office of Research & Development (Mail Code 8102), by telephone/voice mail at (202) 564–2259, by fax at (202) 565–2925; or via e-mail at *pascual.pasky@epa.gov*.

Providing Oral or Written Comments at SAB Meetings: It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments wherever possible. The SAB Staff Office expects the public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a public face-to-face meeting will be limited to a total time of five minutes (unless otherwise indicated), and three minutes at a teleconference meeting (unless otherwise indicated). Requests to provide oral comments must be *in writing* (e-mail, fax, or mail) and received by the DFO no later than noon Eastern Time five business days prior to the meeting in order to reserve time on the meeting agenda. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office no later than noon Eastern Time five business days prior to the meeting so that the comments may be made available to the Panelists for their consideration. Comments should be supplied to the DFO (preferably by e-mail) at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat

PDF, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format)). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access: Individuals requiring special accommodation for these public meetings, such as hearing impaired accommodations for the teleconference call or wheelchair access to the conference room for the face-to-face meeting, should contact the DFO at least five business days prior to the meeting, so that appropriate arrangements can be made.

Dated: December 22, 2004.

Anthony Maciorowski,

Acting Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–264 Filed 1–5–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7858–1]

Science Advisory Board Staff Office Notification of Upcoming Meeting of the Science Advisory Board Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB's Committee on Valuing the Protection of Ecological Systems and Services (C–VPESS) to conduct an advisory on the EPA's draft Ecological Benefits Assessment Strategic Plan (EBASP) and to discuss issues concerning methods.

DATES: January 25–26, 2005. A public meeting of the C–VPESS will be held from 9 a.m. to 5:30 p.m (eastern time) on January 25, 2005 and from 9 a.m. to 3:30 p.m. (eastern time) on January 26, 2005.

ADDRESSES: The meeting will take place at the SAB Conference Center, 1025 F Street, NW., Suite 3700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Members of the public wishing further information regarding the SAB C–VPESS meeting may contact Dr. Angela Nugent, Designated Federal Officer (DFO), via telephone at: (202–343–9981) or e-mail at: *nugent.angela@epa.gov*. The SAB mailing address is: US EPA, Science Advisory Board (1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB, as well as any updates concerning the meetings announced in this notice, may be found in the SAB Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: Background on the SAB C–VPESS and its charge was provided in 68 Fed. Reg. 11082 (March 7, 2003). The purpose of the meeting is for the SAB C–VPESS to conduct an advisory on the EPA's draft Ecological Benefits Assessment Strategic Plan and to discuss issues concerning methods for valuing the protection of ecological systems and services. All of these activities are related to the Committee's overall charge, to assess Agency needs and the state of the art and science of valuing protection of ecological systems and services, and then to identify key areas for improving knowledge, methodologies, practice, and research.

Availability of Review Material for the Meetings: The Agenda for this meeting will be available from the SAB Staff Office Web site at: *http://www.epa.gov/sab/agendas.htm*. The review document that will be the focus of the January 25, 2005 meeting, EPA's draft Ecological Benefits Assessment Strategic Plan, will be available on the Web site of EPA's National Center for Environmental Economics: *http://yosemite.epa.gov/ee/epa/eed.nsf/pages/homepage*.

Procedures for Providing Public Comment: It is the policy of the EPA SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at SAB meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). Interested parties should contact the Designated Federal Official (DFO) in writing via e-mail at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting. *Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least 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 appropriate 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). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations: Individuals requiring special accommodation to access these meetings, should contact the relevant DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: December 22, 2004.

Anthony Maciorowski,

Acting Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–265 Filed 1–5–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7858–2]

Science Advisory Board Staff Office; Notification of Advisory Meeting of the Science Advisory Board Illegal Competitive Advantage Economic Benefit Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Science Advisory Board (SAB) Illegal Competitive Advantage (ICA) Economic Benefit (EB) Advisory Panel will hold a public teleconference to finalize its draft advisory report to the Agency on economic methods related to assessing economic benefits attributed to non-compliance with EPA regulations.

DATES: January 19, 2005. The SAB ICA EB Advisory Panel will meet on January 19, 2005, via teleconference from 10 a.m. to 12 p.m. (noon) (Eastern Standard Time).

ADDRESSES: The public teleconference will take place via teleconference only.

FOR FURTHER INFORMATION CONTACT: Any member of the public who wishes to obtain the teleconference call-in numbers and access codes, would like to submit written or brief oral comments (3 minutes or less), or who wants further information concerning this public teleconference meeting should contact Dr. Jack Kooyoomjian, Designated Federal Officer (DFO), EPA SAB, 1200 Pennsylvania Avenue, NW., (MC

1400F), Washington, DC 20460; via telephone/voice mail: (202) 343–9984; fax: (202) 233–0643; or e-mail at: *kooyoomjian.jack@epa.gov*. General information concerning the SAB can be found on the EPA Web site at: *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the SAB Staff Office hereby gives notice of a public teleconference of the SAB ICA EB Advisory Panel. The Panel has conducted three public teleconference calls and a public meeting to provide advice regarding EPA's Office of Enforcement and Compliance Assurance (OECA) White Paper entitled, "Identifying and Calculating Economic Benefit That Goes Beyond Avoided and/or Delayed Costs." These public meetings were noticed in the **Federal Register**, 69 FR 35599 (June 25, 2004), and 69 FR 60996 (October 14, 2004).

Purpose: The purpose of this public teleconference is to finalize the draft advisory report.

Availability of Meeting Materials: Copies of the agenda for the public teleconference described in this notice and the SAB draft advisory report will be posted on the SAB Web site at: *http://www.epa.gov/sab/agendas.htm* prior to the teleconference.

Providing Oral or Written Comments at SAB Meetings: It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments wherever possible. The SAB Staff Office expects the public statements presented at its meetings will not be repetitive of previously-submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a public teleconference meeting will be limited to a total time of three minutes (unless otherwise indicated). Requests to provide oral comments must be *in writing* (e-mail, fax, or mail) and received by the DFO no later than noon Eastern Time five business days prior to the meeting in order to reserve time on the meeting agenda. *Written Comments:* Although the SAB Staff Office accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office no later than noon Eastern Time five business days prior to the meeting so that the comments may be made available to the Panelists for their consideration. Comments should be supplied to the DFO (preferably by e-mail) at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat PDF, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format)).

Meeting Access: This is a meeting by teleconference. Individuals requiring special accommodation for this meeting should contact the DFO at least five business days prior to the meeting, so that appropriate arrangements can be made.

Dated: December 22, 2004.

Anthony Maciorowski,

Acting Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–266 Filed 1–5–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7858–3]

Science Advisory Board Staff Office; Notification of an Upcoming Meeting of the Science Advisory Board; Second Generation Model Advisory Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the Second Generation Model (SGM) Advisory Panel.

DATES: A public meeting of the SAB SGM Advisory Panel will be held on February 4, 2005, from 8:30 a.m. to 3:30 p.m. (eastern time) in the SAB Conference Center at 1025 F Street, NW., Washington, DC 20004.

FOR FURTHER INFORMATION: Any member of the public who wishes to submit written or brief oral comments (five minutes or less) must contact Dr. Holly Stallworth, Designated Federal Officer, at (202) 343–9867 or via e-mail at: *stallworth.holly@epa.gov*. Any member of the public wishing further information regarding the SAB or the SGM Advisory Panel may also contact Dr. Stallworth, or visit the SAB Web site at: *http://www.epa.gov/sab/*.

Technical Contact: The technical contact in EPA's Office of Atmospheric Programs for the Second Generation Model is Michael Leifman who can be reached at (202) 343–9380, or via e-mail at: *leifman.michael@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background: After receiving a request from EPA's Office of Atmospheric Programs to provide advice on the Second Generation Model, the SAB Staff Office formed an SAB Panel to respond to the Agency's request. A "widecast" soliciting expertise for the SGM Advisory Panel was provided in a **Federal Register** notice published on July 9, 2004 (69 FR 41474–41475). Another **Federal Register** notice published on November 18, 2004 (69 FR 67579–67580) provided notice of a December 2, 2004 teleconference of the SGM Advisory Panel. Posted on the SAB Web site (*http://www.epa.gov/sab/*) are a final roster of the Panel and charge questions from the Office of Atmospheric Programs. Additional background material on the Second Generation Model may be found at: *http://www.epa.gov/air/sgm-sab.html*. On February 4, 2005, panelists will hear from the model developers, discuss background materials and plan for the writing of the SAB Panel's advice. A meeting agenda will be posted on the SAB Web site prior to February 4, 2005.

Procedures for Providing Public Comment. It is the policy of the SAB Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The SAB Staff Office expects that public statements presented at the SGM Advisory Panel's meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* Requests to provide oral comments must be in writing (e-mail, fax or mail) and received by Dr. Stallworth no later than five business days prior to the teleconference in order to reserve time on the meeting agenda. For teleconferences, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. *Written Comments:* Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least five business days prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 98/2000/XP format).

Meeting Accommodations: Individuals requiring special accommodation to access the public meetings listed above should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: December 17, 2004.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 05–267 Filed 1–5–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0429; FRL–7695–6]

Notice of Receipt of Requests to Cancel Registrations of Certain Pentacholorophenol Wood Preservative Products, and/or Amend Registrations to Terminate Certain Uses of Pentachlorophenol Products

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants of pesticide products containing Pentachlorophenol to cancel certain Pentacholorophenol wood preservative products, and/or amend registrations to terminate certain uses of Pentachlorophenol products. Two registrants, KMG Chemicals, Inc. and Vulcan Chemicals, are requesting these actions effective immediately. KMG Chemicals, Inc., is requesting that registrations for two of its products, Pentacon 40 and Penwar, be cancelled. Vulcan Chemicals is requesting amendments to registrations to terminate spray uses for two of its products (Vulcan GLAZD Penta and Vulcan Premium Four Pound [PCP–2] Concentrate). KMG Chemicals, Inc. has asked for no provision for existing stocks. Vulcan Chemicals has asked to be allowed to sell and distribute existing stocks for a period of 18 months after the issuance of the cancellation order terminating spray uses of its products. Both registrants waived the 180–day comment period (i.e., any comment period in excess of 30 days).

DATES: Comments, identified by docket ID number OPP–2004–0429, must be received on or before February 7, 2005.Unless a request is withdrawn by February 7, 2005, the Agency intends to issue cancellation orders granting these requests to cancel certain products, and/or to amend registrations to terminate certain uses. The Agency will consider withdrawal requests postmarked no later than February 7, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Heather Garvie, Office of Pesticide Programs (7510C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0034; e-mail address: garvie.heather@*epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0429. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA 22202. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0429. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0429. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0429.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0429. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of requests from registrants to voluntarily cancel registrations and/or amend registrations to terminate certain uses of pentachlorophenol wood preservative products (see Tables 1 and 2 below.). The Agency received letters from Vulcan Chemicals, dated September 13, 2004, requesting that registrations be amended to terminate spray uses for two of it's products. The Agency also received a letter from Roger C. Jackson, dated December 14, 2004, on behalf of KMG Chemicals Inc. requesting voluntary cancellation of two of its wood preservative products, Pentacon 40 and Penwar. KMG Chemicals, Inc. has asked for no provision for existing stocks. Vulcan Chemicals has asked to be allowed to sell and distribute existing stocks for a period of 18 months after the issuance of the cancellation order terminating spray uses of its products. Both registrants waived the 180–day comment period (i.e., any comment period in excess of 30 days).

The following pentachlorophenol product registrations would be affected by the requests for cancellation:

TABLE 1.—REQUEST FOR CANCELLATION OF REGISTRATIONS FOR WOOD PRESERVATIVE PRODUCTS

Registration No.	Product name	Chemical name
61483–56	Pentacon 40	Pentachlorophenol
61483–55	Penwar	Pentachlorophenol

The following pentachlorophenol products would be affected by the requests to amend registrations to terminate spray uses:

TABLE 2.—REQUEST FOR AMENDMENTS TO TERMINATE SPRAY USES

Registration No.	Product name	Chemical name
5382–36	Vulcan Premium Four Pound (PCP–2) Concentrate	Pentachlorophenol
5382–16	Vulcan GLAZD Penta	Pentachlorophenol

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, the Agency intends to issue cancellation orders for the products, and for the amendments to registrations to terminate uses. Users of these pesticides or anyone else desiring the retention of a particular use should contact the applicable registrant directly before the lapse of this 30–day period.

Table 3 includes the names and addresses of record for all registrants of the products in Tables 1 and 2, in sequence by EPA company number:

TABLE 3.—REGISTRANTS REQUESTING AMENDMENT OF REGISTRATIONS TO TERMINATE CERTAIN USES OR CANCELLATION OF REGISTRATIONS OF PENTACHLOROPHENOL WOOD PRESERVATIVE PRODUCTS

EPA Company No.	Company name and address
61483	KMG Chemicals, Inc., 10611 Harwin Drive,Suite 402, Houston, Texas 77036–1534
5382	Vulcan Chemicals, PO Box 385015, Birmingham, Alabama 35259–5015

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**, and provide a 30–day public comment period. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for voluntary cancellation of a product registration or amendment of a registration to terminate uses must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before February 7, 2005. This written withdrawal of the request for cancellation of a product registration or amendment to terminate uses will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation or use termination action, the effective date of cancellation and all other provisions of any earlier cancellation or use termination order are controlling. The withdrawal request must also include a commitment to pay any maintenance fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The two registrants are KMG Chemicals, Inc., and Vulcan Chemicals. KMG Chemicals, Inc. has asked for no provision for existing stocks. Therefore, the Agency is not proposing allowing any sale, distribution or use of existing stocks in the hands of the registrant on the effective date of the use termination.

Vulcan Chemicals has asked to be allowed to sell and distribute existing stocks (those that still bear the spray use on the label) for a period of 18 months after the issuance of the cancellation order terminating spray uses of their products, and to allow sufficient time to implement amended labeling. However, Vulcan Chemicals does not knowingly sell nor intend to sell at any time in the future, either of their products for spray uses. According to Vulcan Chemicals, their customers are not using the products for any treatment other than pressure-treatment or thermal-treatment.

Existing stocks of any affected product already in the hands of persons other than the registrant can be distributed, sold, or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label of the affected product.

For purposes of this proposed order, the term "existing stocks" is defined, pursuant to EPA's existing stocks policy (56 FR 29362, June 26, 1991), as those stocks of a registered pesticide product which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation or amendment. Any distribution, sale or use of existing stocks in a manner inconsistent with the terms of the cancellation order or the existing stocks provisions contained in the order will be considered a violation of section 12(a)(2)(K) and/or section 12(a)(1)(A) of FIFRA.

List of Subjects

Environmental Protection, Pesticides and Pests.

Dated: December 29, 2004.

Jack E. Housenger,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 05–261 Filed 1–5–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

OPP–2004–0294; FRL–7694–7]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2004–0294, must be received on or before February 7, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: The Product Manager (PM), Antimicrobials Division (7510C), listed in the table below:

Product Manager	Telephone number/e-mail address	Mailing address	File symbol
Velma Noble (PM 31)	(703) 308–6233; *noble.velma@epa.gov.*	Antimicrobials Division (7510C), Office of Pesticides, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001	75680–R 3090–EEN 6836–EIG 6836–EIU 5185–UOO; 74234–R
Marshall Swindell (PM 33)	(703) 308–6341; *swindell.marshall@epa.gov*	Do.	1258–REUT 39967–UO 2693–ERU 2693–ERL 2214–RT 49403–GN 49403–EO 43813–ET
Adam Heyward (PM 34)	(703) 308–6422; *heyward.adam@epa.gov*	Do.	75269–E (MUP); 75799–R (MUP) 75799–E (EP) 43813–GG (MUP) 43813–GU (EP) 43813–GL (EP)

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture antimicrobial pesticides. The following use patterns are included in this notice: Wood preservatives, preservatives for paints, adhesives, coatings, material preservative for treated articles, manufacturing use products (MUPs) for making antifouling paint products, antifouling boat bottom paint, residential mold and mildew control, medical waste treatment, and cooling towers. Potentially affected entities may include, but are not limited to:

- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0294. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA 22202. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be

transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2004–0294. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0294. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0294.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell S., Arlington, VA 22202, Attention: Docket ID Number OPP–2004–0294. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included in any Previously Registered Products

1. *File symbol*: 75680–R. *Applicant*: Rutherford Chemicals. *Contact:* The Acta Group 1203 Nineteenth St., NW., Suite 300, Washington, DC 20036–2401. *Product Name*: Rutherford Cetyl Pyridinium Chloride. *Type of Product*: Indoor preservative and protectant. *Active Ingredient*: Cetyl Pyridinium Chloride (CPC) at 97.8%. *Proposed classification/Use:* None. For use on leather and leather products and processing liquors, paints, textiles and

fibers of, paper and paper products and resin emulsions.

2. *File symbol*: 3090–EEN. *Applicant*: Sanitized, Inc. *Contact*: Steward Klein, P.O. Box 2211, New Preston, CT 06777. *Product Name*: T99-19. *Type of Product*: Textile treatment. *Active Ingredient*: Dimetyl tetradecyl-[3-(trimethoxy silyl)-propyl] ammonium chloride at 40%. *Proposed classification/Use:* None. For treatment on textiles products.

3. *File symbol*: 6836–EIG. *Applicant*: Lonza. *Contact*: Eliot Harrison 122 C St., NW., Suite 740, Washington, DC 20001 *Product Name*: Lonzabac 12. *Type of Product*: Antimicrobial. *Active Ingredient*: Bis (3 aminopropyl) dodecylamine.at 91.4%. *Proposed classification/Use:* None. For treatment of hard non-porous in industrial and institutional sites.

4. *File symbol*: 6836–EIU. *Applicant*: Lonza. *Contact*: Eliot Harrison 122 C St., NW., Suite 740, Washington, DC 20001 *Product Name*: Lonzabac Formulation LNZ-64. *Type of Product*: Disinfectant. *Active Ingredient*: Bis (3 aminopropyl) dodeclamine at 4.86%. *Proposed classification/Use:* None. For use in industrial and institutional sites on hard non-porous surfaces.

5. *File symbol*: 5185–UOO. *Applicant*: Bio-Lab Inc. *Contact*: Mark Jernigan, P.O. Box 300002 Lawrenceville, GA 30049–1002. *Product Name*: Bellacide 350. *Type of Product*: Algicide, bactericide, fungicide. *Active Ingredient*: Tributyl tetradecyl phosphonium chloride at 50%. *Proposed classification/Use:* None. For recirculating cooling water and process water systems.

6. *File symbol*: 74234–R. *Applicant*: Intralytix, Inc. *Contact*: Eliot Harrison, 122 C St., NW., Suite 740, Washington, DC 2000. *Product Name*: LMP-102. *Type of Product*: Non-food contact sanitizer. *Active Ingredient*: Listeria Specific Bacteriophages. *Proposed classification/Use:* None. For use as a sanitizer in food processing and handling facilities.

7. *File Symbol*: 43813–ET. *Applicant*: William Goodwine, Janssen Pharmaceutical, Inc., Plant and Material Protection Division, 1125 Trenton-Harbourton Road, Titusville, NJ 08560–0200. *Product Name*: Econea Technical. *Type of Product*: Manufacturing Use Product (MUP). *Active Ingredient*: 1*H*-Pyrrole-3-carbonitrile, 4-bromo-2-(4-chlorophenyl)-5-trifluoromethyl at 93.2%. *Proposed classification/Use:* None. For use as an antifoulant paint product.

8. *File symbol*: 1258–REUT. *Applicant*: Arch Chemical Co. *Contact*: Gary Schifilliti, 1955 Lake Park Drive, Smyrna, Georgia 30080. *Product Name*: Copper Omadine Powder AF. *Type of Product*: MUP. *Active Ingredient*: Copper 2-Pyridinethiol-1-Oxide at 85%. *Proposed classification/Use:* None. For use as an antifoulant paint product.

9. *File Symbol*: 11350–GL. *Applicant*: Sigma Coatings USA BV, Box 816, Harvey, LA 70059. *Product Name*: Sigma Nexxium 20 Antifouling. *Type of Product*: Antifoulant. *Active Ingredient*: Contains 3.4% of the active ingredient described in 43813–ET. *Proposed classification/Use:* None. For use as an antifoulant paint product.

10. *File Symbol*: 2214–RT. *Applicant*: Tetra Industries, Inc., 25025 I-45 North The Woodlands, TX 77380. *Product Name*: Damprid. *Type of Product*: Residential mold and mildew product. *Active Ingredient*: Calcium chloride at 82%. *Proposed classification/Use:* None. For use on mold and mildew.

11. *File Symbol*: 49403–GN. *Applicant*: Clariant Corporation, 4000 Monroe Road, Charlotte, NC 28205. *Product Name*: JMAC Composite PG Technical. *Type of Product*: Manufacturing Use Only Product. *Active Ingredient*: Silver chloride coated titanium dioxide at 100%. *Proposed classification/Use:* None. For products to be applied to adhesives, sealants, fibers, plastics, coatings.

12. *File Symbol*: 49403–EO. *Applicant*: Clariant Corporation, 4000 Monroe Road, Charlotte, NC 2820. *Product Name*: JMAC Composite PG. *Type of Product*: Material preservatives. *Active Ingredient*: Silver chloride treated titanium dioxide at 100%. *Proposed classification/Use:* None. For material preservative; for adhesives, sealants, fibers, plastics, coatings, films.

13. *File Symbol*: 39967–UO. *Applicant*: Lanxess Corporation, 100 Bayer Road, Pittsburg, PA 15025. *Product Name*: Preventol A5-S. *Type of Product*: Manufacturing use product. *Active Ingredient*: Methanesulfenamide, 1,1-dichloro-*N*-((dimethylamino)-1-fluoro-*N*-(methylphenyl) at 98.1% (tolyfluanid). *Proposed classification/Use:* None. For use as an antifoulant paint product.

14. *File Symbol*: 2693–ERU. *Applicant*: International Paint, Inc., 2270 Morris Avenue, Union, NJ 07083. *Product Name*: Micron Extra P - Blue. *Type of Product*: Antifoulant. *Active Ingredient*: Contains 1.96% of the active ingredient in 39967–UO described above (tolyfluanid). *Proposed classification/Use:* None. For use as an antifoulant paint product.

15. *File Symbol*: 2693–ERL. *Applicant*: International Paint, Inc., 2270 Morris Avenue, Union, NJ 07083. *Product Name*: Ultra P - Blue. *Type of Product*: Antifoulant. *Active Ingredient*: Contains 1.64% of the active ingredient in 39967–UO described above (tolyfluanid). *Proposed classification/Use:* None. For use as an antifoulant paint product.

16. File symbol: 75269–E (MUP). *Applicant*: Keller and Heckman LLP, US Agent for Rutgers Organics GmbH, 1001 G St., NW., Suite 500 West, Washington, DC 20001. *Product Name*: Impralit KDS. *Type of Product*: Wood Preservative. *Active Ingredient*: Polymeric betaine at 5.54%. *Proposed classification/Use:* None. For use on wood.

17. *File symbol*: 75799–R (MUP). *Applicant*: Akzo Nobel Functional Chemicals LLC, 5555 Spalding Drive, Suite 100, Norcross, GA 30092. Product Name: PXTS Technical. *Type of Product*: Wood Preservative. *Active ingredient*: Polyxylenol Tetrasulfide (PXTS) at 80.5%. *Proposed classification/Use:* None. For use on wood.

18. *File symbol*: 75799–E–(EP). *Applicant*: Akzo Nobel Functional Chemicals LLC, 5555 Spalding Drive, Suite 100, Norcross, Georgia 30092. *Product Name*: PXTS Blend D (EP) 115. *Type of Product*: Wood Preservative *Active ingredient*: Polyxylenol Tetrasulfide (PXTS) at 53.9%. *Proposed classification/Use:* None. For use on wood.

19. *File symbol*: 43813–GG. *Applicant*: William Goodwine, Janssen Pharmaceutical, Inc., Plant and Material Protection Division, 1125 Trenton-Harbourton Road, Titusville, NJ 08560–0200. *Product Name*: Bethoguard Technical. *Type of Product*: Wood Preservative. *Active Ingredient*: 3-(Benzo[b]thiophen-2yl)-5,6-dihydro-1,4,2-oxathiazine,4-oxide at 96.6%. *Proposed classification/Use:* None. For use on wood.

20. *File symbol*: 43813–GU. *Applicant*: William Goodwine, Janssen Pharmaceutical, Inc., Plant and Material Protection Division, 1125 Trenton-Harbourton Road, Titusville, NJ 08560–0200. *Product Name*: Bethoguard. *Type of Product*: Wood Preservative. *Active Ingredient*: 3-(Benzo[b]thiophen-2yl)-5,6-dihydro-1,4,2-oxathiazine,4-oxide at 96.6%. *Proposed classification/Use:* None. For Use on wood.

21. *File symbol*: 43813–GL. *Applicant*: William Goodwine, Janssen Pharmaceutical, Inc., Plant and Material Protection Division, 1125 Trenton-Harbourton Road, Titusville, NJ 08560–0200. *Product Name*: Bethoguard 300 SC. *Type of Product*: Wood Preservative. *Active Ingredient*: 3-(Benzo[b]thiophen-2yl)-5,6-dihydro-1,4,2-oxathiazine,4-oxide at 31.1%. *Proposed classification/Use:* None. For use on wood.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: December 23, 2004.

Jack E. Housenger,

Acting Director, Antimicrobials Division, Office of Pesticide Programs.

[FR Doc. 05–260 Filed 1–5–05; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2684]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

December 1, 2004.

Petitions for Reconsideration and Clarification have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI) (1–800–378–3160). Oppositions to these petitions must be filed by January 21, 2005. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television (MB Docket No. 03–15).

Number of Petitions Filed: 11.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–259 Filed 1–5–05; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Tuesday, January 11, 2005 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Darlene Harris,

Deputy Secretary of the Commission.

[FR Doc. 05–377 Filed 1–4–05; 2:33 pm]

BILLING CODE 6715–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Childhood Lead Poisoning Prevention (ACCLPP): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee on Childhood Lead Poisoning Prevention.

Times and Dates: 8:30 a.m.–5 p.m., March 22, 2005; 8:30 a.m.–12:30 p.m., March 23, 2005.

Place: Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, LA 70130, Telephone: (504) 595–6211 or toll free 1–888–627–7033.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The Committee provides advice and guidance to the Secretary; the Assistant Secretary for Health; and the Director, CDC, regarding new scientific knowledge and technological developments and their practical implications for childhood lead poisoning prevention efforts. The committee also reviews and reports regularly on childhood lead poisoning prevention practices and recommends improvements in national childhood lead poisoning prevention efforts.

Matters To Be Discussed: Update on the Lead and Pregnancy Workgroup Agenda activities, ACCLPP process for work group projects, updates of the clinical and public health implications of adverse health effects of blood lead levels less than 10 µg/dL.

Agenda items are subject to change as priorities dictate.

Opportunities will be provided during the meeting for oral comments. Depending on the time available and the number of requests, it may be necessary to limit the time of each presenter.

For Further Information Contact: Crystal M. Gresham, Program Analyst, Lead Poisoning Prevention Branch, Division of Emergency and Environmental Health Services, NCEH, CDC, 4770 Buford Hwy, NE., M/S F–40, Atlanta, Georgia 30341, telephone (770) 488–7490, fax (770) 488–3635.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: December 30, 2004.

B. Kathy Skipper,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–271 Filed 1–5–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

ACTION: Publication of closed meeting summary of the Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Committee Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Background: The Advisory Board on Radiation and Worker Health met on December 13, 2004, in closed session to discuss Individual Case Dose Reconstruction Reviews. The discussion involved individual dose reconstruction case reviews. The individual cases the ABRWH discussed included personal information of a confidential nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and, therefore, could not be disclosed. A Determination to Close the meeting was approved and published, as required by the Federal Advisory Committee Act.

Summary of the Meeting: Attendance was as follows:

Board Members:

Paul L. Ziemer, Ph.D., Chair.

Lew Wade, Ph.D., Executive Secretary (Pro Tem).

Antonio Andrade, Ph.D., Member.

Roy L. DeHart, M.D., M.P.H., Member.

Richard L. Espinosa, Member.
Michael H. Gibson, Member.
Mark A. Griffon, Member.
James M. Melius, M.D., Dr.P.H., Member.
Wanda I. Munn, Member.
Charles L. Owens, Member.
Robert W. Presley, Member.
Genevieve S. Roessler, Ph.D., Member.
NIOSH Staff:
Fred Blosser, Cori Homer, Stu Hinnefeld, Liz Homoki-Titus, Ted Katz, Rob McGolerick, Jim Neton, and Diane Porter.
DOL Staff:
Shelby Hallmark, Jeff Kotsch, Jeff Nesvet, and Pete Turcic.
GAO Staff:
Mary Nugent.
SC&A Staff:
Hans Behling, Joe Fitzgerald, John Mauro.
Ray S. Green, Court Recorder.

Summary/Minutes

Dr. Ziemer called to order the Advisory Board on Radiation and Worker Health (ABRWH) in closed session on December 13, 2004 at 1:30 p.m. The purpose of the closed meeting was to discuss the Individual Case Dose Reconstruction Reviews. This action will allow the ABRWH to fulfill its statutory duty to advise the Secretary of Health and Human Services on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program under EEOICPA.

General topics discussed:

- Closed session procedures.
- Case reviews presented.
- Prepared motion for consideration by the full Board regarding how to proceed with the 20 cases; the motion was approved by unanimous vote, then shared and discussed in open session by the Board on the following day. Dr. Paul Ziemer adjourned the closed session of the ABRWH meeting at 4:50 p.m. with no further business being conducted by the ABRWH.

Contact Person for More Information: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–6825, fax 513/533–6826.

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: December 30, 2004.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–288 Filed 1–5–05; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0558]

Agency Information Collection Activities; Proposed Collection; Comment Request; Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the reporting requirements for assessing the antimicrobial resistance concerns as part of the overall preapproval safety evaluation of new animal drugs, focusing on the effect of antimicrobial new animal drugs on bacteria of human health concern.

DATES: Submit written or electronic comments on the collection of information by March 7, 2005.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Evaluating the Safety of Antimicrobial New Animal Drugs With Regard to Their Microbiological Effects on Bacteria of Human Health Concern

Description: The guidance document discusses an approach for assessing the safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern. In particular, the guidance describes methodology that sponsors of antimicrobial new animal drug applications for food-producing animals may use to complete a qualitative antimicrobial resistance risk assessment. This risk assessment should be submitted to FDA for the purposes of evaluating the safety of the new animal drug to human health. The guidance document outlines a process for integrating relevant information into an overall estimate of risk and discusses possible risk management strategies.

Table 1 of this document represents the estimated burden of meeting the reporting requirements. The burden estimates for these information collection requirements are based on information provided by the Office of New Animal Drug Evaluation, Center for Veterinary Medicine. The guidance document describes the type of information that should be collected by the drug sponsor when completing the antimicrobial resistance risk assessment. FDA will use the risk assessment and supporting information to evaluate the safety of original (21 CFR 514.1) or supplemental (21 CFR 514.8) NADAs for antimicrobial drugs intended for use in food-producing animals.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR 514.1(b)(8) and 514.8(a)(2)	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Hazard Identification (initial scoping of issues—relevant bacteria, resistance determinants, food products; preliminary data gathering)	15	1	15	30	450
Release Assessment (literature review; review of research reports; data development; compilation, and presentation)	10	1	10	1,000	1,000
Exposure Assessment (identifying and extracting consumption data; estimating probability of contamination on food product)	10	1	10	8	80
Consequence Assessment (review ranking of human drug importance table)	10	1	10	4	40
Risk Estimation (integration of risk components; development of potential arguments as basis for overall risk estimate)	10	1	10	12	120
Risk Management (discussion of appropriate risk management activities)	10	1	10	30	300
Total Burden					10,990

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates that on an annual basis an average of 15 NADAs (including original applications and major supplements) would be subject to information collection under this guidance. This estimate is based on the number of reviews completed between October 2003 and October 2004. During that period, microbial food safety for approximately 15 antimicrobial NADAs (including original and major supplements) was evaluated. This estimate excludes NADAs for antimicrobial drug combinations, generic drug applications (ANADAs), and certain supplemental NADAs.

Dated: December 30, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–245 Filed 1–5–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: January 26, 2005, 9 a.m. to 5 p.m., January 27, 2005, 9 a.m. to 5 p.m.

Place: DoubleTree Hotel San Diego-Mission Valley, 7450 Hazard Center Drive, San Diego, California 92108, Phone: (619) 297–5466; Fax: (619) 297–5499.

Status: The meeting will be open to the public.

Agenda: The agenda includes an overview of the Council's general business activities. The Council will also hear presentations from experts on farmworker issues, including the status of farmworker health at the local and national level. In addition, the Council will be holding a public hearing at which migrant farmworkers, community leaders, and providers will have the opportunity to testify before the Council regarding matters that affect the health of migrant farmworkers. The hearing is scheduled for Thursday, January 27, from 9 a.m. to 12 noon, at the DoubleTree Hotel San Diego-Mission Valley.

The Council meeting is being held in conjunction with the 14th Annual Western Migrant Stream Forum sponsored by the Northwest Regional Primary Care Association, which is being held in San Diego, California, during the same period of time.

Agenda items are subject to change as priorities indicate.

For Further Information Contact: Anyone requiring information regarding the Council should contact Gladys Cate, Office of Minority and Special Populations, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 5600 Fishers Lane,

Room 15–99, Rockville, Maryland 20857, Telephone (301) 594–0367.

Dated: December 28, 2004.

Steven A. Pelovitz,

Associate Administrator for Administration and Financial Management.

[FR Doc. 05–216 Filed 1–5–05; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: 30-day notice of information collection under review: Checklist for on-site review of schools; File No. OMB–35.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 30, 2004 at 69 FR 52908, allowed for a 60-day public comment period. The USCIS did not receive any comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 7, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one ore more of the following four points:

(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, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

Type of Information Collection: Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Checklist for On-Site Review of Schools.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* No agency Form Number; File No. OMB–35, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The data is used by the agency when conducting on-site visits at schools that submitted certification applications in SEVIS after the preliminary enrollment period.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 responses at 65 (1.083) minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,830 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: December 30, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–217 Filed 1–5–04; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: 30-day notice of information collection under review: Application to adjust status from temporary to permanent resident, Form I–698.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 14, 2004 at 69 FR 61034, allowed for a 60-day public comment period. The USCIS did not receive any comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted February 7, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application to Adjust Status from Temporary to Permanent Resident.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–698, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The data collected on this form is used by the USCIS to determine an applicant's eligibility to adjust status from temporary to permanent resident.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

respond: 1,179 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,179 annual burden hours.

If you have comments, suggestions, or need a copy of the proposed information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529

Dated: December 30, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–218 Filed 1–5–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: 30-day notice of information collection under review; Supplement A to Form I–539 (filing instructions for V nonimmigrant status) Form I–539–Supp. A.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 8, 2004 at 69 FR 60412, allowed a 60-day public comment period. The USCIS did not receive any comments during that period on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 7, 2004. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(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, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Supplement A to Form I–539 (Filing Instructions for V Nonimmigrant Status Applicants).

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–539 Supplement A. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or Households. This form is used by nonimmigrants to apply for extension of stay or change of nonimmigrant status or for obtaining V nonimmigrant classification. The USCIS will use the data on this form to determine eligibility for the requested benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 427,000 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 213,500 annual burden hours.

If you have comments, suggestions, or need a copy of the proposed information collection instrument, please contact Mr. Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272–8377.

Dated: December 30, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–219 Filed 1–5–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

AGENCY: 30-day notice of information collection under review: Application for benefits under the Family Unity Program, Form 1–817.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** at 69 FR 60411. The notice allowed for a 60-day public review and comment period. The USCIS received no comments on the proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 7, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Application for Benefits Under the Family Unity Program.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–817. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected will be used to determine whether the applicant meets the eligibility requirements for benefits under 8 CFR 245A, Subpart C.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 40,000 responses at 2 hours and 30 minutes (2.5) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100,000 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272–8377.

Dated: December 30, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–220 Filed 1–5–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: 30-day notice of information collection under review: Sponsor's notice of change of address, Form I–865.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 30, 2004 at 66 FR 19797, allowed for a 60-day public comment period. The USCIS did not receive any comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 7, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate the of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, 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 response.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Sponsor's Notice of Change of Address.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–865, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form will be used by every sponsor who has filed an Affidavit of Support under Section 213A and the INA to notify the Service of a change of address. The data will be used to locate a sponsor if there is a request for reimbursement.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at .233 hours (14 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 23,300 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272–8377.

Dated: December 30, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–221 Filed 1–5–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: Petition for Amerasian, widow(er), or special immigrant, Form I–360.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until March 7, 2005.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(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 agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Petition for Amerasian, Widow(er), or Speical Immigrant.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–360. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This form is used to determine eligibility or to classify an alien as an Amerisian, widow or widower, battered or abused spouse or child and special immigrant, including religious worker, juvenile court dependent and armed forces member.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 8,397 responses at (2) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 16,794 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272–8377.

Dated: December 30, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–222 Filed 1–5–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 30-day notice of information collection under review: Request for fee waiver denial letter, Form G–1054.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 30, 2004 at 69 FR 52909, allowed a 60-day public comment period. The USCIS did not receive any comments on this information collection during that period.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 7, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Request for Fee Waiver Denial Letter.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form G–1054. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Title 8 CFR 103.7(c), which authorizes the agency to waive fees, reads (in pertinent part) as follows: "The officer of the Service having jurisdiction to render a decision on the application, petition, appeal, motion or request may, in his discretion, grant the waiver of fee." In order to maintain consistency in the adjudication of fee waiver requests, to collect accurate data on amounts of fee waivers, and to facilitate the public-use process, it is necessary to implement this Fee Waiver Denial Letter, Form G–1054.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 16,000 responses at 1.25 hours (75 minutes) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 20,000 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; (202) 272–8377.

Dated: December 30, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–223 Filed 1–5–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 30-day notice of information collection under review: Petition for alien fiance(e), Form I–129–F.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on October 8, 2004 at 69 FR 60412. The notice allowed for a 60-day public review and comment period. The USCIS did not receive any comments from the public.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 7, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Petition for Alien Fiance(e).

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–129F. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by a U.S. citizen to facilitate the entry of his or her fiancé(e) into the United States, so that a marriage may be concluded within 90 days of entry between the U.S. citizen and the beneficiary of the petition. This form also allows the spouse or child of a U.S. citizen to enter the United States as a nonimmigrant, in accordance with provisions of section 1103 of the Legal Immigration Family Equity Act of 2000.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,000 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: December 30, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–224 Filed 1–5–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: 60-day notice of information collection under review: Application for removal, Form I–243.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until March 7, 2005.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Removal.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–243. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. The information provided on this form allows the USCIS to determine eligibility for an applicant's request for removal from the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 41 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 7 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529.

Dated: December 30, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–225 Filed 1–5–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under Review: Application for stay of deportation or removal, Form I–246.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until March 7, 2005.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the collection of information, including the

validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Stay of Deportation or Removal.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–246. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The U.S. Citizenship and Immigration Services uses this form to determine the eligibility of an applicant for stay of deportation or removal.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue, NW., Washington, DC 20529; 202–272–8377.

Dated: December 30, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–226 Filed 1–5–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: 30-day notice of information collection under review: Immigrant petition for alien workers, Form I–140.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on August 30, 2004 at 69 FR 52907, allowed a 60-day public comment period. The USCIS did not receive any comments on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until February 7, 2005. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Immigrant Petition for Alien Workers.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–140. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to classify a person under section 203(b)(1),.203(b)(2), or 203(b)(3) of the Immigration and Nationality Act. The information collected on this form will be used by the USCIS to determine eligibility for immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 96,000 responses at 60 minutes (1 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 96,000 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529.

Dated: December 30, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–227 Filed 1–5–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: Immigrant petition by alien entrepreneur, Form I–526.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments

are encouraged and will be accepted for sixty days until March 7, 2005.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Information Collection.

(2) *Title of the Form/Collection:* Immigrant Petition by Alien Entrepreneur.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–526. U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by qualified immigrants seeking to enter the United States under section 203(b)(5) of the Immigration and Nationality Act for the purpose of engaging in a commercial enterprise, must petition the U.S. Citizenship and Immigration Services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,368 responses at 1 hour and 15 minutes (1.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,710 annual burden hours.

If you have comments, suggestions, or need a copy of the information collection instrument, please contact Richard A. Sloan, Director, Regulatory Management Division, U.S. Citizenship and Immigration Services, 111 Massachusetts Avenue NW., Washington, DC 20529.

Dated: December 30, 2004.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. 05–228 Filed 1–5–05; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, as Amended; Addition of a New System of Records

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed addition of a new system of records.

SUMMARY: The Department of the Interior is issuing public notice of its intent to add a new Privacy Act system of records to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records systems maintained by the agency (5 U.S.C. 552a(e)(4)). The new system of records is called the Enterprise Access Control Service (EACS)—Interior, DOI–30.

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. Any persons interested in commenting on this proposed system of records may do so by submitting comments in writing to the Departmental Privacy Act Officer, U.S. Department of the Interior, Office of the Chief Information Officer, MS 5312 MIB, 1849 C Street NW., Washington, DC 20240. Comments received within 30 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. In that case the Department will publish any changes to the routine uses.

FOR FURTHER INFORMATION CONTACT: For information on the Enterprise Access Control Service (EACS)—Interior, DOI–30, please contact Richard A. Delph, Office of the Chief Information Officer, Office of the Secretary, Department of the Interior, 625 Herndon Parkway, Herndon, VA 20170, (703) 487–8555.

SUPPLEMENTARY INFORMATION: The purpose of the Enterprise Access Control Service is to streamline DOI bureau/office information technology (IT) user management and administration by providing an enterprise Directory structure. It will provide an enhanced control of user identification, authentication, and authorization. This improvement will enable DOI to centrally manage network resources and support multiple processes. Direct results of this initiative will include enhanced sharing of information and resources and an overall improved level of security for IT systems.

Dated: January 3, 2005.

Marilyn Legnini,

Departmental Privacy Act Officer, Department of the Interior.

INTERIOR/DOI–30

SYSTEM NAME:

Enterprise Access Control Service (EACS)—Interior, DOI–30.

SYSTEM LOCATION:

Information covered by this system is located in three primary master sites at the following locations under the Department of the Interior (DOI), Office of the Secretary, Office of the Chief Information Officer at: (a) The Enterprise Service Center, Herndon, Virginia, (b) Anchorage, Alaska, and (c) the National Business Center, Lakewood, Colorado. DOI bureau and office replicas of the master database of the EACS are located at strategic Departmental locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current DOI employees and contractors who use DOI computer networks and e-mail.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information retained in EACS contains: User name, address, and contact information, Web home page address, user access and permission rights, authentication certificates along with the date and time of signature retained on the signed document, and supervisor's name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system of records is maintained under the authority of 5 U.S.C. 301; the Paperwork Reduction Act of 1995, 44 U.S.C. 3501; and the Government Paperwork Elimination Act, 44 U.S.C. 3504.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of the system are: (1) To provide a common

authoritative directory service for the purpose of ensuring the security of DOI computer networks, resources and information and protecting them from unauthorized access, tampering or destruction, (2) to authenticate and verify that all persons accessing DOI computer networks, resources and information are authorized to access them, (3) to ensure that persons signing official documents are indeed the person represented and to provide for non-repudiation of the use of an electronic signature, and (4) to enable an individual to encrypt and decrypt documents for secure transmission.

Disclosures outside the DOI may be made:

(a) To an expert, consultant, or contractor (including employees of the contractor) of DOI that performs, on DOI's behalf, services requiring access to these records.

(b) To the Federal Protective Service and appropriate Federal, State, local or foreign agencies responsible for investigating emergency response situations or investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license, when DOI becomes aware of a violation or potential violation of a statute, rule, regulation, order or license.

(c) To another agency with a similar smart card system when a person with a DOI SmartCard desires access to that other agency's facility.

(d) To the Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when:

(1) One of the following is a party to the proceeding or has an interest in the proceeding:

(i) The Department or any component of the Department;

(ii) Any Departmental employee acting in his or her official capacity; or

(iii) Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; and

(2) We deem the disclosure to be:

(i) Relevant and necessary to the proceeding; and

(ii) Compatible with the purpose for which we compiled the information.

(e) To the appropriate Federal agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, or order.

(f) To a congressional office in response to a written inquiry to that office by the individual to whom the record pertains.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic media on hard disks, magnetic tapes.

RETRIEVABILITY:

Records are retrievable from EACS by name, digital certificate and personal identification number (PIN), and Web home address.

ACCESS SAFEGUARDS:

The computer servers in which records are stored are located in computer facilities that are secured by alarm systems and off-master key access. EACS access granted to individuals is password-protected. Access to the certificate issuance portion of this system of records is controlled by a digital certificate in combination with a PIN. Each person granted access to the system must be individually authorized to use the system. A Privacy Act Warning Notice appears on the monitor screen when first displayed. Backup tapes are stored in a locked and controlled room in a secure, off-site location. A Privacy Impact Assessment was completed to ensure that Privacy Act requirements and safeguard requirements are met.

RETENTION AND DISPOSAL:

Records relating to persons covered by this system are retained in accordance with General Records Schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Chief Information Officer, Office of the Secretary, Department of the Interior, 625 Herndon Parkway, Herndon, VA 20170.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on him or herself should address his/her request to the local Bureau/office IT computer administrators or help desk. Individuals requesting notification must provide their full name and social security number. Interior bureaus/offices are listed at the Department of the Interior Web site at *http://www.doi.gov*. The request must be in writing and signed by the requester. (*See* 43 CFR 2.60).

RECORDS ACCESS PROCEDURES:

An individual requesting access to records maintained on him or herself should address his/her request to the office listed in the "Notification procedures" section above. Individuals requesting access must provide their full name and social security number. The request must be in writing and signed by the requester. (*See* 43 CFR 2.63).

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on him or herself should address his/her request to the office above. Individuals requesting an amendment must provide their full name and social security number. The request must be in writing and signed by the requester. (*See* 43 CFR 2.71).

RECORD SOURCE CATEGORIES:

Information in this system is obtained from individuals covered by the system supervisors, designated approving officials, certificate issuing authority, and network system administrators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–289 Filed 1–5–05; 8:45 am]
BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974, as Amended; Addition of a New System of Records

AGENCY: U.S. Department of the Interior.

ACTION: Proposed addition of a new system of records.

SUMMARY: The Department of the Interior (DOI) is issuing public notice of its intent to create a Privacy Act (PA) system of records in its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records systems maintained by the agency (5 U.S.C. 552a(e)(4)). The new system of records is captioned, "Interior—DOI–15," and is titled, "Authenticated Computer Access and Signature System (ACASS)."

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the agency's intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this proposed amendment may do so by submitting comments in writing to the Department of the Interior, Privacy Act Officer, Marilyn Legnini, U.S. Department of the Interior, Mail Stop (MS)–5312—Main

Interior Building (MIB), 1849 C Street, NW., Washington, DC 20240. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. The Department will publish a revised notice if changes are made based upon a review of comments received.

FOR FURTHER INFORMATION CONTACT: Bob Donelson, Senior Property Manager, Bureau of Land Management, Department of the Interior, 1620 L Street, NW., MS LS, Washington, DC 20036; 202–452–5190.

SUPPLEMENTARY INFORMATION: The primary purpose of ACASS is: (1) To ensure the security of DOI computer networks in order to maintain continuous communications and protect the information attached to the networks from unauthorized access, tampering or destruction; (2) To verify that all persons accessing DOI networks with "smart card" systems are authorized to access them; (3) To ensure that persons signing official documents are indeed the person represented and to provide assurance to the recipient that the signature is authentic; and (4) To enable an individual to encrypt and decrypt documents for secure transmission.

The new "smart card" access control system is based on digitally encrypted certificates. The DOI is adding the capability for users to electronically sign documents and encrypt documents using digital certificates. The current password access control system is used to maintain access control to the various computer networks and computer systems in the DOI. The new access control system will be used to maintain access control to all DOI computer networks and systems that have installed "smart card" access controls. In addition to the information collected under the current access control system, the new access control system will record the personal identification numbers (PIN) of the "smart card" holder onto the "smart card". The PIN will not be recorded elsewhere in the system. The data will be stored on a server located in the U.S. Department of the Interior, Bureau of Land Management, National Information Resources Management Center, Denver Federal Center, Lakewood, Colorado. A redundant, fail-over, server is located at BLM's Network Operations Center in Portland, Oregon.

A copy of the system notice for Interior—DOI–15, Authenticated Computer Access and Signature System (ACASS), follows.

Dated: January 3, 2005.

Marilyn Legnini,

Departmental Privacy Act Officer, Department of the Interior.

INTERIOR/DOI–15

SYSTEM NAME:

Authenticated Computer Access and Signature System—Interior, DOI–15

SYSTEM LOCATION:

(1) Data covered by this system are maintained in the following locations: U.S. Department of the Interior (DOI), Bureau of Land Management (BLM), National Information Resources Management Center, Denver Federal Center, Lakewood, Colorado. A redundant, fail-over, server is located at BLM's Network Operations Center in Portland, Oregon. A repository of digital certificates included in this system is maintained by the certificate authority. However, only the Department of Interior maintains a listing of individuals to whom the certificates are issued.

(2) Limited access to data covered by this system is available at DOI locations, both Federal buildings and Federally-leased space, where DOI computer systems are located. System Administrators at those locations have access only to the information for employees who attempt to access computer systems at their location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have "smart card" IDs with authentication capability who are granted access to DOI computer networks or certain isolated systems at facilities that have the "smart card" access control system installed and individuals authorized to sign official DOI documents. These include, but are not limited to, the following groups: current agency employees, former agency employees until the records are disposed of in accordance with the proscribed records schedule, agency contractors, other Government employees from agencies with "smart card" systems and volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records maintained on current agency employees and agency contractors include the following data fields: Name, organization/office of assignment, personal identification number (PIN), number of ID security cards issued, ID security card issue date, ID security card expiration date, and ID security card serial number. The Active Directory is a component of the computer network operating system used by DOI that performs network management functions and is the repository for the computer access data. A contracted certification authority provides the digital certificates and encryption services necessary for secure authentication and verification. The collected data will contain the individual's user ID/e-mail address. The Active Directory will generate the date of entry to the computer network/system, time of entry, location of entry, time of exit, security access category, and access status which will also become part of the record. The collected data retained in Active Directory may also contain: office telephone number, supervisor's name and Web home page address. Records on former agency employees are maintained in accordance with the proscribed records schedule.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Presidential Memorandum on Upgrading Security at Federal Facilities, June 28, 1995.

Federal Information Security Act (Pub.L. 104–106), section 5113.

E-Government Act (Pub.L. 104–347), section 203.

Government Paperwork Elimination Act (Pub.L. 105–277).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary purposes of the system are:

(1) To ensure the security of DOI computer networks to maintain continuous communications and protect the information attached to the networks from unauthorized access, tampering or destruction.

(2) To verify that all persons accessing DOI networks with "smart card" systems are authorized to access them.

(3) To ensure that persons signing official documents are indeed the person represented and to provide for non-repudiation of the use of an electronic signature.

(4) To enable an individual to encrypt and decrypt documents for secure transmission.

DISCLOSURES OF RECORDS WITHIN DOI:

Disclosure of these records may be made: (1) To those officers and employees of DOI who have a need for the record in the performance of their duties, or (2) when required by the Freedom of Information Act, 5 U.S.C. 552.

DISCLOSURES OUTSIDE THE DOI MAY BE MADE:

(1) To an expert, consultant, or contractor (including employees of the

contractor) of DOI that performs, on DOI's behalf, services requiring access to these records.

(2) To another agency with a similar "smart card" system when a person with a "smart card" requires access to that agency's facilities on a "need-to-know" basis.

(3) To the Federal Protective Service and appropriate Federal, State, or local agencies responsible for investigating emergency response situations or investigating or prosecuting the violation of or for enforcing or implementing a statute, rule, regulation, order or license, when DOI becomes aware of a violation or potential violation of a statute, rule, regulation, order or license.

(4)(a) To any of the following entities or individuals, when the circumstances set forth in (b) are met:

(i) The Department of Justice (DOJ);

(ii) A court, adjudicative or other administrative body;

(iii) A party in litigation before a court or adjudicative or administrative body; or

(iv) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(b) When

(i) One of the following is a party to the proceeding or has an interest in the proceeding:

(A) DOI or any component of DOI;

(B) Any DOI employee acting in his or her official capacity;

(C) Any DOI employee acting in his or her individual capacity if DOI or DOJ has agreed to represent that employee or pay for private representation of the employee;

(D) The United States, when DOJ determines that DOI is likely to be affected by the proceeding; and

(ii) DOI deems the disclosure to be:

(A) Relevant and necessary to the proceeding; and

(B) Compatible with the purposes for which the records were compiled.

(5) To a congressional office in response to a written inquiry an individual covered by the system has made to the congressional office about him or herself.

(6) To an official of another Federal agency to provide information needed in the performance of official duties related to reconciling or reconstructing data files, in support of the functions for which the records were collected and maintained.

(7) To representatives of the National Archives and Records Administration to conduct records management inspections under the authority of 44 U.S.C. 2903 and 2904.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic media on hard disks, magnetic tapes and the ID authentication card itself and on paper records stored in file cabinets in secured locations.

RETRIEVABILITY:

Records are retrievable from Active Directory by organization, agency point of contact, security access category that describes the type of access the user is allowed, date of system entry, time of entry, location of entry, time of exit, location of exit, ID security card issue date, ID security card expiration date, and ID security card serial number.

ACCESS SAFEGUARDS:

The computer servers in which records are stored are located in computer facilities that are secured by alarm systems and off-master key access. Active Directory access granted to individuals is password-protected. Access to the certificate issuance portion of this system of records is controlled by a digital certificate in combination with a personal identification number (PIN). Each person granted access to the system must be individually authorized to use the system. A Privacy Act Warning Notice appears on the monitor screen when records containing information on individuals are first displayed. Backup tapes are stored in a locked and controlled room in a secure, off-site location. A Privacy Impact Assessment was used to ensure that Privacy Act requirements and safeguard requirements were met.

RETENTION AND DISPOSAL:

Records relating to persons covered by this system are retained in accordance with General Records Schedule 18, Item No. 17. Unless retained for specific, ongoing security investigations:

(1) Records relating to individuals other than employees are destroyed two years after the ID security card expiration date.

(2) Records relating to date and time of system entry and exit of employees are destroyed two years after the date of entry and exit.

(3) All other records relating to employees are destroyed two years after the ID security card expiration date.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Information Resources Management Center, Bureau of Land Management, Denver Federal Center, Building 40, P.O. Box 25047, Denver, Colorado 80225–0047.

NOTIFICATION PROCEDURES:

An individual requesting notification of the existence of records on himself or herself should address his/her request to the local office Information Technology Security Manager. The individual requesting notification must provide their full name and social security number. Interior bureaus/offices are listed at the Department of the Interior Web site at *http://www.doi.gov*. The request must be in writing and signed by the requester. (*See* 43 CFR 2.60.)

RECORDS ACCESS PROCEDURES:

An individual requesting access to records maintained on himself or herself should address his/her request to the local office Information Technology Security Manager. The individual requesting access must provide their full name and social security number. The request must be in writing and signed by the requester. (*See* 43 CFR 2.63.)

CONTESTING RECORD PROCEDURES:

An individual requesting amendment of a record maintained on himself or herself should address his/her request to the local office IT Security Manager. The individual requesting the amendment must provide their full name and social security number. The request must be in writing and signed by the requester. (*See* 43 CFR 2.71.)

RECORD SOURCE CATEGORIES:

Individuals covered by the system, supervisors, and designated approving officials, certificate issuing authority, network system administrators.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 05–292 Filed 1–5–05; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Privacy Act of 1974, as Amended; Amendment of an Existing System of Records

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed amendment of an existing system of records.

SUMMARY: Under the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of our intent to change an existing Privacy Act system of records notice entitled, Interior BIA–18 "Law

Enforcement Services." The revisions will change the name of the system to Interior BIA–18, "Case Incident Reporting System." Other changes to Interior BIA–18 include updating data in the following fields: System Locations, Categories of Individuals Covered by the System, Categories of Records in the System, Routine Uses of Records Maintained in the System, Categories of Users and the Purposes of Such Uses, Policies and Practices for Storing, Retrieving, Accessing, Retaining and Disposing of Records in the System.

The Department of the Interior is issuing public notice of its intent to amend portions of an existing Privacy Act system of records subject to the Privacy Act of 1974 (5 U.S.C. 552a). This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice amendment of an existing records systems maintained by the agency (5 U.S.C. 552a(e)(4)).

EFFECTIVE DATE: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the agency's intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this proposed amendment may do so by submitting comments in writing to the Privacy Act Officer, Bureau of Indian Affairs, U.S. Department of the Interior, P.O. Box 247, Albuquerque, New Mexico 87103. Comments received within 40 days of publication in the **Federal Register** will be considered. The system will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. The Department will publish a revised notice if changes are made based upon a review of comments received.

FOR FURTHER INFORMATION CONTACT: Deputy Bureau Director, Bureau of Indian Affairs (BIA), Office of Law Enforcement Services (OLES), Washington, DC at (202) 208–5787.

SUPPLEMENTARY INFORMATION: The intent of amending this system notice is to accomplish the mission of the BIA, OLES to better clarify previous language, to address administrative changes, and to address the current needs of the agency. The following changes are being proposed to BIA–18: The system location will be changed to reflect an agency reorganization and re-alignment. The name of the system will be changed to more accurately define the information that is contained in the records of this system. The categories of individuals covered by the system will be amended to address both criminal and non-criminal records that the agency collects to perform our law enforcement responsibilities. The categories of records in the system will be amended to be a more complete listing of the information located in our records. The primary purposes of the system will be updated to meet new reporting requirements.

Purposes have also been added that we believe will allow greater access to individuals who need BIA, OLES reports to adjudicate a claim for a loss. The following "Routine Uses" have been changed in order to satisfy the purpose of the system, and to allow greater access to records that are needed by citizens who are served by BIA, OLES programs.

In Routine Use (3), we have added the word "written". The Routine Use will now read: "To a congressional office in response to a written inquiry an individual covered by the system has made to the congressional office about him or herself."

Routine Use (4) we have changed to read: "to Federal, State, local, or tribal agencies or contractors where necessary and relevant to the hiring, retention, removal, or processing of a personnel action of an employee or the issuance of a security clearance, contract, license, grant or other benefit." We added this section to benefit our tribal contract programs that request an Internal Affairs Investigation to take place when a personnel action is required. Routine Use (6) was deleted and subsequent routine uses were renumbered accordingly. Routine Use (6) was deleted because it stated that records could be disclosed to a guardian or guardian ad litem of a child named in the report without differentiating sensitive investigations with material that should be withheld to protect the privacy interest of parties identified in the report. The Privacy Act allows a legal guardian to act on behalf of an individual minor child.

New Routine uses were added to address the recent increase in requests for BIA, OLES reports.

Routine Use (8) says that disclosures outside the Department "for the purpose of providing information on traffic accidents, personal injuries, or the loss or damage of property may be made to: (a) Individuals involved in such incidents; (b) persons injured in such incidents; (c) owners of property damaged, lost or stolen in such incidents; and/or (d) these individuals' duly verified insurance companies, personal representatives, and/or attorneys. The release of information under these circumstances should only occur when it will not: (a) interfere with ongoing law enforcement proceedings, (b) risk the health or safety of an individual, or (c) reveal the identity of an informant or witness that has received an explicit assurance of confidentiality. Social security numbers should not be released under these circumstances unless the social security number belongs to the individual requester." The intent of this use is to facilitate information flow to parties who need the information to adjudicate a claim.

Routine Use (9) "to Federal, State, local, tribal organizations and contractors for the purpose of incident cause identification and to formulate incident prevention programs for improvement of public safety." The intent of this routine use is to allow tribal governments the opportunity to develop strategic plans that will address the public safety issues within their respective jurisdiction.

Routine Use (10) "to Federal, State, local, and tribal organizations responsible for the formulation of statistical reports necessary for the continued operation of the program." This routine use was added to address the need for complete and accurate crime data that is necessary to respond to the Government, Performance, and Results Act.

Routine use (11) "to tribal governments when necessary and relevant to the assumption of a program under Public Law 93–638, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450 *et seq.*" The intent of this routine use is to allow the BIA to transfer files when a tribal government assumes a law enforcement program under the authority of a Public Law 93–638 contract.

Dated: January 3, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

INTERIOR/BIA–18

SYSTEM NAME:

Case Incident Reporting System.

SYSTEM LOCATION:

(1) All District, Agency, and Field Offices of the Bureau of Indian Affairs (BIA), Office of Law Enforcement Services (OLES); (2) BIA, OLES, 1849 C Street, NW., MIB, Washington, DC 20240. (For a listing of specific locations, contact the Systems Manager.)

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual complainants in criminal cases, individuals investigated or arrested for criminal or traffic offenses, or certain types of non-criminal incidents, or any person involved in or witnessing incidents requiring the attention of BIA, OLES.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files include accident reports and incident reports which may contain any of the following: Name, address, social security number, date of birth, telephone numbers, and other personal identifiers; date and case numbers; related correspondence; fingerprint information; vehicle description and license data; passenger data; insurance data; emergency contact information; law enforcement officers' names; agency identifiers; sketches and/or photographs; hospital and other medical records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

25 U.S.C. 1, 1a, 13; 18 U.S.C. 3055; Act of May 10, 1939, 58 Stat. 693; 53 Stat. 520.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The primary uses of the records are: (1) To identify incidents in which individuals were involved, (2) to retrieve the report for information for the individual involved, such as accident reports and reports of damaged, lost or stolen property, (3) as a basis for criminal investigations conducted by the Bureau of Indian Affairs, Office of Law Enforcement Services, (4) to assist Federal, State, tribal, and local law enforcement agencies working in areas contiguous to areas under the jurisdiction of the BIA, (5) for the purpose of accident cause identification and to formulate accident prevention programs for improvement in traffic patterns, and (6) to formulate statistical reports necessary for the continued operation of the program.

DISCLOSURES OUTSIDE THE DEPARTMENT OF THE INTERIOR MAY BE MADE:

(1) To the U.S. Department of Justice when related to litigation or anticipated litigation;

(2) Of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local, foreign, or tribal agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order, or license;

(3) To a congressional office in response to a written inquiry an individual covered by the system has made to the congressional office about him or herself;

(4) To Federal, State, local, or tribal agencies or contractors where necessary and relevant to the hiring, retention, removal, or processing of a personnel action of an employee or the issuance of a security clearance, contract, license, grant, or other benefit;

(5) To Federal, State, local, or tribal governmental officials responsible for administering child protective services in carrying out his or her official duties;

(6) To agencies authorized to care for, treat, or supervise abused or neglected children whose policies also require confidential treatment of information;

(7) To members of community child protective teams for the purposes of establishing a diagnosis, formulation of a treatment plan, monitoring the plan, investigating reports of suspected physical child abuse or neglect, and making recommendations to the appropriate court of competent jurisdiction, whose policies also require confidential treatment of information;

(8) For the purpose of providing information on traffic accidents, personal injuries, or the loss or damage of property may be made to: (a) Individuals involved in such incidents; (b) persons injured in such incidents; (c) owners of property damaged, lost or stolen in such incidents; and/or

(d) These individuals' duly verified insurance companies, personal representatives, and/or attorneys. The release of information under these circumstances should only occur when it will not: (a) Interfere with ongoing law enforcement proceedings, (b) risk the health or safety of an individual, or (c) reveal the identity of an informant or witness that has received an explicit assurance of confidentiality. Social security numbers should not be released under these circumstances unless the social security number belongs to the individual requester;

(9) To Federal, State, local, tribal organizations, and contractors for the purpose of incident cause identification and to formulate incident prevention programs for improvement of public safety;

(10) To Federal, State, local, and tribal organizations responsible for the formulation of statistical reports necessary for the continued operation of the program;

(11) To tribal organizations when necessary and relevant to the assumption of a program under Public Law 93–638, the Indian Self-Determination and Education Assistance Act, 25 U.S.C. 450 *et seq.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders and electronic media such as personal computers.

RETRIEVABILITY:

Cross referenced by individual's name, case number, and other information linked to the individuals in the report.

SAFEGUARDS:

Maintained in accordance with 43 CFR 2.51 Privacy Act safeguards for records. Access is provided on a need-to-know basis only. Manual records are maintained in locked file cabinets under the control of authorized personnel during working hours, and according to the manual maintenance standards identified in Department of the Interior Regulations at 43 CFR 2.51. Electronic records are safeguarded by permissions set to "Authenticated Users" which requires password logon.

RETENTION AND DISPOSAL:

Records are maintained in accordance with record retentions outlined in 16 BIAM or the current BIA Records Schedule. Records are retired to the appropriate Federal Records Center in accordance with BIA records management policies.

SYSTEMS MANAGER(S) AND ADDRESS:

Deputy Bureau Director, Office of Law Enforcement Services, Bureau of Indian Affairs, United States Department of Interior, 1849 C Street, NW., MIB, Washington, DC 20240.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under the general exemption authority provided by 5 U.S.C. 552a(j)(2), the Department of the Interior has adopted a regulation, 43 CFR 2.79(a), which exempts this system from all of the provisions of 5 U.S.C. 552a and the regulations in 43 CFR part 2, subpart G, except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11) and (i) of 5 U.S.C. 552a and the portions of the regulations in 43 CFR part 2, subpart G, implementing these subsections. The reasons for adoption of this regulation are set out at 40 FR 37317 (August 26, 1975).

[FR Doc. 05–291 Filed 1–5–05; 8:45 am]
BILLING CODE 4310–G5–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee: Meeting

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is here given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), of a meeting of the Native American Graves Protection and Repatriation Review Committee. The Review Committee will meet on March 13–15, 2005, in the Keoni Auditorium, Hawaii Imin International Conference Center, 1777 East–West Road, Honolulu, HI 96848–1601, telephone (808) 944–7159. Meeting sessions will begin at approximately 1:00 p.m. on March 13, and 8:30 a.m. on March 14–15. Meeting sessions will end each day at approximately 5 p.m. The agenda for the meeting includes an update on various disputes and issues pending before the Review Committee; requests for recommendations regarding the disposition of culturally unidentifiable human remains; discussion of regulations; the Review Committee's 2002–2004 report to the Congress; discussion of nominees for the committee's seventh member; and presentations and statements by Indian tribes, Native Hawaiian organizations, museums, Federal agencies, and the public.

To schedule a presentation to the Review Committee during the meeting, submit a written request with an abstract of the presentation and contact information. Persons also may submit written statements for consideration by the Review Committee during the meeting. Send requests and statements to the Designated Federal Officer, NAGPRA Review Committee by U.S. Mail to the National Park Service, 1849 C Street NW (2253), Washington, DC 20240; or by commercial delivery to the National Park Service, 1201 Eye Street NW, 8th floor, Washington, DC 20005. Because increased security in the Washington, DC, area may delay delivery of U.S. Mail to Government offices, copies of mailed requests and statements should also be faxed to (202) 371–5197.

Transcripts of Review Committee meetings are available approximately 8 weeks after each meeting at the National NAGPRA Program office, 1201 Eye Street NW, Washington, DC. To request electronic copies of meeting transcripts, send an e–mail message to nagpra_info@nps.gov. Information about NAGPRA, the Review Committee, and Review Committee meetings is available at the National NAGPRA website, http://www.cr.nps.gov/nagpra; for the Review Committee's meeting procedures, select "Review Committee," then select "Procedures."

The Review Committee was established by the Native American Graves Protection and Repatriation Act of 1990 (NAGPRA), 25 U.S.C. 3001 *et seq.* Review Committee members are appointed by the Secretary of the Interior. The Review Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters within the scope of the work of the committee affecting such tribes or organizations; consulting with the Secretary of the Interior in the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Review Committee's work is completed during meetings that are open to the public.

Dated: December 16, 2004

C. Timothy McKeown,

Designated Federal Officer, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 05–241 Filed 1–5–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Sacramento District, Sacramento, CA, and Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of Defense, Army Corps of Engineers, Sacramento District, Sacramento, CA, and in the physical custody of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA. The human remains and associated funerary objects were removed from Fresno County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

An assessment of the human remains, and catalog records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of Big Sandy Rancheria of Mono Indians of California; Cold Springs Rancheria of Mono Indians of California; Northfork Rancheria of Mono Indians of California; Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as Santa Rosa Rancheria Tachi Yokut Tribe, California); Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and Tuolumne Band of Me–Wuk Indians of the Tuolumne Rancheria of California.

In 1948, human remains representing a minimum of one individual were removed from site CA–Fre–27, Fresno County, CA, by F. Fenenga and F.A. Riddell, University of California Archaeological Survey, and transferred to the Phoebe A. Hearst Museum of Anthropology the same year. No known individual was identified. The four associated funerary objects are one abalone shell, one steatite ornament, and two pottery fragments.

Site CA–Fre–27 is a habitation site located on the east bank of the Kings River within the current impoundment boundaries of the Pine Flat Reservoir. Characteristics of material culture, including steatite beads, brownware ceramics, and historic glass trade beads, indicate that the site was inhabited post–A.D. 1500.

Officials of the U.S. Department of Defense, Army Corps of Engineers, Sacramento District, and Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C.

3001 (9–10), the human remains described above represent the physical remains of at least one individual of Native American ancestry. Officials of the U.S. Department of Defense, Army Corps of Engineers, Sacramento District, and Phoebe A. Hearst Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the four objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Department of Defense, Army Corps of Engineers, Sacramento District, and Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Big Sandy Rancheria of Mono Indians of California; Cold Springs Rancheria of Mono Indians of California; Northfork Rancheria of Mono Indians of California; Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as Santa Rosa Rancheria Tachi Yokut Tribe, California); Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and Tuolumne Band of Me–Wuk Indians of the Tuolumne Rancheria of California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642–6096, before February 7, 2005. Repatriation of the human remains and associated funerary objects to the Big Sandy Rancheria of Mono Indians of California; Cold Springs Rancheria of Mono Indians of California; Northfork Rancheria of Mono Indians of California; Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as Santa Rosa Rancheria Tachi Yokut Tribe, California); Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and Tuolumne Band of Me–Wuk Indians of the Tuolumne Rancheria of California may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Big Sandy Rancheria of Mono Indians of California; Cold Springs Rancheria of Mono Indians of California; Northfork Rancheria of Mono Indians of California; Picayune Rancheria of Chukchansi Indians of California; Santa Rosa Indian Community of the Santa Rosa Rancheria, California (also known as Santa Rosa Rancheria Tachi Yokut Tribe, California); Table Mountain Rancheria of California; Tule River Indian Tribe of the Tule River Reservation, California; and Tuolumne Band of Me–Wuk Indians of the Tuolumne Rancheria of California that this notice has been published.

Dated: November 24, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–247 Filed 1–5–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA. The human remains and associated funerary objects were removed from McKinley County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains and associated funerary objects was made by Peabody Museum of Archaeology and Ethnology professional staff in consultation with representatives of the Fort McDowell Yavapai Nation, Arizona; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai–Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico.

In 1887, human remains representing a minimum of 14 individuals were removed from Halonawan, within the Zuni Indian Reservation in McKinley County, NM, by the Hemenway Southwestern Archaeological Expedition, directed by Frank Cushing. The human remains were donated to the Peabody Museum of Archaeology and Ethnology by Mrs. Mary Hemenway in 1890. No known individuals were identified. The one associated funerary object is a St. John's black–on–red jar.

Between 1886 and 1889, human remains representing a minimum of two individuals were removed from Halonawan, within the Zuni Indian Reservation in McKinley County, NM, by the Hemenway Southwestern Archaeological Expedition, directed by Frank Cushing. The human remains were donated to the Peabody Museum of Archaeology and Ethnology by the estate of Mrs. Mary Hemenway at an unknown date and accessioned into the museum collections in 1946. No known individuals were identified. The two associated funerary objects are two bags of ceramic body sherds, clay, wood, plant material, and charcoal.

The interments most likely date to the Pueblo IV period (circa A.D. 1300 or later). Osteological characteristics indicate that the individuals are Native American. Archeological evidence, including an overwhelming presence of Zuni ceramic types, along with oral tradition and historical documentation, indicate that Halonawan was occupied by ancestral Zuni people. The present–day group that represents ancestral Zuni

people is the Zuni Tribe of the Zuni Reservation, New Mexico.

Officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 16 individuals of Native American ancestry. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the three objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Peabody Museum of Archaeology and Ethnology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before February 7, 2005. Repatriation of the human remains and associated funerary objects to the Zuni Tribe of the Zuni Reservation, New Mexico, may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Fort McDowell Yavapai Nation, Arizona; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai–Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: December 6, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–242 Filed 1–5–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Peabody Museum of Archaeology and Ethnology, Harvard University, Cambridge, MA, that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

The 36 cultural items are three stone axes, three jars, five ladles, three bowls, one bag of fragments of a jar, one bone fragment, one bag of stones, one turquoise bead, two stone discs, 12 shells, one bag of soil fragments and powder, one bag of textile fragments, one bag of raw material, and one partial ladle. Accession records indicate that the cultural items were found in graves.

Between 1886 and 1889, the cultural items were removed from Halonawan, within the Zuni Indian Reservation, McKinley County, NM, by the Hemenway Southwestern Archaeological Expedition, directed by Frank Cushing. The items were donated to the Peabody Museum of Archaeology and Ethnology by the estate of Mrs. Mary Hemenway at an unknown date and accessioned into the Museum collections in 1946.

The interments most likely date to the Pueblo IV period or later (circa A.D. 1300 or later). Archeological evidence, including an overwhelming presence of Zuni ceramic types, along with oral tradition and historical documentation, indicate that Halonawan was occupied by ancestral Zuni people. The present–day group that represents ancestral Zuni people is the Zuni Tribe of the Zuni Reservation, New Mexico.

Officials of the Peabody Museum of Archaeology and Ethnology determined that, pursuant to 25 U.S.C. 3001 (3)(B), the cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from specific burial sites of Native American individuals. Officials of the Peabody Museum of Archaeology and Ethnology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Patricia Capone, Repatriation Coordinator, Peabody Museum of Archaeology and Ethnology, Harvard University, 11 Divinity Avenue, Cambridge, MA 02138, telephone (617) 496–3702, before February 7, 2005. Repatriation of the unassociated funerary objects to the Zuni Tribe of the Zuni Reservation, New Mexico, may proceed after that date if no additional claimants come forward.

The Peabody Museum of Archaeology and Ethnology is responsible for notifying the Fort McDowell Yavapai Nation, Arizona; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo

of Zia, New Mexico; San Carlos Apache Tribe of the San Carlos Reservation, Arizona; Tonto Apache Tribe of Arizona; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai–Apache Nation of the Camp Verde Indian Reservation, Arizona; Ysleta del Sur Pueblo of Texas; and the Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: December 6, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–243 Filed 1–5–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Texas Archeological Research Laboratory, The University of Texas at Austin, Austin, TX

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Texas Archeological Research Laboratory, The University of Texas at Austin, Austin, TX. The human remains were removed from 2 sites in Caddo and Sabine Parishes, LA, and 54 sites in 19 counties of northeastern Texas.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Texas Archeological Research Laboratory professional staff in consultation with representatives of the Caddo Nation of Oklahoma.

Caddo Parish, LA

In July 1960, human remains representing one individual were removed from the Belcher Mound site near Shreveport by amateur archeologist Ray Ring. Mr. Ring found the bone fragment between Mounds A and B after the mounds had been leveled by machinery following the well–known excavations by Clarence Webb from 1936 to 1954. No known individual was identified. No associated funerary objects are present.

The Belcher site is a dual mound and habitation site that functioned as a ceremonial center and cemetery between circa A.D. 900–1700. The human remains and associated funerary objects removed from the site by Mr. Webb were affiliated with the Caddo Indian Tribe of Oklahoma based on mortuary practices and ceramic styles. A notice of inventory completion was published in the **Federal Register** on December 13, 2000.

Sabine Parish, LA

In 1962, 1963, and 1965, human remains representing a minimum of six individuals were removed from the Salt Lick site (16SA37A) during excavations by the Texas Archeological Salvage Project at the University of Texas, prior to construction of the Toledo Bend Reservoir. No known individuals were identified. The 13 associated funerary objects are 12 pottery vessels and 1 ceramic pipe.

The Salt Lick site was a Prehistoric period cemetery containing 10 graves. The human remains found in four graves were poorly preserved and were not removed. Burials 1 through 6 were shallow, flexed, and in random orientation. Burials 7 through 10 were deep, extended, and similarly oriented. The consistency of the associated funerary objects among the 10 burials, however, suggests that they were contemporaneous.

The location of the cemetery on land historically occupied by the Caddo Indians, mode of interment, and nature of the associated funerary objects indicate that the human remains and associated funerary objects are culturally affiliated with the Caddo Nation of Oklahoma.

Anderson County, TX

In 1935, human remains representing one individual were removed from the Isibell–Gene Donnell site (41AN14) by the University of Texas after relic collectors had located the Prehistoric period cemetery and habitation area. No known individual was identified. The 11 associated funerary objects are 7 pottery vessels and 4 arrow points.

In 1931, human remains representing one individual were removed from the Emma Owens Farm site (41AN21) by the University of Texas. A known Caddo habitation area was located nearby. No known individual was identified. The three associated funerary objects are one pottery vessel, one piece of hematite, and one metal knife.

In 1935, human remains representing two individuals were removed from the Fred McKee Farm site (41AN32) by the University of Texas. The site contained three Prehistoric period graves, but the human remains from one were poorly preserved and were left in place. No known individuals were identified. The 22 associated funerary objects are 12 pottery vessels and 10 projectile points.

In 1931, human remains representing one individual were removed from the Pierce Freeman Farm site, (41AN34) by the University of Texas. The Prehistoric period cemetery contained four graves, but the human remains from three graves were poorly preserved and were left in place. No known individual was identified. The two associated funerary objects are pottery vessels.

In 1930, human remains representing one individual were removed from the E.W. Ellis Farm site (41AN36) by the landowner and were later donated to the University of Texas. The grave was determined to be an isolated Prehistoric period burial. No known individual was identified. No associated funerary objects are present.

In 1934 and 1935, human remains representing three individuals were removed from the O.L. Ellis Farm site (41AN54). Unknown relic collectors located the Prehistoric period cemetery and excavated two graves. The human remains from one grave were donated to the University of Texas. The University of Texas later excavated another two graves. No known individuals were identified. The 20 associated funerary objects are 17 pottery vessels, 13 of which were purchased from the original collectors, 1 scraper, 1 mano, and 1 projectile point.

In 1929, human remains representing a minimum of one individual were removed from a Prehistoric period grave on the Lee Ellis Farm (41AN56) by the landowner. In 1931, the University of Texas purchased the human remains and associated funerary objects. No known individual was identified. The two associated funerary objects are one arrow point and one pottery vessel.

Bowie County, TX

In 1932, human remains representing nine individuals were removed from the Eli Moore site (41BW2) by the University of Texas. Eight of the individuals were removed from one of two mounds at the Prehistoric period site; the other individual had been disturbed by plowing a short distance from the mounds. It has been determined after examination by numerous physical anthropologists that one additional interment was intrusive into the mound and that the human

remains are not those of a Native American. The site is believed to be part of an Upper Nasoni village visited frequently by European explorers in the late 1600s and 1700s. The Texas Archeological Research Laboratory is in possession of human remains representing six Native American individuals from the Eli Moore site. The location of the human remains of the other three Native American individuals is not known. No known individuals were identified. The 17 associated funerary objects are 6 pottery vessels, 4 arrow points, 4 shell beads, 1 turtle shell, 1 baculum, and 1 bone needle.

In 1939 and 1940, human remains representing a minimum of 14 individuals were removed from the A.J. Hatchel site (41BW3) by the Works Progress Administration–University of Texas at Austin. The remaining 17 interments discovered during exploration were left in place. The site is believed to be part of the Upper Nasoni village mentioned above. No known individuals were identified. The 18 associated funerary objects are 17 pottery vessels and 1 celt fragment.

In 1932, human remains representing a minimum of four individuals were removed from the Mitchell site (41BW4) by the University of Texas at Austin, and in 1939 and 1940, the Works Progress Administration–University of Texas removed additional human remains representing a minimum of 67 individuals from another area of the site. The Mitchell site is also considered to be a part of the Upper Nasoni village visited by several European explorers. No known individuals were identified. No associated funerary objects are present from the 1932 excavation. The 174 associated funerary objects from the latter excavation are 111 pottery vessels, 52 beads, 3 ceramic pipes, 3 mussel shells, 2 turtle shells, 2 bone needles, and 1 shell gorget.

In 1962, human remains representing two individuals, which had been removed on an unknown date from the Stovers Lake site (41BW8) by relic collectors, were donated to the University of Texas. No known individuals were identified. No associated funerary objects are present.

Camp County, TX

At an unknown date, human remains representing one individual were removed from the G.W. Rumsey Farm site (41CP3) under unknown circumstances. The site is a large multi-component cemetery with a small habitation area nearby. No records exist to document the acquisition of the human remains. No known individual was identified. No associated funerary objects are present.

Cass County, TX

Prior to 1962, human remains representing one individual were removed from the "Berry" site under unknown circumstances. The human remains were acquired by the University of Texas as part of the J.D. Scurlock Collection. Details of the acquisition are not documented, but it is thought that this site may be the same as the Berry Farm site (41BW57), a Prehistoric period Caddo cemetery located near the Bowie/Cass County line. No known individuals were identified. No associated funerary objects are present.

In 1932, human remains representing a minimum of 13 individuals were removed from a Prehistoric period cemetery at the Goode Hunt site (41CS23) by the University of Texas. Four sets of poorly preserved human remains were not removed. No known individuals were identified. The 77 associated funerary objects are 64 pottery vessels, 5 mussel shells, 4 pitted stones, 1 abraded stone, 1 pigment sample, 1 mano, and 1 boatstone.

In 1932, human remains representing a minimum of 26 individuals were removed from the Clements Brothers Farm site (41CS25) by the University of Texas. The site is a Late Prehistoric/Historic period cemetery that had been looted previously by relic collectors. Some of the human remains were poorly preserved and were not removed. Seven of the 26 sets of human remains are believed to have been recovered from a deposit adjacent to the cemetery, referred to as a midden area. No known individuals were identified. The 124 associated funerary objects are 33 pottery vessels, 72 beads, 4 pigment samples, 2 dart points, 2 arrow points, 1 deer bone, 1 pebble, 1 pitted stone, 1 bone awl, 1 shell pendant, 1 scraper, 1 mussel shell, 1 clay knob, 1 terrapin shell, 1 shell disc, and 1 ceramic pipe.

In 1959, human remains representing one individual, which had been removed at an unknown date from the Sulphur River site (41CS27) by an avocational archeologist, were donated to the University of Texas. No known individual was identified. No associated funerary objects are present.

Cherokee County, TX

In 1935, human remains representing four individuals were removed from the Solon Stanley Farm site (41CE3) by the University of Texas. The four Prehistoric period graves at the site had been previously disturbed by relic collectors. No known individuals were identified. The 20 associated funerary objects are pottery vessels.

In 1935, human remains representing five individuals were removed from the J.W. Blackburn site (41CE4) by the University of Texas. The site is described as a Prehistoric period cemetery with a habitation area located nearby. No known individuals were identified. The 26 associated funerary objects are pottery vessels.

In 1935, human remains representing two individuals were removed from the E.W. Hackney site (41CE6) by the University of Texas. The burials have been dated to the Protohistoric or Historic period. No known individuals were identified. The 41 associated funerary objects are 29 shell beads, 8 pottery vessels, and 4 projectile points.

In 1935, human remains representing a minimum of 13 individuals were removed from the Jim Allen site (41CE12) by the University of Texas. The site was determined to be a Protohistoric/Historic cemetery. Associated funerary objects found with one burial date to the European contact period. No known individuals were identified. The 46 associated funerary objects are 27 pottery vessels, 8 glass beads, 7 shell beads, 3 arrow points, and 1 biface.

In 1935, human remains representing two individuals were removed from the A.H. Reagor Farm site (41CE15) by the University of Texas. The Prehistoric period graves were located near a habitation area. No known individuals were identified. The seven associated funerary objects are three pottery vessels, two pot sherds, one mussel shell, and one biface.

In 1935, human remains representing a minimum of eight individuals were removed from the E.W. Henry Farm site (41CE17) by the University of Texas. The site is described as a Prehistoric period cemetery with a large habitation area nearby. The human remains from three burials were poorly preserved and were left in place. No known individuals were identified. The 20 associated funerary objects are 19 pottery vessels and 1 ceramic pipe.

In 1968, 1969, and 1970, human remains representing 14 individuals were removed from the George C. Davis site (41CE19) by the University of Texas, Texas Archeological Research Laboratory. The site, now the Caddoan Mounds State Park, consists of three earthen mounds, including one burial mound, one borrow pit, and an extensive village dating from Pre–Caddoan to Late Caddoan periods. The site was most heavily occupied during the Early Caddoan period. All burials found during the excavations date to the

very early Caddoan period (circa A.D. 800–1200). No known individuals were identified. The 560 associated funerary objects are 197 arrow points, 137 disc beads, 33 organic materials, 30 bivalves, 24 bone pins, 19 bifaces, 15 blue, gray, green, purple, and red pigment samples, 11 earspools, 10 lithic flakes, 9 flint flakes, 13 celts, 7 pieces of bark cloth, 7 faunal bones and bone fragments, 7 conch shells, 5 pottery vessels, 4 copper and copper salt samples, 4 animal incisor fragments, 3 necklaces, 3 boatstones, 2 pearl beads, 2 bead headbands, 2 wooden objects, 2 stone pipes, 1 marine shell belt, 1 bone awl, 1 cane object, 1 piece of matting, 1 piece of red ochre, 1 ornament, 1 pebble, 1 perforated disc, 1 sandstone, 1 shell, 1 sherd, 1 piece of animal skin, 1 smoothed stone, and 1 turtle shell.

In 1962, human remains representing one individual, which had been removed from the Forest Mound site (41CE290) by an avocational archeologist, were donated to the University of Texas. The burial was from a natural formation that resembled a mound. No known individual was identified. No associated funerary objects are present.

Delta County, TX

In 1962 and 1963, human remains representing two individuals were removed from the L.O. Ray site (41DT21) by the Dallas Archeological Society. The human remains were acquired by the University of Texas in August 1969. The site is a Prehistoric period habitation area. No known individuals were identified. No associated funerary objects are present.

Franklin County, TX

In 1930, human remains representing two individuals were removed from the R.L. Jaggers site (41FK3) by the University of Texas. Of the four Prehistoric period graves found at the site, one burial was a cremation deposit that was not removed; another burial contained poorly preserved human remains that were not removed. No known individuals were identified. The six associated funerary objects are four pottery vessels and two projectile points.

In 1934, human remains representing two individuals were removed from the P.G. Hightower site (41FK7) by the University of Texas. The site is a Prehistoric period cemetery. No known individuals were identified. The three associated funerary objects are one arrow point, one pitted stone, and one sandstone.

Harrison County, TX

In 1931, human remains representing one individual were removed from the H.R. Taylor site (41HS3) by the University of Texas. The Prehistoric period cemetery contained 64 graves, but the human remains from 63 graves were poorly preserved and were not removed. No known individual was identified. No associated funerary objects are present.

In 1962, human remains representing six individuals were removed from the Susie Slade site (41HS13) by relic collectors and donated to the University of Texas. The associated funerary objects, however, were retained by the collectors. The same year, human remains from two other graves representing two individuals were excavated by the University of Texas. No known individuals were identified. The 38 associated funerary objects are 15 blue glass beads, 15 conch shell beads, 5 pottery vessels, 1 arrow point, 1 shell, and 1 pigment sample.

In 1986, human remains representing a minimum of nine individuals were removed from site 41HS74 by Heartfield, Price & Greene, Inc., prior to lignite mining activities. The site is a Prehistoric period habitation area and cemetery. The human remains were transferred to the University of Texas in 2001. No known individuals were identified. The 20 associated funerary objects are pottery vessels.

Hopkins County, TX

In 1931, human remains representing one individual were removed from the Culpepper site (41HP1) by the University of Texas. The Prehistoric period cemetery and habitation area contained eight graves, but most of the human remains were disturbed and so poorly preserved that they were not removed. No known individual was identified. The six associated funerary objects are pottery vessels.

In 1934, human remains representing one individual were removed from the Alford site (41HP5) by the University of Texas. The site had been disturbed earlier by local relic collectors. No known individual was identified. The two associated funerary objects are 1 shell gorget, which was purchased from the original collectors, and one arrow point.

Lamar County, TX

In 1931, human remains representing a minimum of 10 individuals were removed from the H.E. Womack site (41LR1) by the University of Texas. The site is a Prehistoric and Historic period habitation area and cemetery. No known individuals were identified. The 44 associated funerary objects are 27 blue and white beads, 6 pieces of red ochre, 5 pottery vessels, 2 pebbles, 1 scraper, 1 sandstone, 1 biface, and 1 modified faunal bone.

In 1931, human remains representing a minimum of 96 individuals were removed from the T.M. Sanders site (41LR2) by the landowner and the University of Texas. The human remains unearthed by the landowner were acquired by the University of Texas. The site is a habitation area between two Prehistoric period mounds. No known individuals were identified. The 6,604 associated funerary objects are 6,416 shell beads, 20 pearl beads, 2 columella beads, 55 pottery vessels, 30 seeds, 14 arrow points, 12 shell gorgets, 12 shell discs, 9 shell pendants, 6 stone and clay pipes, 5 biface, 5 bone awls, 4 bone hoes, 2 conch shells, 2 pearls, 1 bone needle, 1 celt, 1 collection of fish bones, 1 flint scraper, 1 mussel shell, 1 piece of red ochre, 1 piece of yellow ochre, 1 sample of green pigment, 1 pottery disc, and 1 stone earplug.

In 1934, human remains representing one individual were removed from a Prehistoric period grave on the Matt Reese Farm site (41LR3) by an avocational archeologist. The human remains were donated to the University of Texas the same year as part of the W.A. Rickard collection. No known individual was identified. No associated funerary objects are present.

Morris County, TX

In 1930, human remains representing a minimum of three individuals were removed from the R.L. Cason site (41MX1) by the University of Texas. The site is a Prehistoric period cemetery containing four graves. The human remains of one individual were poorly preserved and were left in place. No known individuals were identified. The 27 associated funerary objects are 19 pottery vessels, 7 arrow points, and 1 stone celt.

In 1931, human remains representing a minimum of one individual, which had been removed from the Prehistoric period Hooper Glover Farm site (41MX4) by relic collectors, were purchased by the University of Texas. No known individual was identified. No associated funerary objects are present.

In 1930, human remains representing four individuals were removed from the Richard Watson Farm site (41MX6) by the University of Texas. The site is a Prehistoric period cemetery. No known individuals were identified. No associated funerary objects are present.

Nacogdoches County, TX

In 1939, human remains representing a minimum of two individuals were removed from Prehistoric period site 41NA3 by the Texas Highway Department and transferred to the University of Texas the same year. No known individuals were identified. The one associated funerary object is a pottery vessel.

In 1975, human remains representing a minimum of one individual were removed from the Deshazo site (41NA27) by the University of Texas. The cemetery has both prehistoric and historic components. The human remains from two graves were poorly preserved and were not removed. No known individuals were identified. The one associated funerary object is a pottery vessel.

Red River County, TX

In 1930, human remains representing two individuals were removed from a Prehistoric period earthen mound at site 41RR3 by a relic collector. The human remains and some associated funerary objects were donated to the University of Texas in 1931. No known individuals were identified. The eight associated funerary objects are five pottery vessels, two conch shell beads, and one biface.

In 1927 or before, human remains representing one individual were removed from the S.E. Watson site (41RR8), also known as he Chapman Plantation by the landowner after flooding had exposed the Prehistoric period grave. The human remains were donated to the University of Texas in 1927 and the associated funerary objects were purchased by the university from the landowner the same year. No known individual was identified. The 18 associated funerary objects are 14 pottery vessels, 3 celts, and 1 dart point.

In 1988, human remains representing a minimum of one individual were removed from the Sam Kaufman site (41RR16) by a relic collector and donated to the University of Texas. The age of the site is unknown. No known individual was identified. No associated funerary objects are present.

Sabine County, TX

In 1939, human remains representing a minimum of three individuals were removed from the Beckham Place site (41SB35) by the University of Texas. Several years earlier, a relic collector had unearthed the prehistoric flexed burials and reburied the human remains as a group, keeping the associated funerary objects. No known individuals were identified. No associated funerary objects are present.

Shelby County, TX

In 1931, human remains representing two individuals were discovered at site 41SY24 by county road crews. The prehistoric human remains and associated funerary objects were removed by Frank Bussey and donated to the University of Texas. No known individuals were identified. The 92 associated funerary objects are 76 sherds, 7 pottery vessels, 7 projectile points, 1 pipe stem fragment, and 1 clay ladle.

Smith County, TX

In 1958, human remains representing two individuals were removed from the Prehistoric period Henry Chapman Farm site (41SM56) by an avocational archeologist. The human remains were donated to the University of Texas in 1959. No known individuals were identified. No associated funerary objects are present.

Titus County, TX

In 1934, human remains representing a minimum of five individuals were removed from the William Farrar Farm site (41TT1) by the University of Texas. The site includes a Prehistoric period cemetery and habitation area. Two burials were found in a flexed position. No known individuals were identified. The three associated funerary objects are pottery vessels.

In 1934, human remains representing five individuals were removed from three Prehistoric period graves at site 41TT2 by the University of Texas, after the burials were discovered by the landowner. The human remains from nine graves were poorly preserved and were not removed. No known individuals were identified. The four associated funerary objects are two pottery vessels, one celt, and one quartzite core.

In 1959, human remains representing two individuals, which had been removed from the Alex Justice site (41TT13) by two avocational archeologists, were donated to the University of Texas. Records indicate that the collectors excavated 24 burials from the Late Prehistoric period cemetery. No known individuals were identified. No associated funerary objects are present.

In 1934, human remains representing a minimum of one individual, which had been removed from the Prehistoric period C.T. Coley Farm site (41TT17) by the landowner, were acquired by the University of Texas. No known individual was identified. No associated funerary objects are present.

Van Zandt County, TX

In 1940, human remains representing two individuals were removed from site 41VN6 by the University of Texas in cooperation with the Works Progress Administration. A Prehistoric period cemetery, habitation area, and earthen mound were excavated at the site. Eight graves were located, but most of the human remains were poorly preserved and not removed. No known individuals were identified. No associated funerary objects are present.

Wood County, TX

In 1934, human remains representing one individual were removed from the A.C. Gibson site (41WD1) by the University of Texas. Three Prehistoric period graves were excavated, but the human remains in two of the graves were poorly preserved and not removed. No known individual was identified. The three associated funerary objects are two mussel shells and one dart point.

In 1930, human remains representing one individual were removed from the J.H. Reese Farm site (41WD2) by the University of Texas. The human remains from two other burials were poorly preserved and not removed. The three Prehistoric period burials had been unearthed and reburied previously by the landowner. No known individual was identified. No associated funerary objects are present. Funerary objects were purchased by the university from the landowner, but they cannot be specifically associated with the recovered human remains.

In 1931, human remains representing two individuals were removed from the Prehistoric period H.D. Spigner Farm site (41WD4) by the University of Texas. No known individuals were identified. No associated funerary objects are present. The landowner retained possession of the human remains and funerary objects from three other graves that had been unearthed previously.

Historical evidence and oral history indicate that a large area of northeast Texas, including the counties encompassing the 56 sites described above, is part of the traditional territory of the Caddo people. Archeological, historical, and oral history evidence indicates that settlements within this region exhibit a cultural continuity dating from circa A.D. 1000 and continuing into the Historic period. Cultural affiliation with the Caddo Nation of Oklahoma is also based on the nature of the sites from which the human remains were obtained, the mode of interment, the kinds of associated funerary objects, including whole pottery vessels, and the cranial

deformation exhibited in some of the human remains.

Officials of the Texas Archeological Research Laboratory have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of a minimum of 308 individuals of Native American ancestry. Officials of the Texas Archeological Research Laboratory also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 8,083 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Texas Archeological Research Laboratory have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Caddo Nation of Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Dr. Darrell Creel, Director, Texas Archeological Research Laboratory, 1 University Station, R7500, The University of Texas at Austin, Austin, TX 78712–0714, telephone (512) 471–5960, before February 7, 2005. Repatriation of the human remains to the Caddo Nation of Oklahoma may proceed after that date if no additional claimants come forward.

The Texas Archeological Research Laboratory is responsible for notifying the Caddo Nation of Oklahoma that this notice has been published.

Dated: December 13, 2004

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 05–244 Filed 1–5–05; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Privacy Act of 1974, as Amended; Amendment of a System of Records

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of major changes to a system of records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Department of the Interior is amending a system of records managed by the National Park Service (NPS). The changes are to the system of records "Case Incident Reporting System—NPS–19," which is published in its entirety below.

DATES: 5 U.S.C. 552a(e)(11) requires that the public be provided a 30-day period in which to comment on the agency's intended use of the information in the system of records. The Office of Management and Budget, in its Circular A–130, requires an additional 10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this amended system may do so by submitting comments in writing to the NPS Privacy Act Officer, 1849 C Street, NW., (2605) Washington, DC 20240. Comments will be received within 40 days of publication in the **Federal Register** will be considered. The proposed system will be effective at the end of the comment period unless comments are received which would require a contrary determination. The Department will publish a revised notice if changes are made based upon a review of comments received.

FOR FURTHER INFORMATION CONTACT: Don Coelho, Department of the Interior, National Park Service, Law Enforcement and Emergency Services, 1201 Eye Street, NW., Washington, DC 20005, 202–513–7084.

SUPPLEMENTARY INFORMATION: When originally published in the **Federal Register**, this system of records was identified as above. With the publishing of this notice, the address of the System Manager has also been changed to reflect an organizational change within NPS. The Routine Use section in this notice in (1) is changed to facilitate processing of requests for routine law enforcement reports to the subject of the incident or to those representing the subject or parties involved in the incident. This change will help to ensure that information needed to process claims is processed as expeditiously as possible to better serve the constituents of the National Park Service. Slight changes to existing Routine Uses found in (2) are made to better clarify the instances when releases can be made to legal and law enforcement entities.

A copy of the system notice for Interior/NPS–19, Case Incident Reporting System, is attached.

Dated: January 3, 2005.

Diane M. Cooke,

Privacy Act Officer, National Park Service.

INTERIOR/NPS–19

SYSTEM NAME:

Case Incident Reporting System—National Park Service, NPS–19.

SYSTEM LOCATION:

United States Park Police, 1100 Ohio Drive, SW., Washington, DC 20242. (2) New York Field Office, Bldg. #275, Floyd Bennet Field, Brooklyn, NY 11234. (3) San Francisco Field Office, Building 201, Fort Mason, San Francisco, CA 94123. (4) National Park areas and Regional Offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individual complainants in criminal cases, witnesses, victims, suspicious persons, individuals investigated or arrested for criminal or traffic offenses, or involved in motor vehicle accidents, or certain types of non-criminal incidents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name of individual, date and case number of incident, type of offense or incident, fingerprint information, vehicle information, and location of incident.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

16 U.S.C. 1.4.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are: (1) To identify incidents in which individuals were involved, (2) to retrieve the report for information for the individual involved, such as accident reports and reports of found property, (3) to aid National Park Service (NPS) Law enforcement officers on a need to know basis, (4) as the basis for criminal investigations conducted by the United States Park Police, and commissioned law enforcement employees, and (5) to assist local, Regional, and Federal law enforcement agencies working in areas contiguous to areas under the jurisdiction of the NPS.

(1) Disclosure outside the Department for the purpose of providing information on traffic accidents, personal injuries, or the loss or damage of property may be made to:

a. Individuals involved in such incidents;

b. Persons injured in such incidents;

c. Owners of property damaged, lost or stolen in such incidents; and/or

d. These individuals' duly verified insurance companies, personal representatives, and/or attorneys.

The release of information under these circumstances should only occur when it will not:

a. Interfere with ongoing law enforcement proceedings;

b. Risk the health or safety of an individual; or

c. Reveal the identity of an informant or witness that has received an explicit assurance of confidentiality.

Social security numbers should not be released under these circumstances unless the social security number belongs to the individual requester.

(2) Disclosures outside the DOI may also be made:

a. To the Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when:

i. One of the following is a party to the proceeding or has an interest in the proceeding:

1. The Department or any component of the Department;

2. Any Departmental employee acting in his or her official capacity;

3. Any Departmental employee acting in his or her individual capacity where the Department or the Department of Justice has agreed to represent the employee; and

ii. We deem the disclosure to be:

1. Relevant and necessary to the proceeding; and

2. Compatible with the purpose for which we compiled the information.

b. To the appropriate Federal agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation or order, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, or order.

c. To a congressional office in response to a written inquiry to that office by the individual to whom the record pertains.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records, magnetic disk, diskette, personal computers, and computer tapes.

RETRIEVABILITY:

Incident reports are retrievable from individual park or U.S. Park Police Field Offices only. No national repository exists. Manual reports are generally tracked by case number, date, location, type of offense or incident, ranger/officer name. Automated reports are retrievable by case number, date, time, location, types of offense or incident, ranger name, involved persons name(s), and vehicle data.

SAFEGUARDS:

Maintained with safeguards meeting the requirements of 43 CFR 2.51 for manual and automated records. Access to records in the system is limited to authorized personnel whose official duties require such access. Paper records are maintained in locked file cabinets and/or in secured rooms. Electronic records conform to Office of Management and Budget and Departmental guidelines reflecting the implementation of the Federal Information Security Management Act. The electronic data will be protected through user identification, passwords, database permissions and software controls. Such security measures will establish access levels for different types of users.

RETENTION AND DISPOSAL:

Records are maintained for various lengths of time, depending of the seriousness of the incident. Records are retired to the Federal Records Center or purged, depending on the nature of the document.

SYSTEM MANAGER(S) AND ADDRESS:

(1) Commander, Information Management Section, U.S. Park Police, National Park Service, United States Department of the Interior, Washington, DC 20242; (2) Chief, Division of Law Enforcement & Emergency Services, National Park Service, United States Department of the Interior, Washington, DC 20005.

RECORD SOURCE CATEGORIES:

Incident information obtained from individual(s) on whom information is maintained, to include victims, complainants, witnesses, suspects, suspicious persons, or otherwise involved, as well as investigating officials.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under the general exemption authority provided by 5 U.S.C. 552a(j)(2), the Department of the Interior has adopted a regulation, 43 CFR 2.79(a), which exempts this system from all of the provisions of 5 U.S.C. 552a, and the regulations in 43 CFR, part 2, subpart D, except subsections (b), (c), and (1), and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) of 5 U.S.C. 552a and the portions of the regulations in 43 CFR part 2, subpart D implementing these subsections. The reasons for adoption of this regulation are set out at 40 FR 37217 (August 26, 1975).

[FR Doc. 05–290 Filed 1–5–05; 8:45 am]
BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–499]

In the Matter of Certain Audio Digital-to-Analog Converters and Products Containing Same; Notice of a Commission Decision To Review and Reverse One Finding of the Administrative Law Judge in a Final Initial Determination; Commission Determination Not To Review the Remainder of the Initial Determination Finding a Violation of Section 337: Schedule for the Filing of Written Submissions on the Issues of Remedy, the Public Interest, and Bonding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review and reverse a finding contained in the final initial determination ("ID") issued by the presiding administrative law judge ("ALJ") in the above-captioned investigation on November 15, 2004. Specifically, the Commission has determined to review and reverse the ID's finding that the '928 patent is unenforceable due to incorrect inventorship in view of a recently issued Certificate of Correction by the U.S. Patent and Trademark Office (USPTO). The Commission has determined not to review the remainder of the ID, thereby finding a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3152. Copies of the public version of the ID and all nonconfidential 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202)

205–1810. 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*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 14, 2003, based on a complaint filed on behalf of Cirrus Logic, Inc. of Austin, TX ("Cirrus"). 68 FR 64641 (Nov. 14, 2003). The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of certain audio digital-to-analog converters and products containing same by reason of infringement of claims 1 and 11 of U.S. Patent No. 6,492,928 ("the '928 patent"). The notice of investigation named Wolfson Microelectronics, PLC of Edinburgh, United Kingdom; and Wolfson Microelectronics, Inc. of San Diego, CA (collectively "Wolfson") as respondents.

On December 29, 2003, the ALJ issued an ID (Order No. 5) granting complainant's motion to amend the complaint and notice of investigation to add allegations of infringement of claims 2, 3, 5, 6, and 15 of the '928 patent, and of claims 9, 12, and 19 of U.S. Patent No. 6,011,501 ("the '501 patent"). 69 FR 4177 (Jan. 28, 2004). On July 1, 2004, the ALJ issued an ID (Order No. 16) granting complainant's motion to terminate the investigation as to claims 1 and 2 of the '928 patent. On July 27, 2004, the ALJ issued an ID (Order No. 24) granting complainant's motion to terminate the investigation in part as to claim 11 of the '928 patent. Orders Nos. 5, 16, and 24 were not reviewed by the Commission; consequently, claims 3, 5, 6 and 15 of the '928 patent and claims 9, 12, and 19 of the '501 patent remain in the investigation. An evidentiary hearing was held from August 3–August 11, 2004.

On November 15, 2004, the ALJ issued his final ID finding a violation of section 337 based on his findings that the asserted claims of the '501 patent are infringed, that they are not invalid in view of any prior art, and that claims 9 and 12 of the '501 patent are not invalid because of failure to provide an enabling written description of the claimed invention. The ALJ found that the '928 patent is unenforceable because the inventors intentionally withheld highly material prior art from the examiner during the prosecution of the '928 patent application at the USPTO. Independently, the ALJ found that the '928 patent is unenforceable because one person was mistakenly listed as an inventor on the patent. On November 23, 2004, a certificate correcting inventorship was issued by the USPTO. Accordingly, unenforceability on this ground has been cured. *Viskase Corp.* v. *American National Can Co.*, 261 F.3d 1316, 1329 (Fed. Cir. 2001) ("Absent fraud or deceptive intent, the correction of inventorship does not affect the validity or enforceability of the patent for the period before the correction."). The ALJ found that the accused devices infringe the asserted claims of the '928 patent, if enforceable, and that the asserted claims of the '928 patent are not invalid in view of any prior art, or for failure to provide an enabling written description of the claimed invention or for failure to disclose the best mode. The ALJ also issued his recommendations on remedy and bonding during the period of Presidential review on November 15, 2004.

On November 30, 2004, Cirrus, Wolfson, and the Commission's investigative attorney filed petitions for review of the final ID. On December 7, 2004, all parties filed responses.

Having examined the record in this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, the Commission has determined to review and reverse the ID's finding that the '928 patent is unenforceable due to incorrect inventorship in view of the recently issued certificate of correction by the USPTO. The Commission has determined not to review the remainder of the ID, thereby finding a violation of section 337.

In connection with the final disposition of this investigation, the Commission may issue (1) an order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) cease and desist orders that could result in respondents being required to cease and desist from engaging in unfair action in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry are either adversely affecting it or likely to do so. For background, *see* In the Matter of Certain Devices for Connecting Computers via Telephone Lines, Inv. No. 337–TA–360, USITC Pub. No. 2843 (December 1994) (Commission Opinion).

When the Commission contemplates some form of remedy, it must consider the effects of that remedy upon the public interest. The factors the Commission will consider include the effect that an exclusion order and/or cease and desist orders would have on (1) the public health and welfare, (2) competitive conditions in the U.S. economy, (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation, and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the President has 60 days to approve or disapprove the Commission's action. During this period, the subject articles would be entitled to enter the United States under a bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed.

Written Submissions: The parties to the investigation, interested government agencies, and any other interested persons are encouraged to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should address the ALJ's recommended determination on remedy and bonding. Complainant and the Commission investigative attorney are also requested to submit proposed remedial orders for the Commission's consideration. The written submissions and proposed remedial orders must be filed no later than the close of business on Monday, January 10, 2005, and reply submissions must be filed no later than close of business on Monday, January 17, 2005. No further submissions will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document and 14 true copies thereof with the Office of the Secretary on or before the deadlines stated above. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment unless the information has already been granted such treatment during the proceedings. All such requests should be directed to the Secretary of the Commission and must include a full statement of the reasons why the

Commission should grant such treatment. *See* 19 CFR 210.5. Documents for which confidential treatment is granted by the Commission will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.42, 210.46, and 210.50 of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.42, 210.46, and 210.50).

By order of the Commission.

Issued: December 30, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–251 Filed 1–5–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–520]

In the Matter of Certain Digital Image Storage and Retrieval Devices; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Investigation on the Basis of a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting a joint motion to terminate the above-captioned investigation on the basis of a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3152. Copies of the public version of the ID and all nonconfidential 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. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. 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.*

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 16, 2004, based on a complaint filed on behalf of Ampex Corporation, of Redwood City, California ("Ampex"). 69 FR 50400 (Aug 16, 2004). The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and sale within the United States after importation of certain digital image storage and retrieval devices by reason of infringement of certain claims of U.S. Patent No. 4,821,121. The respondent named in the notice of investigation is the Sony Corporation of Tokyo, Japan ("Sony").

On October 1, 2004, Ampex and Sony entered into a settlement agreement, and on November 24, 2004, Ampex and Sony filed a joint motion to terminate the investigation pursuant to 19 CFR 210.21 based on the settlement agreement. The Commission investigative attorney filed a response in support of the joint motion.

On December 9, 2004, the ALJ issued the subject ID (Order No. 6) granting the joint motion of complainant Ampex and respondent Sony to terminate the investigation on the basis of a settlement agreement.

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 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: December 30, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 05–252 Filed 1–5–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–529]

In the Matter of Digital Processors, Digital Processing Systems, Components Thereof, and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on December 7, 2004, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of BIAX Corporation of Boulder, Colorado. The complaint alleges 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 digital processors and digital processing systems, components thereof, and products containing same by reason of infringement of claims 11–13, 26, and 32–33 of U.S. Patent No. 4,487,755, claims 6, 8, 13–14, 28, 33–34, and 36 of U.S. Patent No. 5.021,954, claims 1–3, 9–21, 23, and 25–30 of U.S. Patent No. 5,517,628, claims 3–9, 11–12, and 16–24 of U.S. Patent No. 6,253,313, and claims 1, 3, 5, 7–8, 10, 13–16, 18, 20–22, and 24–28 of U.S. Patent No. 5,765,037. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

Complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and its exhibits, except for any confidential information contained therein, are 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., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *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.*

FOR FURTHER INFORMATION CONTACT: Benjamin D.M. Wood, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2582.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules

of Practice and Procedure, 19 CFR 210.10 (2004).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on December 30, 2004, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain digital processors and digital processing systems, components thereof, and products containing same by reason of infringement of one or more of claims 11–13, 26, or 32–33 of U.S. Patent No. 4,487,755, claims 6, 8, 13–14, 28, 33–34, or 36 of U.S. Patent No. 5,021,954, claims 1–3, 9–21, 23, or 25–30 of U.S. Patent No 5,517,628, claims 3–9, 11–12, or 16–24 of U.S. Patent No. 6,253,313, or claims 1, 3, 5, 7–8, 10, 13–16, 18, 20–22, or 24–28 of U.S. Patent No. 5,765,037, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—BIAX Corporation, 2452 Briarwood Drive, Boulder, Colorado 80305.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Texas Instruments, Inc., 12500 TI Boulevard, Dallas, Texas 75243–4136;
iBiquity Digital Corporation, 8865 Stanford Boulevard, Suite 202, Columbia, Maryland 21045;
Kenwood Corporation, 2967–3 Ishikawa-machi, Hachioji-shi, Tokyo, 192–8525, Japan;
Kenwood U.S.A. Corporation, 2201 E Dominguez Street, Long Beach, California 90810.

(c) Benjamin D.M. Wood, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the response to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

Issued: January 3, 2005.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 05–250 Filed 1–5–05; 8:45 am]

BILLING CODE 7020–02–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meeting

DATES: Week of January 3, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

ADDITIONAL MATTERS TO BE CONSIDERED:

Week of January 3, 2005

Wednesday, January 5, 2005

2 p.m. Affirmation Session (Public Meeting) (Tentative).

a. Private Fuel Storage (Independent Spent Fuel Storage Installation); Docket No. 72–22–SFSI (Tentative).

b. Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2); Unpublished Board Order (Dec. 17, 2004). (Tentative).

c. Motion for Clarification and Amendment of CLI–04–34 (Rene Chun) (Tentative).

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at (301) 415–7080, TDD: (301) 415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: January 3, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05–318 Filed 1–4–05; 9:26 am]

BILLING CODE 7590–01–M

DEPARTMENT OF STATE

[Public Notice 4952]

30-Day Notice of Proposed Information Collection: Form DS–4071, Export Declaration of Defense Technical Data or Services, OMB 1405–0157

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Export Declaration of Defense Technical Data or Services.
- *OMB Control Number:* 1405–0157.
- *Type of Request:* Extension of a Currently Approved Collection.

- *Originating Office:* PM/DDTC.
- *Form Number:* DS–4071.
- *Respondents:* Business organizations.
- *Estimated Number of Respondents:* 2,000.
- *Estimated Number of Responses:* 10,000.
- *Average Hours per Response:* ¼ hour (15 minutes).
- *Total Estimated Burden:* 2,500 hours.
- *Frequency:* On occasion.
- *Obligation To Respond:* Mandatory.

DATES: Comments may be submitted to the Office of Management and Budget (OMB) for up to 30 days from February 7, 2005.

ADDRESSES: Direct Comments and questions to Alex Hunt, the State Department Desk Officer in Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at (202) 395–7860. You may submit comments by any of the following methods:

- *E-mail: ahunt@omb.eop.gov.* You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
- *Hand Delivery or Courier:* OIRA State Department Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Angelo A. Chang, Acting Director, Office of Defense Trade Controls Management, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, SA–1, 12th Floor, Room H1200, Washington, DC 20522–0112 (202) 663–2830. E-mail: *ChangAA@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Actual exports of defense technical data and defense services will be electronically reported directly to the Directorate of Defense Trade Controls (DDTC). DDTC administers the International Traffic in Arms Regulations and section 38 of the Arms Export Act (AECA). The actual exports must be in accordance with requirements of the ITAR and section 38 of the AECA. DDTC will monitor the information to ensure there is proper control of the transfer of sensitive U.S. technology.

Methodology: The exporter will electronically report directly to DDTC the actual export of defense technical data and defense services using DS–4071. DS–4071 will be available on DDTC's Web site (*http://www.pmdtc.org*).

Dated: December 16, 2004.

Gregory M. Suchan,

Deputy Assistant Secretary for Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 05–274 Filed 1–5–05; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4951]

30-Day Notice of Proposed Information Collection: Irish Peace Process Cultural and Training Program (IPPCTP) Employer Information Collection; 1405–0124

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Irish Peace Process Cultural and Training Program Employer Information Collection.
- *OMB Control Number:* 1405–0124.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of European and Eurasian Affairs, Office of United Kingdom, Benelux, and Ireland Affairs—EUR/UBI.
- *Form Number:* N/A.
- *Respondents:* Entities wishing to provide employment and individuals participating in the program.
- *Estimated Number of Respondents:* 261.
- *Estimated Number of Responses:* 411.
- *Average Burden per Response:* Range: 2–30 minutes per response. Median: 10 minutes per response.
- *Total Estimated Burden:* 99 hours.
- *Frequency:* On occasion.
- *Obligation To Respond:* Required to Obtain or Retain a Benefit.

DATE(S): Comments may be submitted to the Office of Management and Budget (OMB) for up to 30 days from February 7, 2005.

ADDRESSES: Comments and questions should be directed to Alex Hunt, the State Department Desk Officer in Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at (202) 395–7860. You may submit comments by any of the following methods:

- *E-mail: ahunt@omb.eop.gov.* You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
- *Hand Delivery or Courier:* OIRA State Department Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Michael O'Malley, Country Desk Officer for Ireland and Northern Ireland Affairs, Bureau of European and Eurasian Affairs, Room 5428, U.S. Department of State, Washington, DC 20520, who may be reached on (202) 647–5674 or via e-mail at *omalleyme@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The collection requests information from (a) entities wishing to provide employment opportunities to participants in the congressionally-mandated Irish Peace Process Cultural and Training Program (IPPCTP), and (b) individuals selected for participation in the IPPCTP.

Methodology: Information will be collected by the Program Administrator directly from interested employers and participants, either via e-mail or hard copies. Prospective employers will be

expected to provide background information about the company and jobs being offered, as well as reports on participants' work experience once involved in the program. Participants will need to provide background/resume information, a photograph, and tracking information during pre-departure training.

Dated: December 21, 2004.

Matthias Mitman,

Director, Acting, Office for United Kingdom, Benelux and Ireland, Bureau of European and Eurasian Affairs, Department of State.

[FR Doc. 05–275 Filed 1–5–05; 8:45 am]

BILLING CODE 4710–23–P

DEPARTMENT OF STATE

[Public Notice 4950]

30-Day Notice of Proposed Information Collection: DS–1504, Request for Customs Clearance of Merchandise, OMB Control Number 1405–0104

ACTION: Notice of request for public comments and submission to OMB of proposed collection information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Request for Customs Clearance of Merchandise.
- *OMB Control Number:* 1405–0104.
- *Type of Request:* Extension of a currently approved collection.
- *Originating Office:* Bureau of Diplomatic Security, Office of Foreign Missions, Diplomatic Tax and Customs Program, DS/OFM/VTC/TC.
- *Form Number:* DS–1504.
- *Respondents:* Eligible foreign diplomatic or consular missions, certain foreign government organizations, and designated international organizations.
- *Estimated Number of Respondents:* 350.
- *Estimated Number of Responses:* Approximately 13,700.
- *Average Hours per Response:* Fifteen minutes.
- *Total Estimated Burden:* 3,425 hours.
- *Frequency:* On occasion.
- *Obligation To Respond:* Required to obtain or retain a benefit.

DATE(S): Submit comments to the Office of Management and Budget (OMB) for up to 30 days from February 7, 2005.

ADDRESSES: Direct Comments and questions to Alex Hunt, the State Department Desk Officer in Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB), who may be reached at (202) 395–7860. You may submit comments by any of the following methods:

- *E-mail: ahunt@omb.eop.gov.* You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
- *Hand Delivery or Courier:* OIRA State Department Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Ms. Irina Kaufman, DS/OFM/VTC, 3507 International Place, NW., U.S. Department of State, Washington, DC, 20008, who may be reached on (202) 895–3683, or by e-mail at *kaufmani@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: Exemption from customs duties is a privilege enjoyed by foreign diplomatic and consular personnel on assignment in the United States under the provisions of the Vienna Conventions on Diplomatic and Consular Relations and the terms of various bilateral agreements. Under the Foreign Missions Act of 1982 (as amended), 22 U.S.C. 4301 *et seq.*, the Department of State's Office of Foreign Missions (OFM) is given the authority to grant privileges and benefits, based on reciprocity. The application form DS–1504, "Request for Customs Clearance of Merchandise" provides OFM with the necessary information to provide and administer the benefit effectively and efficiently.

Methodology: The collected information is used by the Office of Foreign Missions (OFM) in determining the eligibility of foreign diplomatic and consular missions and personnel for exemption from duties otherwise imposed by U.S. Customs and Border Protection (CBP) on imported goods. In some cases, the reciprocal relationship between the United States and other nations requires that some type of duty or restriction on importation be imposed. The information on this form provides the basis upon which to determine, in cooperation with CBP, the proper handling of diplomatic shipments.

Dated: December 2, 2004.

Lynwood M. Dent, Jr.,

Deputy Assistant Secretary and Deputy Director, Office of Foreign Missions, Bureau of Diplomatic Security, Department of State.

[FR Doc. 05–276 Filed 1–5–05; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 4949]

30-Day Notice of Proposed Information Collection: Refugee Biographic Data, OMB Control Number 1405–0102

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Refugee Biographic Data.
- *OMB Control Number:* 1405–0102.
- *Type of Request:* Extension of a Currently Approved Collection.
- *Originating Office:* Bureau of Population, Refugees, and Migration, PRM/A.
- *Form Number:* N/A.
- *Respondents:* Refugee applicants for the U.S. Resettlement Program.
- *Estimated Number of Respondents:* 70,000.
- *Estimated Number of Responses:* 70,000.
- *Average Hours per Response:* One-half hour.
- *Total Estimated Burden:* 35,000 hours.
- *Frequency:* Once per respondent.
- *Obligation To Respond:* Required To Obtain a Benefit.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from January 6, 2005.

ADDRESSES: Direct comments and questions to Alex Hunt, the Department of State Desk Officer in the Office of Information and Regulatory Affairs at

the Office of Management and Budget (OMB), who may be reached at (202) 395–7860. You may submit comments by any of the following methods:

- *E-mail: Alexander_T._Hunt@omb.eop.gov.* You must include the DS form number (if applicable), information collection title, and OMB control number in the subject line of your message.
- *Hand Delivery or Courier:* OIRA, Department of State Desk Officer, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503.
- *Fax:* (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Amy Nelson, Refugee Processing Center, 1401 Wilson Blvd, Arlington, VA 22209, who may be reached at (703) 907–7200 or at *nelsonab@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The Refugee Biographic Data Sheet describes a refugee applicant's personal characteristics and is needed to match the refugee with a sponsoring voluntary agency to ensure initial reception and placement in the U.S. under the United States Refugee Program administered by the Bureau for Population, Refugees, and Migration.

Methodology: Biographic information is collected in a face-to-face interview of the applicant overseas. An employee of an Overseas Processing Entity, under contract with PRM, collects the information and enters it into the Worldwide Refugee Admissions Processing System.

Dated: December 14, 2005.

Terry Rusch,

Director, Office of Admissions, Bureau of Population, Refugees and Migration, Department of State.

[FR Doc. 05–277 Filed 1–5–05; 8:45 am]

BILLING CODE 4710–33–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending December 24, 2004

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2004–19942.
Date Filed: December 20, 2004.
Parties: Members of the International Air Transport Association.
Subject: PSC/Reso/121 dated December 3, 2004, Intended effective date: January 1 & January 15, 2005.

Docket Number: OST–2004–19958.
Date Filed: December 22, 2004.
Parties: Members of the International Air Transport Association.
Subject: PTC2 EUR 0594 dated 22 December 2004, PTC2 EUR–AFR 0214 dated 22 December 2004, Mail Vote 427—Resolution 010c—Special Passenger, Amending Resolution from Algeria, *Intended effective date:* 31 December 2004.

Maria Gulczewski,

Supervisory Dockets Officer, Alternate Federal Register Liaison.

[FR Doc. 05–229 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending December 24, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart B (formerly subpart Q) of the Department of Transportation's Procedural Regulations (*see* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2004–19970.
Date Filed: December 23, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 13, 2005.
Description: Application of Transmile Air Services Sdn Bhd, requesting a foreign air carrier permit to engage in scheduled all-cargo service between the United States and any point or points and charter all-cargo service between Malaysia and the United States and any point or points in third countries.

Docket Number: OST–2004–19975.
Date Filed: December 23, 2004.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 13, 2005.
Description: Application of Amiyi Airlines Limited, requesting a foreign air carrier permit to operate foreign air transportation of property, and mail on a charter basis, between points in the United States and points in Nigeria, and to operate all-cargo charter services between points in the United States and points in third countries, as provided in the U.S.-Nigeria Air Transport Services Agreement.

Maria Gulczewski,

Supervisory Dockets Officer, Alternate Federal Register Liaison.

[FR Doc. 05–230 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Air Traffic Procedures Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Air Traffic Procedures Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held Monday, January 10, 2005, from 1 p.m. to 4:30 p.m., Tuesday, January 11, 2005 from 9 a.m. to 4:30 p.m., and Wednesday, January 12, 2005 from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at the Sofitel Hotel, 5800 Blue Lagoon Drive, Miami, FL 33126.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Creamer, Executive Director, ATPAC, System Operations and Safety, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9205.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby give of a meeting of the ATPAC to be held Monday, January 10, 2005 from 1 p.m. to 4:30 p.m., Tuesday, January 11, 2005 from 9 a.m. to 4:30 p.m., and Wednesday, January 12, 2005 from 9 a.m. to 4:30 p.m.

The agenda for this meeting will cover: a continuation of the Committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of Minutes.
2. Submission and Discussion of Areas of Concern.
3. Discussion of Potential Safety Items.
4. Report from Executive Director.
5. Items of Interest.
6. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to space available. With the approval of the Chairperson; members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than January 2, 2005. The next quarterly meeting of the FAA ATPAC is planned to be held from April 18–20, 2005, in Washington, DC.

Any member of the public may present a written statement to the Committee at any time at the address given above.

Issued in Washington, DC, on December 20, 2004.

Stephen Creamer,

Executive Director, Air Traffic Procedures Advisory Committee.

[FR Doc. 05–238 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 05–06–C–00–CAK To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Akron-Canton Regional Airport, North Canton, OH

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 and use the revenue from PFC at Akron-Canton Regional 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 February 7, 2005.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Detroit Airports District Office, 1677 South Wayne Road, Suite 107, Romulus, Michigan 48174.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard B. McQueen, Assistant Airport Director of the Akron-Canton Regional Airport Authority at the following address: 5400 Lauby Rd #9, North Canton, Ohio 44720.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Akron-Canton Regional Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Jason Watt, Program Manager, Detroit Airport District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174, (734) 229–2906. 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 and use the revenue from a PFC at Akron-Canton Regional Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 8, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Akron-Canton Regional Airport Authority 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 April 11, 2005.

The following is a brief overview of the application.

Proposed Charge Effective Date: November 1, 2006.

Proposed Charge Expiration Date: August 1, 2015.

Level of the Proposed PFC: $4.50.

Total Estimated PFC Revenue: $21,369,000.

Brief Description of Proposed Projects: Property Acquisition, Security Enhancements, Glycol Recovery Study and Design, Acquire Snow Removal Equipment, Aircraft Apron Rehabilitation, Terminal Rehabilitation, Runway 14/32 Closure/Conversion to Taxiway.

Class or Classes of Air Carriers, Which the Public Agency Has Requested Not be Required to Collect PFCs: Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** The application may be reviewed in person at this same location.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Akron-Canton Regional Airport Authority.

Issued in Des Plaines, Illinois on December 29, 2004.

Elliott Black,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 05–237 Filed 1–5–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34628]

Peter A. Gilbertson, et al. and Anacostia Rail Holdings Company—Continuance in Control Exemption—Northern Lines Railway, LLC

Peter A. Gilbertson and Bruce A. Lieberman (Gilbertson, *et al.*), noncarrier individuals, and Anacostia Rail Holdings Company (ARH), a noncarrier holding company (together, Petitioners), have filed a verified notice of exemption for Gilbertson *et al.* to continue in control of and for ARH to control Northern Lines Railway, LLC (NLR), upon NLR's becoming a Class III rail carrier.[1]

The transaction was expected to be consummated on or after December 14, 2004.

This transaction is related to the concurrently filed verified notice of exemption in STB Finance Docket No. 34627, *Northern Lines Railway, LLC—Lease and Operation Exemption—The Burlington Northern and Santa Fe Railway Company.* In that proceeding, NLR seeks to lease from The Burlington Northern and Santa Fe Railway Company and operate approximately 22.4 miles of rail line in St. Cloud, St. Joseph, and Cold Spring, MN.

Gilbertson, *et al.* and/or ARH currently control the following Class III

[1] Upon consummation of the lease in the related proceeding, ARH will not control NLR. However, because ARH may, at some point in the future have control over NLR, ARH is now seeking authority for such control.

rail carriers: (a) Chicago SouthShore & South Bend Railroad (CSS), which owns and/or operates property in Illinois and Indiana; (b) Illinois Indiana Development Company, LLC (IIDC),[2] which owns (but does not currently operate) property in Illinois and Indiana; (c) Pacific Harbor Line, Inc. (PHL), which operates property in California; (d) Louisville & Indiana Railroad Company (L&I), which owns and/or operates property in Indiana and Kentucky; and (e) New York & Atlantic Railway Company (NYA), which operates property in New York.[3]

Petitioners state that: (1) The railroads do not connect with each other or any railroad in their corporate family; (2) the transaction is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34628, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Rose-Michele Weinryb, Esq., Weiner Brodsky Sidman Kider PC, 1300 19th St., NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 27, 2004.

[2] SouthShore Corporation (SouthShore) has 60% ownership of CSS and IIDC, and Gilbertson, *et al.* constitute two of the three directors of SouthShore.

[3] Gilbertson, *et al.* own and control ARH, which in turn owns and controls PHL, L&I and NYA.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–253 Filed 1–5–05; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34417 (Sub-No. 2)]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF), pursuant to a modified written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), has agreed to grant additional local trackage rights to UP [1] over a BNSF line of railroad between BNSF milepost 113.0 and BNSF milepost 117.0 near Endicott, NE, a distance of approximately 4.0 miles.[2]

The transaction was scheduled to be consummated on December 24, 2004.

The purpose of this transaction is to modify the temporary trackage rights exempted in Finance Docket No. 34417 to include an additional 1.5 miles of trackage and to extend the expiration date to on or about May 16, 2005. The modified rights will permit UP to continue to serve the shipper at Endicott until permanent arrangements can be made for alternate rail service to this shipper, and will permit UP to handle trains carrying materials from the portion of the line that is being salvaged.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34417 (Sub-No. 2) must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert T. Opal, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 22, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–254 Filed 1–5–05; 8:45 am]

BILLING CODE 4915–01–P

[1] UP submits that the trackage rights being granted here are only temporary rights, but, because they are "local" rather than "overhead" rights, they do not qualify for the Board's new class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). *See Railroad Consolidation Procedures—Exemption for Temporary Trackage Rights*, STB Ex Parte No. 282 (Sub-No. 20) (STB served May 23, 2003). Therefore, UP and BNSF concurrently have filed a petition for partial revocation of this exemption in STB Finance Docket No. 34417 (Sub-No. 3), *Union Pacific Railroad Company—Temporary Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, wherein UP and BNSF request that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire on or about May 16, 2005. That petition will be addressed by the Board in a separate decision.

[2] The original trackage rights granted in *Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company*, Finance Docket No. 34417 (STB served Nov. 3, 2003), extended between BNSF milepost 114.5 and BNSF milepost 117.0 near Endicott, NE, a distance of approximately 2.5 miles. By decision served December 8, 2003, in Finance Docket No. 34417 (Sub-No. 1), the Board granted an exemption to permit the trackage rights granted in Finance Docket No. 34417 to expire. At that time, it was anticipated by the parties that the rights would expire on or about October 15, 2004. However, this authority has not yet been exercised.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34627]

Northern Lines Railway, LLC—Lease and Operation Exemption—The Burlington Northern and Santa Fe Railway Company

Northern Lines Railway, LLC (NLR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease, from The Burlington Northern and Santa Fe Railway Company (BNSF), and operate approximately 22.4 miles of rail line extending: (a) From the 33rd Street crossing, approximately milepost 76.03, in St. Cloud, MN, exclusive of the actual crossing, approximately one-half mile west of the St. Cloud Yard, to the current end-of-track in St. Joseph, MN, approximately milepost 81.11 at Borgert Road, Line Segment 204; and (b) from Rice Junction in St. Cloud, approximately milepost 0.0 of the Cold

Spring line to the current end-of-track west of Cold Spring, MN, approximately milepost 16.98 near 178th Street, BNSF Line Segment 203, as well as certain related yard and industry tracks.[1]

In addition, NLR will acquire from BNSF incidental trackage rights, which will enable NLR to access the leased industry and yard tracks from the leased main line tracks, as follows: (a) Over the BNSF double main lines from approximately milepost 73.0 to approximately milepost 75.0; (b) over the east leg of the wye (Track 156) and over the west leg of the wye (Track 157), in East St. Cloud; (c) from the west end of the wye in East St. Cloud to the Track 12 switch with the East Lead in St. Cloud Yard; and (d) from the clearance point of the Track 11 switch with the West Track in St. Cloud Yard to the 33rd Street crossing, inclusive of the actual crossing, approximately one-half mile west of the St. Cloud Yard. All of the incidental trackage rights involve rail track located in the vicinity of St. Cloud.

This transaction is related to STB Finance Docket No. 34628, *Peter A. Gilbertson, et al.* and *Anacostia Rail Holdings Company—Continuance in Control Exemption—Northern Lines Railway, LLC,* wherein Peter A. Gilbertson, *et al.* (Gilbertson *et al.*) and Anacostia Rail Holdings Company (ARH) have filed a verified notice of exemption for Gilbertson *et al.* to continue in control of and for ARH to control NLR upon its becoming a Class III rail carrier.

NLR certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and states that such revenues will not exceed $5 million annually. The transaction was scheduled to be consummated on or after December 14, 2004.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34627, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Rose-Michele Weinryb, Esq., Weiner Brodsky Sidman Kider PC, 1300 19th St., NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: December 27, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 05–255 Filed 1–5–05; 8:45 am]

BILLING CODE 4915–01–P

[1] NLR indicates that BNSF will reserve out of the leased trackage certain limited trackage rights between the 33rd Street crossing and a point west of the ballast pit track 582 (which includes trackage on the St. Joseph main line from the 33rd Street crossing to Rice Junction, approximately milepost 0.0, and trackage on the Cold Spring main line from milepost 0.0 to milepost 2.5 west of the ballast pit track 582).

Federal Register

Thursday,
January 6, 2005

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Regulation for Nonessential Experimental Populations of the Western Distinct Population Segment of the Gray Wolf; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT61

Endangered and Threatened Wildlife and Plants; Regulation for Nonessential Experimental Populations of the Western Distinct Population Segment of the Gray Wolf

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) establish a rule for the nonessential experimental populations (NEPs) of the Western Distinct Population Segment (DPS) of the gray wolf (*Canis lupus*), so that in States and on Tribal reservations with Service-approved wolf management plans, we can better address the concerns of affected landowners and the impacts of a biologically recovered wolf population. In addition, States and Tribes with Service accepted wolf management plans can petition the Service for lead management authority for experimental wolves consistent with this rule. Within the Yellowstone and central Idaho experimental population areas, only the States of Idaho and Montana currently have approved management plans for gray wolves. The State of Wyoming has prepared a wolf management plan that was not approved by the Service. No Tribes have approved management plans. Therefore, at this point in time these regulatory changes only affect wolf management within the experimental population areas in Montana and Idaho. As we discussed in our advance notice of proposed rulemaking regarding delisting the Western DPS of the gray wolf (68 FR 15879; April 1, 2003), once Wyoming has an approved wolf management plan, we intend to propose removing the gray wolf in the Western DPS from the List of Endangered and Threatened Wildlife. This rule does not affect gray wolves in the Eastern DPS, the Southwestern DPS, or the non-experimental wolves in the Western DPS.

DATES: The effective date of this rule is February 7, 2005.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at U.S. Fish and Wildlife Service, Office of the Western Gray Wolf Recovery Coordinator, 100 North Park, Suite 320, Helena, Montana 59601. Call 406–449–5225 to make arrangements.

FOR FURTHER INFORMATION CONTACT: Ed Bangs, Western Gray Wolf Recovery Coordinator, at the above address or telephone 406–449–5225, ext. 204 or at *ed_bangs@fws.gov* or on our Web site at *http://westerngraywolf.fws.gov/*.

SUPPLEMENTARY INFORMATION:

Background

In 1994, we promulgated special rules under section 10(j) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), for the purpose of wolf reintroduction. The rules, codified at 50 CFR 17.84(i), established two nonessential experimental populations (NEPs), one for the central Idaho area and the other for the Yellowstone area, that provided management flexibility to address the potential negative impacts and concerns regarding wolf reintroduction.

On April 1, 2003, we published in the **Federal Register** (69 FR 15879) an Advance Notice of Proposed Rulemaking under the Act, announcing our intent to remove the Western DPS of the gray wolf (*Canis lupus*) from the List of Endangered and Threatened Wildlife in the near future. At the time, we indicated that the number of wolves in the Yellowstone and central Idaho NEP areas had exceeded our numerical recovery goals. We also emphasized the importance of State wolf management plans to any delisting decision; we believed these plans would be the major determinants of wolf protection and prey availability, and would set and enforce limits on human use and other forms of take, once the wolf is delisted. These State management plans will determine the overall regulatory framework for the future conservation of gray wolves, outside of Tribal reservations, after delisting. For reasons we discuss in more detail below, we are not yet prepared to propose delisting the Western DPS of gray wolves; however, we are issuing a new regulation for the NEPs in the Western DPS for States or Tribal reservations with Service-approved wolf management plans.

Gray wolf populations were eliminated from Montana, Idaho, and Wyoming, as well as adjacent southwestern Canada, by the 1930s (Young and Goldman 1944). After human-caused mortality of wolves in southwestern Canada was regulated in the 1960s, populations expanded southward (Carbyn 1983). Dispersing individuals occasionally reached the northern Rocky Mountains of the United States (Ream and Mattson 1982, Nowak 1983), but lacked legal protection there until 1974 when they were listed as endangered under the Act.

In 1982, Congress made significant changes to the Act with the addition of section 10(j), which provides for the designation of specific reintroduced populations of listed species as "experimental populations." Previously, we had authority to reintroduce populations into unoccupied portions of a listed species' historical range when doing so would foster the species' conservation and recovery. However, local citizens often opposed these reintroductions because they were concerned about the placement of restrictions and prohibitions on Federal and private activities. Under section 10(j) of the Act, the Secretary of the Department of the Interior can designate reintroduced populations established outside the species' current range, but within its historical range, as "experimental." Based on the best scientific and commercial data available, we must determine whether experimental populations are "essential," or "nonessential," to the continued existence of the species. Regulatory restrictions are considerably reduced under a Nonessential Experimental Population (NEP) designation.

Without the "nonessential experimental population" designation, the Act provides that species listed as endangered or threatened are afforded protection primarily through the prohibitions of section 9 and the requirements of section 7. Section 9 of the Act prohibits the take of an endangered species. "Take" is defined by the Act as harass, harm, pursue, hunt, shoot, wound, trap, capture, or collect, or attempt to engage in any such conduct. Service regulations (50 CFR 17.31) generally extend the prohibitions of take to threatened wildlife. Section 7 of the Act outlines the procedures for Federal interagency cooperation to conserve federally listed species and protect designated critical habitat. It mandates all Federal agencies to determine how to use their existing authorities to further the purposes of the Act to aid in recovering listed species. It also states that Federal agencies will, in consultation with the Service, ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of a listed species or result in the destruction or adverse modification of designated critical habitat. Section 7 of the Act does not affect activities undertaken on private land unless they are authorized, funded, or carried out by a Federal agency.

For purposes of section 9 of the Act, a population designated as experimental is treated as threatened regardless of the species' designation elsewhere in its

range. Through section 4(d) of the Act, threatened designation allows us greater discretion in devising management programs and special regulations for such a population. Section 4(d) of the Act allows us to adopt regulations that are necessary to provide for the conservation of a threatened species. In these situations, the general regulations that extend most section 9 prohibitions to threatened species do not apply to that species, and the special 4(d) rule contains the prohibitions and exemptions necessary and appropriate to conserve that species. Regulations issued under section 4(d) for NEPs are usually more compatible with routine human activities in the reintroduction area.

For the purposes of section 7 of the Act, we treat NEPs as a threatened species when the NEP is located within a National Wildlife Refuge or National Park, and section 7(a)(1) and the consultation requirements of section 7(a)(2) of the Act apply. Section 7(a)(1) requires all Federal agencies to use their authorities to conserve listed species. Section 7(a)(2) requires that Federal agencies, in consultation with the Service, ensure that any action authorized, funded, or carried out is not likely to jeopardize the continued existence of a listed species or adversely modify its critical habitat. When NEPs are located outside a National Wildlife Refuge or National Park, we treat the population as proposed for listing and only two provisions of section 7 would apply—section 7(a)(1) and section 7(a)(4). In these instances, NEPs provide additional flexibility because Federal agencies are not required to consult with us under section 7(a)(2). Section 7(a)(4) requires Federal agencies to confer (rather than consult) with the Service on actions that are likely to jeopardize the continued existence of a species proposed to be listed. The results of a conference are advisory in nature and do not restrict agencies from carrying out, funding, or authorizing activities.

In 1994, we promulgated special rules under section 10(j) of the Act for the purpose of wolf reintroduction. The rules, codified at 50 CFR 17.84(i), established two NEPs, one for the central Idaho area and the other for the Yellowstone area. We also identified protective measures and management practices necessary for the populations' conservation and recovery. As wolves in the NEPs are generally treated as a threatened species, these rules provided additional flexibility in managing wolf populations within the experimental population areas compared to outside these areas, where wolves were listed as endangered.

Since their reintroduction in 1994, wolf populations in both experimental areas have exceeded expectations (Service 2004). This success prompted the Service to reclassify the status of gray wolves in the Western DPS, outside of the experimental population areas, to threatened (68 FR 15804) and publish a special 4(d) rule for the WDPS (found in 50 CFR 17.40(n)) that provides more flexible management for wolves outside the experimental population areas. We also published an advance notice of proposed rulemaking, indicating our intent to delist the Western DPS of gray wolves in the future (68 FR 15879).

However, the 2003 4(d) rule did not apply within the experimental population areas in Idaho or Yellowstone; as a result, management of threatened wolves in the western DPS outside of the experimental population areas became more flexible than management of wolves inside the experimental population areas. We now issue a rule for States or Tribal reservations with Service-approved wolf management plans that provides for additional flexibility within the experimental population areas in recognition of the fact that wolves are numerous in the experimental population areas. In addition, the rule provides for transition to a State and Tribal lead for wolf management in those States or reservations with Service-approved wolf management plans, with the exception of lands managed by the National Park Service or the Service. The 1994 NEP rules found at 50 CFR 17.84(i) are retained in Wyoming and on Tribal reservations within Wyoming without approved management plans.

Previous Federal Actions

The northern Rocky Mountain wolf (*Canis lupus irremotus*) was listed as endangered in Montana and Wyoming in the first list of species that were protected under the 1973 Act, published in May 1974 (U.S. Department of the Interior 1974). To eliminate problems with listing separate subspecies of the gray wolf and identifying relatively narrow geographic areas in which those subspecies are protected, on March 9, 1978, we published a rule (43 FR 9607) relisting the gray wolf at the species level (*Canis lupus*) as endangered throughout the conterminous 48 States and Mexico, except Minnesota, where the gray wolf was reclassified to threatened. In addition, critical habitat was designated in Minnesota and Michigan in that rulemaking.

On November 22, 1994, we designated areas in Idaho, Montana, and Wyoming as NEPs in order to initiate gray wolf reintroduction in central Idaho and the Greater Yellowstone area (59 FR 60252, 59 FR 60266). These experimental population designations contain special rules that govern the take of wolves within the geographical areas. The 1994 rules governing those experimental populations allowed for increases in the authority of States and Tribes to manage the wolves under a State or Tribal management plan approved by the Service. Specifically, the 1994 rules allowed States or Tribes to expand the definition of "livestock" for purposes of managing conflicts between wolves and livestock, and the rules also allowed States and Tribes to document adverse effects of wolves on ungulates for the purposes of managing those conflicts.

In January 1995, 15 wolves captured in Alberta, Canada, were released in central Idaho. In January 1996, an additional 20 wolves from British Columbia were released into the central Idaho experimental population area. In March 1995, 14 wolves from Alberta were released from holding pens in Yellowstone National Park. In April 1996, this procedure was repeated with 17 wolves from British Columbia (Bangs and Fritts 1996, Fritts *et al.* 1997, see Service 2004 for additional references).

On December 11, 1997, we published a proposal to revise the NEP rules in central Idaho and the Yellowstone area (62 FR 65237). This proposal attempted to clarify ambiguous language regarding wolf control options of suspected captive wolves and wolf-dog hybrids found in the wild within the experimental population areas. Due to litigation over wolf reintroduction, in which the Service ultimately prevailed, and other priorities, that proposal was never finalized. This rule resolves that ambiguous language (*see* (xi)(H) in this rule).

On July 13, 2000, we published a proposal (65 FR 43450) to revise the listing of the gray wolf across most of the conterminous United States. On April 1, 2003, we published a rule establishing three DPSs (Western, Eastern, and Southwestern) and reclassifying the gray wolf from endangered to threatened in the Western and Eastern DPSs except where NEPs existed (68 FR 15804). We established special rules under section 4(d) of the Act for the Western and Eastern DPSs. Also on April 1, 2003, we published two Advance Notices of Proposed Rulemaking announcing our intent to delist the gray wolf in the Eastern (68 FR 15876) and Western (68 FR 15879) DPSs in the future.

We received several petitions during the past decade requesting delisting of the gray wolf in all or part of the 48 conterminous States. We subsequently published findings that these petitions did not present substantial information that delisting gray wolves in all or part of the conterminous 48 States was warranted (54 FR 16380, April 24, 1989; 55 CFR 48656, November 30, 1990; 63 FR 55839, October 19, 1998).

Recovery Goals

The demographic recovery goal for the WDPS is a minimum of 30 breeding pairs, each consisting of an adult male and an adult female that successfully produced at least 2 pups that survived until December 31, that are equitably distributed among 3 recovery areas/States for 3 successive years (68 FR 15804). Our current estimates indicate wolf populations in northwestern Montana where they are designated threatened, and in central Idaho and Yellowstone where they are designated experimental, have exceeded this recovery goal. In late 2002 there were about 663 wolves and 43 breeding pairs equitably distributed throughout Montana (about 183 wolves and 16 breeding pairs), Idaho (about 263 wolves and 9 breeding pairs), and Wyoming (217 wolves and 18 breeding pairs) (Service *et al.* 2003). The year 2002 was the third successive year that the wolf population in Montana, Idaho, and Wyoming had 30 or more breeding pairs. The wolf population continues to expand in the NEP areas. At the end of 2003, the wolf population was estimated at 761 wolves and 51 breeding pairs. Montana had an estimated 182 wolves and 10 breeding pairs, Idaho had 345 wolves and 25 breeding pairs, and Wyoming had 234 wolves and 16 breeding pairs (Service *et al.* 2004). Preliminary monitoring in 2004 indicates the wolf population continues to increase, again primarily in the NEP areas (Service 2004b).

Currently Designated Nonessential Experimental Populations of Gray Wolves

The Secretary designated two NEP areas for gray wolves in the Northern Rockies. Wolves were reintroduced into the Yellowstone NEP Area and the Central Idaho NEP Area in 1995 and 1996. The reintroductions as experimental populations were intended to further the recovery of gray wolves in the northern United States Rocky Mountains, as described in the recovery plan (Service 1987), and provide more management flexibility to address local and State concerns about wolf-related conflicts.

The Central Idaho Experimental Population Area consists of the portion of Idaho south of Interstate Highway 90 and west of Interstate 15; and the portion of Montana south of Interstate 90, west of Interstate 15, and south of Highway 12 west of Missoula (59 FR 60266; November 22, 1994).

The Yellowstone Experimental Population Area consists of the portion of Idaho east of Interstate Highway 15; the portion of Montana east of Interstate Highway 15 and south of the Missouri River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming (59 FR 60252; November 22, 1994).

However, as explained below, the new regulation proposed here will not apply in Wyoming or within any Tribal reservation in Wyoming at this time.

Current Special Regulations for the Western Distinct Population Segment

Three special rules currently apply to wolves in Montana, Idaho, and Wyoming. The two 1994 10(j) experimental population rules allow flexibility in the management of wolves, including authorization for private citizens to non-injuriously harass wolves and take wolves that are in the act of attacking livestock on private land, without a permit. These rules also provide a permit process that similarly allows the take, under certain circumstances, of wolves in the act of attacking livestock on public land. In addition, they allow opportunistic non-injurious harassment of wolves by livestock producers on private and public grazing lands, and also allow designated government employees or Service-designated agents under specified circumstances to perform non-lethal and lethal control to remove problem wolves. The 1994 rules allow States and Tribes to define unacceptable impacts on native ungulate herds and relocate wolves to reduce wolf predation. They also provide a mechanism for increased State and Tribal participation in wolf management, if cooperative agreements are developed to make them designated agents of the Service.

The 2003 4(d) rule for the Western DPS outside of the Central Idaho and Yellowstone NEP areas allows landowners and permittees on Federal grazing allotments to harass wolves in a non-injurious manner at any time. Like the 1994 10(j) rules, the 4(d) rule allows flexibility in the management of wolves, including authorization for private citizens on private land to non-injuriously harass wolves and take wolves that are in the act of attacking livestock, livestock herding or guarding animals, or dogs without a permit. The 4(d) rule also provides a written authorization process that allows the taking, under certain circumstances, of wolves on public land in the act of attacking livestock or livestock herding or guarding animals. In addition, it allows designated government employees or Service-designated agents to perform non-lethal and lethal control to remove problem wolves under specified circumstances. The 4(d) rule allows take of wolves under written authorization in a few more circumstances than the 1994 10(j) rules. Like the 1994 10(j) rules, the 4(d) rule allows the State and Tribes to define unacceptable impacts on native ungulate herds and relocate wolves to reduce wolf predation. The 4(d) rule, like the 1994 10(j) rules, also provides a mechanism for increased State and Tribal participation in wolf management, if cooperative agreements are developed to make them designated agents of the Service. A table comparing the parameters of wolf management in this final 10(j) rule with those in the 1994 10(j) rules, and with the 4(d) rules, is included as part of this rule.

State and Tribal Wolf Management Plans

In order to delist the Western DPS wolf population due to recovery, the demographic criteria (a minimum of 30 breeding pairs of wolves [an adult male and female wolf that raise at least 2 pups until December 31] that are equitably distributed throughout Montana, Idaho, and Wyoming for a minimum of 3 successive years) must be met, and the Service must determine, based on the best scientific and commercial data available, that the species is no longer in danger of extinction and is not likely to be in danger of extinction in the foreseeable future throughout all or a significant portion of its range. The basis for the determination is a review of the status of the species in relation to five factors identified in section 4(a)(1) of the Act—(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; and (E) other natural or manmade factors affecting its continued existence. These factors are not analyzed in detail as part of this rule because there was no proposed change in the WDPS listing status. Rather, this rule focuses on management of NEP wolves in the WDPS as we await delisting and transfer of management for

wolves in the WDPS to the States and Tribes.

State management plans have been determined by the Service to be the most appropriate means of maintaining a recovered wolf population and of providing adequate regulatory mechanisms post-delisting (*i.e.*, addressing factor D) because the primary responsibility for management of the species will rest with the States upon delisting and subsequent removal of the protections of the Act. Therefore, based on the demographic criteria mentioned above, each State needs to commit to maintain at least 10 or more breeding pairs, so the wolf population will not fall below 30 breeding pairs overall, and so that an equitable distribution of wolf breeding pairs is maintained among the three States. The northern Rocky Mountain wolf population is a three-part metapopulation and requires adequate management by all three States to ensure sufficient connectivity and distribution to remain recovered. Because the population inhabits parts of Montana, Idaho, and Wyoming, all three States must have adequate regulatory mechanisms to reasonably ensure their share of the population will remain recovered before the Service can propose it be delisted.

The Service determined that Wyoming's current State law and its wolf management plan do not suffice as an adequate regulatory mechanism for the purposes of delisting (letter from Service Director Steven Williams to Montana, Idaho, and Wyoming, January 13, 2004). Consequently, this rule, which defines the expanded authorities for States or Tribes with Service-approved plans, does not affect the portion of the Yellowstone NEP area in Wyoming. Wyoming has initiated legal action challenging our decision to not approve their wolf management plan. As the case works its way through the court system, we will attempt to continue to work with Tribes in Wyoming and the State of Wyoming to develop a Wyoming State law and State or Tribal wolf management plans that we can approve. Once we have approved a wolf management plan for the State of Wyoming, and barring the identification of any new threats to the species, we expect to propose rulemaking to remove the Western DPS of the gray wolf from the List of Endangered and Threatened Wildlife (for additional discussion, see our Advance Notice of Proposed Rulemaking at 68 FR 15879).

At this time there are few, if any, wolf breeding pairs or packs that significantly use Tribal reservation lands in the NEPs in Montana, Idaho, or Wyoming, and the recovery and subsequent maintenance of a recovered wolf population does not depend upon Tribal reservations or Tribal wolf management. The Service has not requested wolf management plans from any Tribe within the Western DPS, and any future delisting action is unlikely to be dependent on wolf management on Tribal lands. We do not believe any Tribal treaty rights to hunt and gather on ceded lands are adversely affected by this rule.

To provide as much flexibility as possible for Tribal members who are landowners, this rule treats Tribal members' lands on reservations as private property. Therefore, on Tribal lands within Montana and Idaho, individuals may take wolves on reservation lands as allowed on other private lands under this rule, if such take is allowed by Tribal wildlife regulations. A Tribal government may not assume designated agent status and lead for wolf management until it has a Tribal wolf management plan that has been approved by the Service. Tribes in Wyoming may develop their own wolf management plan for their reservation, and once accepted by the Service, may assume designated agent status. In the absence of a Service-approved Tribal wolf management plan or cooperative agreement, the Service will issue any written authorization for wolf take on Tribal lands.

Summary of Comments and Recommendations

A. Soliciting Public Comment

In our March 9, 2004, proposed rule and associated notifications, we requested that all interested parties submit comments, data, or other information that might aid in our decisions or otherwise contribute to the development of this final rule. The comment period for the proposed rule was open from March 9, 2004, through May 10, 2004. During that period we publicized and conducted two public hearings, one in Helena, Montana, on April 19, 2004, and another in Boise, Idaho, on April 20, 2004. We did not receive any requests for additional hearings and none were held. We also provided additional information at several general public meetings in order to explain the proposal, respond to questions concerning gray wolf protection and recovery, and receive input from interested parties. We contacted appropriate Federal, State, and Tribal agencies, scientific organizations, agricultural organizations, outdoor user groups, environmental organizations, animal rights groups, and other interested parties and requested that they comment on the proposal. We conducted numerous press interviews to promote wide coverage of our proposed rule in the media. We published legal notices in many newspapers announcing the proposal and hearings, and invited comment. We posted the proposal and numerous background documents on our Web site, and we provided copies upon request by mail or E-mail and at our hearings and informational meetings. We established several methods for interested parties to provide comments and other materials, including verbally or in writing at public hearings, by letter, E-mail, facsimile, or on our Web site.

During the 60-day comment period and at our two public hearings, we received nearly 23,000 separate comments, including comments from 39 individuals or agency representatives who spoke at public hearings. These comments included form letters and petitions with multiple signatures. Comments originated from nearly all States and several countries. We revised and updated the proposed rule in order to address comments and information we received during the comment period. In the following paragraphs we address the substantive comments we received concerning various aspects of the proposed rule. Comments of a similar nature are grouped together under subject headings (referred to as "Issues" for the purpose of this summary) below, along with our response to each. In addition to the following discussion, refer to the "Changes from the Proposed Rule" section (also below) for more details.

B. Technical and Editorial Comments

Issue 1: Numerous technical and editorial comments and corrections were provided by respondents.

Response 1–1: We corrected and updated numbers and other data wherever appropriate. We edited the rule to make its purpose and wolf management strategies clearer.

Response 1–2: We eliminated or condensed several sections in the proposed rule because they were either no longer relevant or to improve the clarity and intent of this rule. These changes include dropping most references to wolf management and regulations outside of the Western DPS and the central Idaho and Yellowstone NEP areas; dropping detailed descriptions of the Montana and Idaho wolf management plans; and dropping or condensing sections that are no longer relevant because they applied

more to the past active wolf reintroduction program rather than the current program that maintains and manages an established recovered wolf population.

Response 1–3: We include a table that compares the parameters of wolf management in this final 10(j) rule with those in the 1994 10(j) rules and with the 4(d) rule.

Issue 2: Changes were suggested for our definitions of terms such as "reasonable belief," "problem wolf," "in the act," "landowner," "livestock," and "active den site." Most of the changes were recommended to improve consistency with State or other Federal rules, to improve law enforcement capabilities, or to clarify this rule.

Response 2–1: Allowing wolf take because of an individual's "reasonable belief" the wolf may attack livestock appeared to invite abuse of wolf take. The Service and State law enforcement officials indicated that the term "reasonable belief" is largely unenforceable in the context of its use in the proposed rule, because it could be read to require proof of an individual's state of mind. It could allow more liberal take of wolves than current State regulations and standards allow for defense of private property from other large carnivores managed by the States. The standards for taking wolves to protect property on private and public land were changed to make them more enforceable and also more consistent with State regulations and enforcement standards. Take will be allowed if wolves are physically attacking or "in the act of" attacking—*i.e.*, molesting, harassing, chasing—livestock, livestock guarding and herding animals, and dogs), and if an agency investigation can confirm such take based on physical evidence of an attack or threat of attack likely to occur at any moment.

Response 2–2: The definition of take of problem wolves "in the act" has been changed to a definition of "in the act of attacking," meaning "the actual biting, wounding, grasping, or killing of livestock or dogs, or chasing, molesting, or harassing by wolves that would indicate to a reasonable person that such biting, wounding, grasping, or killing is likely to occur at any moment." Evidence of an attack must be available upon investigation. If no actual biting, wounding, grasping or killing has occurred, evidence must be available that a reasonable person would have believed that it was likely to occur at any moment. This standard does not require proof of an individual's state of mind. Instead, the standard requires evidence that an attack was likely to occur. Such evidence may include photographs of livestock or of the physical scene immediately following the wolf taking; indications that livestock were chased, molested or harassed, such as livestock and wolf tracks, trampled ground, broken fences, brush or vegetation, or muddied, lathered, bunched or trampled livestock; or dead or wounded livestock. This change will make take of wolves in defense of private property more enforceable and more consistent with State regulations. This standard will still allow the take of wolves that are physically attacking livestock or dogs on private lands, and livestock on public lands. We believe that by expanding the definition of "in the act" to include wolves preparing to attack livestock or dogs, we will more effectively remove problem wolves, enhance the ability of landowners and public land permittees to protect their private property, reduce the agency workload, and reduce the potential for abuse of this regulation that could result in the take of non-problem wolves, while not resulting in adverse impacts to wolf populations.

Response 2–3: We agree that the definition of a "problem wolf" should not include a wolf attacking any domestic animal, such as a cat, but should be more specific to the types of animals that have been attacked in the past such as horses, cattle, sheep, mules, goats, domestic bison, llamas, and dogs. The definition of a problem wolf has been changed to a wolf that attacks livestock (defined as cattle, sheep, horses, mules, goats, domestic bison, certain types of livestock herding or guarding animals) and dogs on private lands, and livestock on public lands. The Service or our designated agent(s) can designate and control a problem wolf, if it has attacked domestic animals other than livestock or dogs, two or more times in a calendar year.

Response 2–4: Wolves should not be labeled "problem wolves" when they are attracted, artificially fed, or baited, or when livestock are not reasonably protected. The conditions required for take of a problem wolf are—(A) Evidence of dead or wounded livestock or dogs caused by wolves or evidence that an attack on livestock or dogs by wolves is likely to occur at any moment; (B) A likelihood that additional losses will occur if no control is taken; (C) No unusual attractants or artificial or intentional feeding of wolves; and (D) On public lands, animal husbandry practices specified in approved allotment plans and annual operating plans are being followed.

Response 2–5: Definitions of "routinely present" and "demonstrable but non-immediate threat to human safety" need clarification. We dropped these two phrases from the final rule. Issues regarding potential threat to private property or human safety will be reworded "as determined by the Service or our designated agent(s)."

Response 2–6: Some suggested that the definition for "active den site" begin earlier than April 1 or go later than June 30. From 1987 through 2004, we have monitored over 329 breeding pairs of wolves in Montana, Idaho, and Wyoming (USFWS 2004) and none were documented to have produced pups before April 1. By June 30 wolf pups are mobile and many begin moving to rendezvous sites, so we did not expand the time frame within that definition. Land-use restrictions, even around active den sites, have rarely been required to protect wolves in the past and we do not believe they will be necessary in the future (Bangs *et al.* in press).

Response 2–7: Some comments suggested certain sex and age classes of wolves, *i.e.*, breeding females or their pups, should be more protected than others. We dropped language from the final rule regarding more restrictive control options for females with pups or their pups. Our data indicate that after 4–6 weeks other pack members can successfully raise wolf pups, and removal of the breeding female does not mean the pups will not survive (Boyd and Jimenez 1994). Most pups are born by mid-April, and by early summer when most livestock come onto public grazing allotments, pups are mobile and can be raised by other pack members. Wolf packs are resilient to change and losing pack members, including alphas, as this happens frequently in nature even when humans are not impacting wolf pack social dynamics (Mech and Boitani 2003). We also recognize that, at times, the presence of wolf pups and their extra food requirement contribute to livestock depredation. Therefore, we have left the case-by-case decisions about wolf removal to our and our designated agent(s)' field personnel. We believe leaving such decisions to professional personnel in the field increases management flexibility and will not affect wolf recovery or the overall level of agency-caused wolf mortality.

Response 2–8: Some commenters recommended a more restrictive definition for "landowner" or restricting the use of take authorization by private individuals to remove problem wolves. Under this rule "landowner" applies only to private landowners or public land permittees who actually experience confirmed wolf depredations.

C. Legal Compliance With Laws, Regulations, and Policy

Issue 3: There was some confusion as to where and when the rule applies. Some believed it would immediately apply to all parts of any State with an approved management plan and others believed it would immediately apply throughout all experimental population areas. Some perceived that the new rule only applied after States with acceptable plans sign Memorandum of Agreements (MOAs) with the Secretary.

Response 3–1: This rule applies only to experimental areas within States or Tribal reservations with approved management plans, which at this time means only within the States of Montana and Idaho (letter from Service Director Steven Williams to Montana, Idaho, and Wyoming, January 13, 2004). Until a management plan from the State of Wyoming or a Wyoming Tribe is approved by the Service, no part of this rule applies in Wyoming or on a Tribal reservation in Wyoming. All wolf management in Wyoming remains under the aegis of the 1994 10(j) rules. When the Service approves a Wyoming or Tribal wolf management plan in that State, then this rule also will apply in Wyoming or that Tribal reservation in Wyoming. Furthermore, no Tribe in Montana or Idaho can lead wolf management on their reservation until the Tribe has a wolf management plan approved by the Service. Neither the 1994 rules nor this rule apply outside of the experimental population areas, except it provides some management options to the Service and our designated agent(s) for wolves from the experimental population area that disperse beyond the experimental population boundaries. Maps are provided to show the established experimental population areas in which this rule may apply.

Response 3–2: This rule becomes effective within 30 days in the experimental population areas in Montana and Idaho, as they have wolf management plans that have been approved by the Service. As soon as Wyoming or a Tribal reservation in Wyoming has a wolf management plan that is approved by the Service, this rule will become immediately effective in that respective area. While Tribal reservations in Montana and Idaho are considered as private land for individuals under the provisions of this rule, Tribal governments may not become designated agents and lead wolf management on reservations until they have a Tribal wolf management plan approved by the Service.

Response 3–3: The completion of an MOA with the Secretary of the DOI which is consistent with this rule allows a State or Tribe to take the lead in wolf management, to become "designated agent(s)," and to implement all parts of its approved wolf management plan that are consistent with this rule. This includes issuing written authorization for take, and making all decisions regarding implementation of the State or Tribal plan consistent with this rule. Under the MOA process, the Service will annually review the States' and Tribes' implementation of their plans to ensure compliance with this rule and to ensure the wolf population remains above recovery levels. States and Tribes also can become "designated agent(s)" and implement all or selected portions of this rule by entering into a cooperative agreement with the Service.

Issue 4: Some commenters believed the new 10(j) rule calls for a new Environmental Impact Statement (EIS) or additional section 7 consultation.

Response 4–1: We have carefully reviewed the requirements of the National Environmental Policy Act (NEPA) and its regulations (Council on Environmental Quality 40 CFR Section 1502.9). We believe this final rule, as well as the process by which it was developed and finalized, comply with all provisions of the Act, NEPA, and applicable regulations. The possible impacts resulting from this rule do not differ or extend beyond the scope of those examined in the 1994 EIS (Service 1994) or the 1994 10(j) rules. We do not believe the additions in this new 10(j) rule constitute substantial changes that create new environmental concerns. We present the following evidence:

In the 1994 EIS and 10(j) rules we predicted that 100 wolves in each of the 2 experimental areas would kill an annual average of 10–19 cattle and 57–68 sheep. Confirmed losses have been below predicted levels, even though wolf population levels are higher than predicted. From 1995 through 2003, wolves were confirmed to have killed 8.4–13.2 cattle, 33.6–46.3 sheep, and 2.5–2.7 dogs annually per experimental area. As predicted in the EIS, from 1987 through 2004 a cumulative total of approximately $440,000 in private compensation has been paid to livestock producers who have had confirmed or probable livestock losses caused by wolves, including areas both inside and outside the experimental population areas. The EIS also predicted that in each of the two experimental population areas annual livestock losses would range from $1,888 to $30,470 annually; and in reality, annual compensation for wolf-caused losses has averaged about $17,000 per area since 1995. The EIS predicted economic losses (in the range of $207,000–$857,000), primarily due to decreases in hunting for female elk; some decreases in winter control hunts for female elk have occurred, all within predicted levels. The EIS predicted that visitation to Yellowstone National Park would increase and generate $23,000,000 of economic activity in Montana, Idaho, and Wyoming. The popularity of wolf viewing in Yellowstone surpassed our predictions, although the economic impact is largely unknown.

The EIS predicted that the wolf population (defined by the distribution of breeding pairs) would likely remain within the EIS primary analysis area (Forest Service lands and adjacent private lands in central Idaho, and public land in and around Yellowstone National Park and private land in adjacent counties). As predicted, although individual lone wolves have dispersed widely, judging from the distribution of breeding pairs, the wolf population is contained within the EIS's primary analysis area.

In the EIS and 1994 10(j) rules, we also anticipated that legal control of wolves to minimize livestock depredations would annually remove an average 10 percent of the experimental population. Since 1995 lethal wolf removal has annually removed an average of less than 5 percent of the experimental wolf population. We predicted that the numerical and temporal goals for wolf population recovery would be reached in late 2002, with about 129 wolves counted in late winter in each of the 2 areas. These recovery criteria were reached in late 2002, but with an estimated 271–284 wolves per recovery area, about twice the predicted levels.

We anticipate that this rule will result in some additional wolf mortality by the public over current levels. However, the combination of agency control and legal control by the public will still likely effect on average 10 percent or less of the wolf population annually and we believe will not increase human-caused mortality to a level that could reduce the wolf population below recovery levels. Thus this rule does not create impacts that were not already analyzed or anticipated in the 1994 EIS and 1994 10(j) rules. This rule also provides safeguards that we believe will maintain the wolf population above numerical recovery goals in the experimental population areas. These safeguards are discussed throughout the body and discussion of the rule, including but not limited to the conditions under which the take provisions of the rule may be

implemented. In conclusion, we are adopting the prior EIS for this rulemaking because the analysis is still applicable, *i.e.*, the conditions have not changed and the action has not changed significantly.

Response 4–2: We have conducted an intra-Service section 7 consultation on this rulemaking. We have determined that the original consultation (contained in Appendix 7 of the 1994 EIS) remains adequate in its analysis of the gray wolf, woodland caribou, black-footed ferret, bald eagle, whooping crane, piping plover, least tern, pallid sturgeon, sockeye salmon, chinook salmon, Kendall Warm Springs dace, Wyoming toad, five species of Snake River mollusks, and MacFarlene's four-o'clock. No impacts to these species beyond those predicted in 1994 have occurred and this rule will cause no additional impacts beyond those envisioned in 1994. Since 1994, Canada lynx, bull trout, water howellia, white sturgeon, northern Idaho ground squirrel, Spalding's catchfly, and steelhead have been listed under the Act within the experimental population areas. In our original consultation, we determined wolf recovery would not affect any of those species but did not provide justification. We have updated the consultation to include a rationale of why the proposed action would not affect these species. Finally, because three grizzly bear cubs have been killed by wolves within the action area since the original consultation, we formally consulted on the effects of the proposed action on the grizzly bear. In this consultation, we determined that the project was not likely to jeopardize the continued existence of the grizzly bear (a copy of this consultation is available; see **FOR FURTHER INFORMATION CONTACT** section, above).

Issue 5: Some commenters believed we improperly considered economic, political, or other factors when developing the proposed rule. Some believed we favored livestock and State interests, and others believed we favored outside interests and environmental organizations.

Response 5: Except when designating critical habitat, the Act prohibits economic considerations during the rulemaking process and the Administrative Procedure Act prohibits Federal agencies from providing special interest groups any special access to the rulemaking process. This rulemaking has complied with those prohibitions.

Issue 6: Some commenters believed we are violating the Service's mission.

Response 6: The USFWS mission is working with others, to conserve, protect, and enhance fish, wildlife and plants and their habitats for the continuing benefit of the American people. A decade ago, the Service and our cooperators reintroduced wolves into the northern Rocky Mountains, and the WDPS wolf population have now exceeded numerical recovery goals outlined in the 1994 EIS. Nothing in this rule reduces the ability of the Service to achieve its mission or its responsibility under the Endangered Species Act to recover gray wolves; rather, this rule builds on the partnerships already established with the States and Tribes to manage the species.

Issue 7: One comment suggested the proposed rule violates the Airborne Hunting Act. Another suggested wolf control for State ungulate management violates the Wilderness Act.

Response 7–1: This rule does not allow public hunting of wolves, including by aircraft. It allows management agencies to remove problem wolves, using such tools as darting, netgunning, or gunning from aircraft. This type of agency activity is not a violation of the Airborne Hunting Act.

Response 7–2: This rule does not supersede or invalidate any other Federal, State, or Tribal laws or regulations. All wolf management activities under this rule must be conducted in compliance with all other applicable laws and regulations.

D. Lethal Control

Issue 8: Many commenters expressed varying degrees of opposition or support for the lethal control of gray wolves. Some commenters asked that we prohibit any form of lethal take; some supported killing of wolves only in defense of human life; some supported lethal control only if carried out by designated government agent(s); and others felt that lethal control should never occur on public lands. Lethal control of wolves that kill only pets also was opposed by some. Others (especially in Idaho) advocated lethal removal of all wolves. Some commented that all wolf control should be conducted in a humane manner. Others indicated that for physical evidence to be preserved, the site of the wolf take should remain undisturbed and be examined quickly to reduce the potential for abuse of the rule.

Response 8–1: The Service will continue to cooperate with the U.S. Department of Agriculture-Animal and Plant Health Inspection Service-Wildlife Services (USDA–APHIS–WS), State agencies, universities, and special interest groups to investigate ways to reduce the level of conflict between people, livestock, and wolves (Service 2004; Bangs *et al.* in press; Bradley 2003; Bangs and Shivik 2002; Oakleaf 2001). To date, we and our partners in wolf recovery have investigated and implemented the use of fencing; guard animals; extra herders; light, siren, and other scare devices, including those activated by wolf radio-collars; shock aversion conditioning; flagging; less-than-lethal munitions; offensive and repelling scents; supplemental feeding; harassing wolves at dens and rendezvous sites to move the center of wolf pack activity away from livestock; trapping and moving individual pack members or the entire pack; moving livestock and providing alternative pasture; investigating the characteristics of livestock operations that experience higher depredation rates; and research into the type of livestock and rate of livestock loss that are confirmed in remote public grazing allotments. We also correspond with researchers and wildlife managers around the world to learn how they deal with similar problems. While preventative and non-lethal control methods can be useful in some situations, they are not consistently reliable, and lethal control will remain an important tool to manage wolves that have learned to depredate on livestock. Lethal removal of problem wolves to the extent that it reduces the wolf population below recovery levels is not permitted. Under this rule, we or our designated agent(s) will regulate human-caused mortality of wolves in a manner that reduces conflicts between wolves and people while maintaining a recovered wolf population.

Response 8–2: To preserve physical evidence of a wolf attack, we require in the rule that any wolf take be reported within 24 hours and the site remains undisturbed.

Response 8–3: The Service treats wolves as humanely as conditions allow. We or our designated agent(s) routinely capture and release wolves for monitoring, research, and control. We train our employees in humane wildlife handling techniques. We capture wolves by leg-hold trapping, snaring, darting, and use the utmost caution to preserve the health and well-being of the captured animal. Mortalities resulting from wolf captures are below 2 percent of the animals handled. When we or our designated agent(s) must kill problem wolves, we use the most effective and humane techniques possible under field conditions. We continue to investigate non-lethal ways to reduce wolf-livestock conflicts, and we prefer to prevent livestock depredations, if possible, rather than react to them by killing depredating wolves.

Response 8–4: This rule clearly states that for take by landowners on their private lands or take on public land by a Federal allotment permittees of a gray wolf in the act of attacking livestock or dogs, the carcass of the wolf and the surrounding area should not be disturbed in order to preserve physical evidence that the take was conducted according to this rule. The take should be reported immediately, and the Service or our designated agent(s) will use the carcass and evidence in the area surrounding it to confirm that the livestock or dogs were wounded, harassed, molested, or killed by wolves. The take of any wolf without such evidence of a direct and immediate threat may be referred to the appropriate authorities for prosecution.

Issue 9: We received comments about the differentiation in wolf management between public and private lands, such as: States do not differentiate between private and public lands for defense of personal property from most resident predators and neither should the Service; the Service should not control wolves on public land; the Service should recognize the difficulties with different wolf management strategies for livestock producers in checkerboard areas of mixed public and private ownership; and the Service should recognize the special authorities of Tribes on reservations and ceded lands.

Response 9–1: Under this rule, any landowner can shoot a wolf attacking or "in the act" of attacking livestock or dogs on private land without prior written authorization. The rule also allows legally authorized permittees on public land, including outfitters and guides, to kill a wolf attacking or "in the act" of attacking livestock or herding or guarding animals being used as part of their Federal land-use permit on their public allotment without prior written authorization. We consider reservation lands in States with approved plans as private land to extend as much management flexibility as possible to Tribal lands. Any such take of wolves must be reported immediately and evidence of an attack or that wolves were "in the act" of attacking must be presented to agency investigators. Any take of wolves without such evidence of attack (such as wounded or dead livestock or dogs) or without evidence that a reasonable person would have believed an attack was likely to occur at any moment (such as indicators that livestock were being chased or harassed by wolves, and proximity of wolves to livestock), may be referred to the proper authorities for prosecution. The mandatory evidence and reporting provisions will reduce the number of wolves killed by permittees, and will minimize the potential for abuse. Removing the wolves that are actually attacking livestock is a more effective method of removing problem wolves, especially on remote public lands, than agency control days after depredations have occurred. After a problem wolf is removed by a permittee, further agency control is rarely warranted, especially because immediate action by the permittee can more easily target the problem wolf, compared to agency control after-the-fact based on educated assumptions concerning the identity of the problem wolf. This provision does not allow the taking of wolves to protect hunting dogs (because they do not qualify as livestock under this rule) being used by outfitters and guides on public land, nor will it allow private individuals recreating on public land who are not public land permittees to take wolves unless in self-defense or in defense of others.

Response 9–2: By making the take provisions between private land and public land similar, we have reduced the confusion that might surround problem wolf management options in areas of checkerboard landownership whose borders may be difficult to ascertain.

Issue 10: Some commenters requested the definition of "public land permittee" be expanded to include permitted outfitters and guides.

Response 10–1: We dropped the written authorization requirement for take of wolves by public land permittees, including guides and outfitters, when wolves are attacking or are "in the act" of attacking livestock on their allotments during the active period of their federally-issued land-use permit. "Public land permittee" also includes Tribal members who are legally grazing their livestock on ceded public lands under Tribal treaty rights. The rule does not allow the taking of wolves on public lands when wolves attack dogs that are not being used by permittees for livestock guarding or herding. Private users of public land or people who are not active public land permittees may non-injuriously harass wolves that are attacking livestock or dogs but may not kill or injure wolves on public land for attacking livestock or dogs.

Response 10–2: This rule allows us or our designated agent(s) to issue "shoot on sight" written authorizations to both private landowners and public land permittees with active grazing allotments after wolf depredations have been confirmed, agency lethal control is already authorized, and wolves still present a significant threat to livestock. Such take must be conducted in compliance with the conditions specified in the written take authorization issued by the Service or our designated agent(s).

Issue 11: We received comments for and against agency control of wolves in response to wolf impacts on ungulate herds. People against such control believe that wolves are part of the ecosystem and that predator and prey should be allowed to naturally fluctuate. People who supported such agency wolf control believed that wolves could significantly reduce hunter harvest of ungulates, fostering ill will and increasing the potential for illegal killing of wolves. Some were concerned about abuse of this provision and lack of public review and scientific integrity in the decision-making process. There was some question as to how wolf management for ungulates would apply in Wyoming, the only State without an accepted wolf management plan.

Response 11–1: Under the 1994 rules, any State, including Wyoming, or Tribe can move wolves if they document that wolf predation is negatively impacting attainment of State or Tribal goals for big game. To date, no State or Tribe has documented excessive wolf predation on native ungulate herds, warranting wolf removal, nor has any State or Tribe requested such.

Response 11–2: In some situations, wolf predation, in combination with other factors, could potentially contribute to dramatic localized declines in wild ungulate populations (Mech and Boitani 2003). As noted in their comments on the proposed rule, segments of the public and State fish and game agencies are concerned that if these conditions exist and wolf predation is contributing to dramatic declines in a local ungulate population, management of wolf predation should be an available option. Most, if not all, core wolf habitat in the experimental population areas is now occupied by wolf packs. Any relocated wolves are likely to settle outside of core areas and near livestock and private property—likely creating additional conflicts with local livestock producers (Bradley 2003). This rule allows wolves to be killed to resolve significant conflicts with State and Tribal ungulate management objectives.

Response 11–3: States and Tribes can lethally take wolves to resolve significant ungulate management issues, but only after submitting a scientific, written proposal that has undergone peer and public review. The State or Tribal proposal must define the issue, history, past and future monitoring and management and describe the data

indicating the impact by wolf predation on the wild ungulate population, what degree of wolf removal will occur, and why it believes wolf control is appropriate. The proposal must discuss other potential remedies. The Service will review the State's or Tribe's proposal once it has undergone peer and public review. The Service will only approve wolf take for ungulate management after we determine that the proposal scientifically supports wolf removal and does not compromise wolf recovery objectives.

Issue 12: Some comments supported and others were against translocation (capturing and releasing at a distant location) of problem wolves.

Response 12: Translocation of wolves to reduce wolf-livestock conflicts can be a valuable management tool when wolf populations are low and empty habitat is available (Bradley 2003). The Rocky Mountain wolf population is well above recovery levels and nearly all suitable release sites for translocated wolves are already occupied by resident wolf packs. Wolves are territorial, and resident packs may kill strange wolves in their territory. Translocating problem wolves is often unsuccessful at preventing further problems, because once a wolf has learned that livestock can be prey, it can carry that learned behavior to its new location, where it can continue being a problem wolf (Service 1999). Also, some wolves travel great distances after translocation and return to the area where they were captured and begin attacking livestock again. As a result, translocated wolves rarely contribute to recovery of the Rocky Mountain wolf population (62 FR 65237). The Service or our designated agent(s) will primarily rely on lethal control for management of wolves that attack livestock, if non-lethal methods appear ineffective, because most habitat in Montana, Idaho, and Wyoming that does not have livestock is already occupied by resident wolf packs. No wolves have been relocated in Montana, Idaho, or Wyoming since 2001. However, in rare instances, translocation may be used to resolve conflicts or excessive depredation of native wild ungulate populations.

Issue 13: Some recommended the Service emphasize non-lethal wolf control to resolve conflicts, including encouraging ranchers to take measures to reduce the risk of wolf depredation.

Response 13: The Service works with USDA–APHIS–WS, livestock organizations, private groups, and individuals to identify and publicize ways that livestock producers can reduce the risk of wolf depredation. The decision to use any of the tools offered is strictly voluntary on the part of the livestock producer, but in the past many producers have been willing to take additional steps to reduce the risk of wolf predation. To date, a multitude of preventative and non-lethal wolf control measures have been used to reduce wolf conflicts with livestock. None are always reliable or effective, but some can have limited and temporary benefit (Bangs and Shivik 2002, see Service 2004 for additional references). The Service and our designated agent(s) will continue to investigate preventative and non-lethal management options to reduce wolf conflicts with livestock, but lethal control will continue to be an important option in many situations.

Wolf populations can remain stable while withstanding 25–35 percent human-caused mortality per year (Mech and Boitani 2003). Agency lethal control of problem wolves was predicted in the 1994 EIS to remove about 10 percent of the wolf population annually, and at that level lethal control will reduce the overall level of conflicts with livestock without reducing the wolf population. To date, agency lethal control of wolves has removed an average of less than 5 percent of the wolf population annually and the amount of lethal take allowed under this new regulation is not predicted to increase annual wolf mortality above 10 percent annually of the population or to a level that reduces the wolf population below recovery levels.

Issue 14: Some commenters believed the Service should not loosen restrictions on lethal take of wolves, and that we should base the take levels on scientific information, not local political pressure.

Response 14: We recognize that excessive human persecution of wolves is the primary reason for the decline of wolves across North America. We believe the protections of the Act, in combination with extensive public education efforts by the Service and numerous private and public partner organizations, have reduced human persecution and led to the increase in gray wolf numbers and an expansion of their range. For the wolf population to remain recovered, human-caused mortality must be regulated. This rule provides adequate regulation of human-caused mortality to prevent severe population declines. We have based our decisions about the appropriate level of wolf control on wolf biology, research, and our best professional judgment (*see* Service 2004 for relevant references), despite pressure from interest groups at both ends of the spectrum of human perspectives about wolves and wolf management.

Issue 15: Some commenters described the past persecution of wolves and expressed the belief that similar persecution will resume if the proposed rule is adopted.

Response 15: This final rule is not expected to significantly increase the level of human persecution of gray wolves. It does not reduce the Federal protection for illegally killing gray wolves. We believe that providing additional mechanisms for the control of problem wolves, including harassment and control options, will reduce the need for reactive agency lethal control and the incentive to illegally kill wolves. We do not believe this rule will increase the threats from human-caused mortality to the majority of the wolf population that does not exhibit problem behavior, and indeed will increase human tolerance for non-depredating wolves and will help decrease those threats.

E. Other Management Concerns

Issue 16: Some asked what procedural steps are required to determine "excessive population pressure" so that wolves might be hunted by the public. Others requested we not allow public hunting or trapping of wolves.

Response 16: This rule does not allow public hunting or trapping of wolves. We do not envision that a case of "excessive population pressure" could be made for this wolf population that would allow consideration of public hunting while wolves are listed.

F. State Management Concerns

Issue 17: Concern was expressed about whether State or Tribal management of gray wolves would provide adequate protection to ensure the continued viability of the wolf population. Others welcomed the State or Tribal lead in management over the Federal management, though some were concerned about funding for State and Tribal wolf management. Some thought the cost of State management should be paid by the Federal government.

Response 17–1: If a State or Tribe (on its reservation) is interested in assuming management responsibility for wolves while they are listed, the Service must first approve their wolf management plan. The Service must be assured that State or Tribal management will be consistent with the Act, this rule, and recovery of the species, before we may delegate management responsibility to that State or Tribe. States and Tribes with approved plans are only able to manage the wolf population within the framework established by this rule.

Response 17–2: We have funded State and Tribal wolf monitoring, research,

and management planning efforts for gray wolves in Montana, Idaho, and Wyoming. For the past several years, Congress has targeted funding for wolf management to Montana, Idaho, and Wyoming, and the Nez Perce Tribe. In addition, Federal grant programs are available that fund wildlife management programs by the States and Tribes. The Cooperative Endangered Species Conservation Fund, for example, provides funds to states for species and habitat conservation actions for threatened and endangered and other at-risk species.

G. Native American Management Concerns

Issue 18: Some felt that the Tribal wolf management roles vis-à-vis the Federal and State agencies should be clarified and recognized.

Response 18: This rule provides Tribes with all the same opportunities on reservation lands, *i.e.*, lands held by a Tribe in fee simple or held in trust for Tribes, that it offers the States on lands under State wildlife management authority. Tribes with Service-accepted wolf management plans and wildlife management authority and capability can assume the lead for wolf management on their reservation lands through the same MOA process with the Secretary of DOI that is available to States, or can serve as designated agents through the cooperative agreement process. This rule treats Tribal member's lands on reservations as private property within the borders of States with approved wolf management plans. Tribal individuals within reservations may take wolves according to the provisions of this rule, assuming such take is legal under Tribal regulations. In the absence of a Service-approved Tribal wolf management plan or cooperative agreement, the Service will issue any written authorization for wolf take on Tribal lands.

Issue 19: The Nez Perce Tribe asked for Government-to-Government discussions with the Service.

Response 19: The Service met with Nez Perce Tribal representatives on October 25, 2004, in Boise, Idaho, to fulfill their request for a government-to-government meeting regarding the Tribe's role in wolf management. We also acknowledged receipt of their draft wolf management plan titled "Nez Perce Tribal Gray Wolf Conservation and Management Plan." We were unable to discuss the details of this final rule at that time, and agreed to review their draft wolf management plan once this rule is promulgated. The Nez Perce Tribe has done a commendable job in the wolf recovery program since 1995. During wolf recovery, under contract with the Service, the Nez Perce Tribe has provided such services as wolf monitoring, communications with affected and interested parties, and research. We encourage the continued cooperation and coordination between the Tribes and States to delineate the roles and responsibilities for management of wolves both inside and outside Tribal reservations. Tribal reservations within States with approved wolf management plans are considered 'private land' for the purposes of this rule. Therefore, individuals on Tribal lands may take wolves according to the provisions of this final rule for private landowners, and thereby benefit from the additional flexibility this rule provides, as long as it does not violate Tribal regulations.

Issue 20: Tribes have extensive treaty rights on ceded lands throughout the experimental population areas.

Response 20: The provisions of this rule are available to Tribal governments only on their reservation lands. Wolf management on private inholdings within reservations without approved Tribal wolf management plans will be coordinated by the Service. The States have lead resident game management authorities outside of reservations and should include any Tribal treaty rights in their State management plans. Tribal treaty rights, such as a share of the potential legal wolf harvest, are not an issue affected by this rule. This rule does recognize and encourage State and Tribal cooperative agreements to provide opportunities for increased wolf management flexibility and consistency throughout reservations, ceded lands, and other areas within States. This rule also acknowledges Tribal treaty rights for pasturing and grazing livestock on ceded lands, as specified below. This rule treats wolves on reservations in States with approved wolf management plans as if they were on private property, thereby affording individuals on those reservations additional management flexibility to deal with problem wolves.

G. Memorandum of Agreement Concerns

Issue 21: Two interpretations were expressed about the relationship between this rule and the proposed MOAs. Some thought this rule would go into effect immediately in any State with an approved plan, and that the MOA was a subsequent and separate process. Another interpretation was this rule would only go into effect after a State or Tribe completed an MOA with the DOI.

Response 21: This rule is effective in 30 days from the date of publication within any part of the experimental population area within a State or Tribal reservation that has a Service-accepted wolf management plan. The MOA process is a separate and subsequent issue. The States or Tribes can choose to become designated agents under this rule through either an MOA or a cooperative agreement.

Issue 22: The intent of the MOA was questioned. Some thought the MOA allowed a State or Tribe to implement this rule while others thought it allowed additional flexibility beyond that permitted by this rule.

Response 22: The MOA process cannot allow wolf management beyond that authorized by this rule without further public comment and modification of this rule. The MOA process gives States or Tribes the opportunity to take the lead in implementing all parts of this rule, including issuance of take authorization, and determining what types and levels of control are necessary to manage problem wolves.

Issue 23: Some questioned whether this rule or an MOA under this rule would cover management of areas outside the 10(j) experimental population areas.

Response 23: This rule and related MOAs only apply to State or Tribal management inside the experimental population areas.

Issue 24: A few comments addressed the exclusion of Wyoming from this rule because Wyoming lacks a Service-approved plan. Some argued Wyoming's plan should have been approved. The support was mixed, some wanting this rule to apply in Wyoming, regardless of State plan approval. Others indicated that Wyoming should not get the benefit of this rule's additional flexibility without an adequate State plan.

Response 24: This rule will apply in Wyoming only after Wyoming has a wolf management plan that is approved by the Service. Likewise this rule will apply to any Tribal reservation land in Wyoming only after that Tribe has a wolf management plan approved by the Service. In the absence of a Service-approved wolf management plan, the 1994 10(j) rules still apply to Wyoming and all Tribal reservations within the experimental population areas in Wyoming.

Issue 25: Concerning the timing of implementation of the provisions of the rule, some wanted it to be effective immediately, others wanted a phase-in period. Some indicated that if the Secretary can terminate an MOA in 90

days, the States and Tribes should be allowed to do the same.

Response 25–1: This rule becomes effective in 30 days from date of publication. The Secretary will review any State or Tribal petition as soon as possible; references to a 30-day timeframe for acting on the MOA have been removed.

Response 25–2: The language in the final rule has been changed to allow either party to terminate the MOA with 90 days notice.

H. General Comments on the Proposed Experimental Rule

Issue 26: The bulk of the comments from the public were very similar. While most stated the proposed rule was not protective enough of wolves, others said it was too protective.

Response 26: We solicited comments to identify new information and search for new ideas to improve wolf management under this rule. We addressed the substantive comments we received, and did not modify this rule because more people expressed one opinion over another.

Issue 27: Some believed that States with approved wolf management plans should be able to be delisted separately.

Response 27: We are not proposing to delist the WDPS gray wolves at this time. Therefore, comments of this nature are not addressed in this rule. In addition, at this time the Act does not allow wolves to be delisted on a State-by-State basis.

I. Comments Not Germane to This Rulemaking

Some comments went beyond the scope of this rulemaking, or beyond the authority of Service or the Act. Since these issues do not relate to the action we proposed, they are not addressed here. These comments included support or opposition for future delisting proposals. Some indicated concern that this rule might lead to the killing of wolf-like canids (dogs) by the public. Some comments indicated wolves were either not native to the experimental areas, wolf reintroduction was illegal, wolf reintroduction usurped States' rights, that the type of wolf that currently lives in Montana, Idaho, and Wyoming is a non-native wolf, or that the Service fails to use the definition of a species as proposed by Linnaeus. Many of these types of comments were discussed in the reclassification rule (68 FR 15804). We also received comments expressing support for, and opposition to, wolf recovery and the proposal (or parts of it) without further elaboration or explanation.

Issue 28: Where did the idea for this rule come from; was it politically motivated?

Response 28: The Service proposed a rule revision in 1997 (62 FR 65237) but litigation postponed development of a final rule. The States, particularly Idaho, raised the issue of a rule revision in 2002 when the WDPS wolf population first achieved its recovery goal. However, the Service did not initiate a rule revision at that time because we believed the recovered wolf population should be delisted and instead focused our resources and efforts on helping the States develop wolf management plans and on preparing a delisting proposal. However, in 2004 after the Service did not approve the Wyoming wolf plan and it appeared delisting would be delayed, we reconsidered a rule change. The Service developed this rule to assist in management of the recovered wolf population and to begin the transition to increased State and Tribal involvement while we continue our efforts to delist the recovered wolf population.

Changes to the Final Rule

As a result of comments, additional data received during the comment period, and additional analysis, several changes were made to the special rule we proposed on March 9, 2004 (69 FR 10956). Every section of the rule received some degree of specific or general public comment. The following paragraphs discuss significant changes.

Comments showed a polarization over the issues of when, where, by whom, and under what circumstances lethal control would occur. The conditions under which a private citizen can take a wolf in this final rule differ slightly from the March 2004 proposed rule. The net result of the changes will likely slightly increase the level of problem wolf take by the public on public land, and slightly decrease the level of public wolf take on private land, over that proposed in March 2004. This rule will result in a higher level of problem wolf take on both private and public land by the public than the 1994 10(j) rules (see Comparison Table). We expect this take to be minimal, but it may slightly decrease the overall rate of livestock depredation and slightly decrease agency expenditures to control problem wolves. The main potential effect of this rule is to slightly shift the ability to remove problem wolves to the affected landowners and public land permittees, from the Service and our designated agent(s). These changes will more closely align wolf management strategy with existing State management of large carnivores and the approved Montana and Idaho State wolf management plans.

Since 1995, when the first wolves were reintroduced into the experimental population areas, less than two wolves have been taken by the public each year. Six wolves have been shot on private land as they attacked livestock and eight wolves were killed on private land under "shoot-on-sight" written authorizations for chronic livestock depredations. No wolves have been killed by the public on public land, even though the Service has issued written authorizations to shoot wolves attacking livestock on grazing allotments. Overall agency take to resolve conflicts with livestock, including authorized take by the public, resulted in an average of 6.6 percent (range 0–11.2 percent) and 2.9 percent (range 0–4.8 percent) of the NEP wolves being removed annually from 1995 though 2003, in the Yellowstone and central Idaho areas, respectively. Before wolves were reintroduced in 1995, we predicted that agency wolf control (including legal regulated take in defense of private property) would remove an average 10 percent of the population annually. We do not foresee this final rule increasing wolf mortality, including regulated take by the public in defense of their private property or by States or Tribes in response to unacceptable impacts to ungulate populations, to levels that average more than 10 percent annually, or to a level that threatens wolf recovery. Mandatory reporting and the requirement for evidence of wolf attacks are similar to State requirements for taking black bears and mountain lions to protect private property. These mandatory conditions should minimize the potential for abuse of the regulations and take of non-problem wolves.

Significant changes to and clarifications of the final rule are discussed in the following sections.

1. *Proposed*—Allowed only landowners and public land permittees to opportunistically harass wolves in a non-injurious manner at any time for any reason. Such harassment was allowed only when there were not purposeful actions to attract, track, wait for, or search out the wolf. Examples of this type of harassment include scaring the wolf with noise [yelling or shooting into the air], movement [running or driving toward the wolf], or objects [throwing a rock at a wolf or releasing bear pepper spray]. Such harassment must be of a very limited duration, cannot result in any injuries to the wolf, and must be reported to us or our designated agent(s) within 7 days.

1. *Final*—Allows anyone to opportunistically harass wolves in a non-injurious manner at any time for

any reason. All the same conditions as proposed apply in that such harassment must be conducted on an opportunistic basis, may not physically harm the wolf, and there can be no purposeful actions to attract, track, wait for or search out the wolf. Such harassment must be reported within 7 days.

Discussion—Wolves are normally wary of humans. However, wolves can become accustomed to being around people unless people teach them to avoid close contact. We believe that allowing anyone to opportunistically harass a wolf, as long as the wolf is not injured, will not result in any physical harm to wolves, but could make them more wary of people (Bangs and Shivik 2001; Bangs et al In press). Such harassment will provide people with an extra means to protect their livestock and pets from wolf conflict, without harming the wolf. Wary wolves should be more likely to avoid areas with high levels of human activity, which should reduce conflicts with people and their livestock, thereby reducing the level of reactive lethal control. Such non-injurious harassment should also make wolves more cautious of people which could reduce the opportunity for people to illegally take wolves.

2. *Proposed*—Allowed the take of wolves attacking any domestic animal on private land or when there was a "reasonable belief" that such an attack was imminent.

2. *Final*—Allows the take of wolves attacking (actually biting, wounding, grasping) or in the act of chasing, molesting, or harassing that would indicate to a reasonable person that such biting, wounding, grasping, or killing is likely to occur at any moment. On private land, wolves can be taken without written take authorization if they are attacking livestock (defined as cattle, sheep, horses, mules, goats, domestic bison, and livestock herding or guarding animals) or dogs. On public land, wolves can be taken without written take authorization when they are attacking livestock but only by a permittee with a current Federal land-use permit that requires livestock use. On both private and public land, evidence of an attack, such as wounded livestock, or evidence that a reasonable person would have believed an attack was likely to occur at any moment, such as indicators that livestock were being chased or harassed by wolves, and proximity of wolves to livestock, must be presented to investigators. This is more protective of wolves on private land because the final rule limits this take to livestock or dogs, less protective on public land because it allows take without take authorization, and overall, less protective of wolves than the 1994 10(j) rules or the March 2004 proposed rule.

Discussion—Some wildlife law enforcement agents claimed parts of the proposed rule were unenforceable. For example, we received comments that "reasonable belief" was a vague term, as used in the proposed rule, and would invite abuse and killing of non-problem wolves. The definition of "in the act of attacking" in this final rule is consistent with existing State statutes regarding the legal take of mountain lions and black bears to protect private property. This type of "defense of property" regulation has generally worked well—take of both mountain lions and black bears under such State regulations is generally limited to less than 10 individuals per year. The wording in this final rule does not require determination of a person's state of mind; instead it requires physical evidence to verify the attack, or physical evidence that a reasonable person would have believed an attack was likely to occur at any moment. Take of wolves must be reported within 24 hours (with additional reasonable time to report take allowed if access to the site is limited). Take without such evidence may be referred to the proper authorities for prosecution. Allowing public take of problem wolves in such a manner allows for effective removal of problem wolves and reduces the likelihood of abuse of the regulations.

3. *Proposed*—Allowed take on private land of a wolf attacking any domestic animal.

3. *Final*—Only allows take on private land of a wolf attacking livestock (cattle, sheep, horses, mules, goats, domestic bison, and herding and guarding animals) or dogs. This is more protective of wolves than the proposed rule and less protective than the 1994 10(j) rules.

Discussion—In 1987, the first livestock depredation by wolves in Montana in recent history occurred. From 1987 through 2003, wolves have been confirmed to have killed a minimum total of 301 cattle, 804 sheep, 20 other livestock (10 goats, 9 llamas, and a foal horse), and 63 dogs in Montana, Idaho, and Wyoming. There have been a few scattered reports of suspected wolf depredations on poultry, cats, or hares—but none of these were ever confirmed. Public comment indicated that abuse of the regulation was more likely if wolf take was allowed for any domestic animal. We agreed and concluded that wolf control should be restricted to types of domestic animals that have been attacked in the past, are common in the experimental areas, are often free-ranging, and are large enough that if they are attacked there would be physical evidence to investigate and confirm wolf involvement.

4. *Proposed*—Allowed take, by grazing permittees on public land, of wolves attacking livestock, after a confirmed depredation on livestock had already occurred and a written Federal take authorization had been issued.

4. *Final*—Allows take by some public land permittees on public land of wolves attacking or in the act of attacking livestock—without written take authorization. Public land permittees include Tribal members who are legally grazing livestock on ceded lands under recognized treaty rights. This rule does not allow take of wolves by the general public on public land or take of wolves attacking dogs, with the exception of dogs being used by permittees for herding or guarding livestock. We believed that permittees should be allowed to immediately remove problem wolves without a take authorization, if wolves are caught in the act of attacking their livestock in their area of designated use. This is less protective of wolves than the proposed rule or the 1994 10(j) rules, but should lead to more effective control with more surety that the problem wolves are the ones taken.

Discussion—The most effective mechanism to target and remove individual problem wolves is to immediately take wolves seen attacking or in the act of attacking livestock. We believe that such take will be limited. To date no wolf has been legally taken on public land under a written lethal take authorization by a livestock producer who saw it attacking his/her livestock. The opportunity for abuse and excessive take is reduced by requirements to report the take, hold an active Federal land-use permit for livestock use or be a Tribal member exercising recognized treaty rights, and limit such take to a specific active allotment. We do not allow lethal take of wolves to protect hunting hounds or pet dogs that are not being used by permittees to guard or herd livestock, nor do we allow lethal take of wolves by the general public recreating on public lands to protect livestock or dogs. We believe that hound hunters and the general public can adequately protect their livestock and dogs on public land by opportunistic non-injurious harassment of wolves.

5. *Proposed*—Allowed issuance to private landowners or their adjacent neighbors or public land grazing permittees written take authorization of limited duration to shoot on sight wolves on private property or adjacent

private property or active allotment, after (1) One confirmed wolf depredation on livestock or domestic animals; and (2) We determine wolves are routinely present and are a significant risk.

5. *Final*—Allows issuance to private landowners with confirmed depredation on their private property or public land livestock grazing permittees, written take authorization of limited duration to shoot on sight wolves on their private property or their active allotment, after (1) One confirmed wolf depredation on livestock or dogs on that private property or one confirmed depredation on livestock on an active grazing allotment; (2) We or our designated agent(s) determine that wolves are routinely present and are a significant risk; and (3) We or our designated agent(s) are authorized to do lethal control. Written take authorization may be issued at our or our designated agent(s)'; discretion on a case-by-case basis to assist in the removal of problem wolves. On private land, this is less protective of wolves than the proposed rule, and more protective than the 1994 10(j) rules that allowed "shoot-on-sight" written take authorization to be issued after the second confirmed livestock depredation, even to adjacent neighbors who did not have previous depredations on their property. On public grazing allotments, it is less protective of wolves than the proposed rule or the 1994 10(j) rules.

Discussion—Shoot-on-sight written take authorizations should only be issued when the agencies also are actively trying to lethally remove problem wolves, as is currently the case. Such take authorizations should be an option on public land grazing allotments, where access and agency removal of problem wolves is often more difficult. Narrowing the scope by which such take authorizations can be issued will more closely focus removal on problem adult wolves and resolution of chronic livestock depredations, and will reduce the potential for abuse. This provision of the final rule is consistent with management of large predators causing property damage on public land under current State wildlife regulations.

6. *Proposed*—Allowed States or Tribes to lethally remove wolves causing unacceptable impacts to native ungulate populations or herds, after they consulted with the Service, and identified possible mitigation measures and remedies, and only if such take would not inhibit wolf recovery.

6. *Final*—Provides a process for the States or Tribes to lethally remove wolves in response to wild ungulate impacts, similar to the proposed rule but in a more structured, transparent, and science-based process. The State or Tribe would develop a science-based plan and make it available for peer and public review. Based on that peer review and public comment, the State or Tribe would finalize the plan and then submit it to the Service for written concurrence. The Service would approve the plan if we determine the proposal is scientifically-based and would not reduce the wolf population below recovery levels. The final rule is similar to the proposed rule and less protective of wolves than the 1994 10(j) rules, which only allowed relocation of wolves in response to wild ungulate impacts.

Discussion—Commenters showed a lot of mistrust over the issue of lethally removing wolves for State ungulate management objectives. To provide checks and balances in this process and satisfy our mandates under the Act that our decisions are made upon the best scientific information available, we recommend an open, transparent, science-based process. We believe that scientific studies in North America demonstrate that under some circumstances wolf predation can effect ungulate populations and hunter harvest (Mech and Boitani 2003) and predicted as much in our 1994 EIS analysis of the effects of wolf reintroduction. Because there are no large blocks of unoccupied wolf habitat in the experimental population areas, this final rule allows for the lethal removal rather than relocation of wolves that are causing significant impact to State or Tribal managed ungulate herds.

7. *Proposed*—Required the release of any breeding female and her pups if caught on public land before October 1 during an initial agency wolf control action.

7. *Final*—Allows the Service or our designated agent(s) the discretion to decide whether to remove any depredating wolf, including breeding females or their pups, on public land after the first confirmed livestock depredation. The final rule is less protective of female wolves and their pups than either the proposed rule or the 1994 10(j) rules.

Discussion—Pups less than 6 months of age do not have permanent teeth and are rarely directly involved in killing livestock. However, breeding females can be active hunters for the pack, and packs with pups may need to hunt more often to feed the pups. Pups older than 6 weeks have been successfully reared by pack members other than the breeding female (Boyd and Jimenez 1994). Most livestock are not grazed on public land until June, when the pups are old enough to be raised by other pack members. Pups younger than 6 months are rarely targeted during agency wolf control actions, but the alpha female may be identified as the primary livestock killer. The final rule allows the Service or our designated agent(s) more management flexibility to make decisions in the field on a case-by-case basis depending on the best information available at the time. We do not expect this flexibility to result in any significant increase in the take of either breeding females or pups, but control may occur earlier in the year than in the past.

8. *Proposed*—Allowed the States with accepted wolf management plans to petition the Secretary to assume wolf management authority and possibly identify and implement management strategies in the accepted State wolf plan beyond those identified in the proposed rule. The Secretary would have to respond within 30 days of receipt of the petition.

8. *Final*—Allows both States and Tribes on their reservations, with approved wolf management plans, to petition the Secretary to lead implementation of this rule. Under an MOA, the States or Tribes could authorize and conduct all the wolf management activities that the Service currently conducts and implement all portions of their approved State or Tribal wolf management plan that are consistent with this rule. These activities include: (1) Wolf monitoring—such as capture, radio-collaring, telemetry monitoring, and other wolf population census techniques; (2) wolf control—such as implementing or authorizing USDA–APHIS–WS to use non-lethal or lethal control to minimize damage to private property by wolves, issue written take authorizations (less-than-lethal munitions and shoot-on-sight written take authorizations) to the public on both private and public land; (3) determining whether wolf control is needed to resolve excessive wolf predation on big game populations; (4) wolf-related research—such as investigating the relationships between wolves and livestock and the effect of wolf predation on big game populations and hunter harvest; (5) conducting wolf information and educational programs; and (6) assisting in the enforcement of regulations designed to conserve the wolf population. All or some of these authorities and responsibilities also can be assumed without an MOA, with "designated agent" status under a cooperative agreement with the Service, but routine coordination on a daily or weekly basis is required. Under a cooperative agreement, only the specific

provisions of the 10(j) rule are implemented, not the State or Tribal wolf management plan. Under an MOA, all applicable portions of the State or Tribal wolf management plan which are consistent with this rule can be implemented. The Service oversight is limited to a general review of the overall program on an annual basis to ensure the wolf population is being maintained above recovery levels.

This rule eliminates reference to the 30-day requirement to approve an MOA. The Secretary will approve the petition as soon as possible but only after he/she determines all applicable policies and laws were appropriately addressed.

States or Tribes with approved plans may not implement additional management strategies beyond those identified in this rule, without a proposed amendment to the 10(j) rule and an opportunity for public comment.

Discussion—Commenters pointed out that the term "designated agent" was used inconsistently in the proposed rule, and that Tribes have unique wildlife management authorities and wildlife treaty rights separate from the States. In the final rule, we clarify that the Tribes have their own rights and separate governments and have the ability to enter into an MOA with the Secretary of DOI if they have accepted wolf management plans for their reservation lands. States or Tribes with approved wolf management plans can become designated agents for the purposes of this rule in two ways:

(1) Cooperative Agreements—The States and Tribes can enter into cooperative agreements with the Service to implement portions of this experimental rule, and serve as Service's "designated agent" for all or parts of this rule. States and Tribes that develop cooperative agreements with the Service are responsible for implementing this rule as written and are required to routinely consult with the Service on all the wolf management activities the States or Tribe has agreed to implement.

(2) MOA—Under an MOA, the Secretary may appoint the State or Tribe to be a "designated agent" and may delegate all wolf management responsibilities to the State or Tribe, and the State or Trihe may implement all portions of this rule and applicable portions of their management plan without day-to-day oversight by the Service. These are in addition to the authorities given to a "designated agent." Under an MOA, the States and Tribes must report to the Service on an annual basis. and the Service review ensures that State or Tribal management maintains the wolf population at or above recovery levels.

The differences between an MOA and a cooperative agreement are that the cooperative agreement allows the States or Tribes to assist the Service to implement various parts of the Service's wolf conservation and management program as a designated agent, while the MOA provides the States or Tribes the opportunity to independently lead their approved wolf management and conservation efforts, plus act as a designated agent. The States and Tribes may enforce their own regulations and assist in our investigations under this rule, but under either a cooperative agreement or an MOA the Service retains the lead for law enforcement investigations and prosecution of violations of this rule.

FINAL RULE COMPARED TO THE 1994 EXPERIMENTAL POPULATION SPECIAL RULES AND THE 2003 4(D) RULE

Refer to the regulations in 50 CFR for the complete wording and reporting requirements.

Provision	Final experimental population rules 50 CFR 17.84(n)	1994 rules 50 CFR 17.84(i)	2003 4(d) Rule 50 CFR 17.40(n)
Geographic Area	Same as 1994 rules. This special rule applies only to wolves within the areas of two NEPs, which together include—Wyoming, the southern portion of Montana, & Idaho south of Interstate 90 but only in States or on Tribal lands that have State or Tribal wolf management plans accepted by the Secretary.	Same as final	This special applies to the gray wolf in Washington, Oregon, California, Idaho, Nevada, Montana, Utah north of U.S. Highway 50, and Colorado north of Interstate Highway 70, except where listed as an experimental population in Idaho, Montana, and Wyoming.
Interagency Coordination (Section 7 Consultation).	Same as 1994 rules. Federal agency consultation with the Service on agency actions that may affect gray wolves is not required within the two NEPs, unless those actions are on lands of the National Park System or the National Wildlife Refuge System.	Same as final	Consultations would occur for the gray wolf as they would for any threatened species.
Take in Self Defense.	Same as 1994 rules. Any person may take a wolf in self defense or in defense of others.	Same as final	Same as final.
Protection of Human Life & Safety.	Same as 1994 rules. The Service, or our designated agents, may promptly remove (that is, place in captivity or kill) any wolf determined by the Service or designated agent to be a threat to human life or safety.	Same as final	Same as final.
Opportunistic Harassment.	Anyone can opportunistically harass gray wolves in a non-injurious manner without Service written authorization.	Landowners & permit holders on Federal land (including guides & outfitters) can opportunistically harass gray wolves in a non-injurious manner without Service written authorization.	Same as 1994 rules.

FINAL RULE COMPARED TO THE 1994 EXPERIMENTAL POPULATION SPECIAL RULES AND THE 2003 4(D) RULE—Continued

Refer to the regulations in 50 CFR for the complete wording and reporting requirements.

Provision	Final experimental population rules 50 CFR 17.84(n)	1994 rules 50 CFR 17.84(i)	2003 4(d) Rule 50 CFR 17.40(n)
Intentional Harassment.	The Service or our designated agent can issue a 1-year take authorization to private landowners & to Federal permittees after verified persistent wolf activity on their private land or allotment. The written take authorization would allow intentional & potentially injurious, (less-than-lethal munitions) but non-lethal, harassment of wolves.	No specific provision for intentional harassment were available in the 1994 rules, but since 2000 over 150 intentional take authorizations have been issued for 90-days on private land, under Section 17.32 research permits within the experimental areas. No wolves have been seriously injured.	Same as final, except written authorization is for 90 days.
Taking wolves "in the act" of attacking livestock on PRIVATE land by private individuals without prior written authorization.	Landowners on their own private land may take a gray wolf attacking (killing, wounding, or biting) or in the act of attacking (actively chasing, molesting, harassing) their livestock (includes livestock herding & guarding animals) or dogs. Such take must be reported in 24 hours & injured or dead livestock or dogs or physical evidence that would lead a reasonable person to believe that an attack would occur at any moment on livestock or dogs must be evident to verify the wolf attack.	The 1994 rules allowed wolf take on private land without written authorization, when wolves were physically biting & grasping livestock (cattle, sheep, horses, & mules). Six wolves have been killed attacking livestock since 1995.	Landowners on their own private land may shoot wolves that are biting, wounding or killing livestock, herding or guard animals, or dogs. Landowners shall provide evidence of animals wounded or kill by wolves in less than 24 hours, and Service confirms animals were wounded or killed by wolves.
Taking persistent problem wolves "in the act" on PUBLIC land by public land permittees.	"Livestock" is defined to include livestock herding or guarding animals. Public land is only Federal land. Livestock producers & some permittees with an active valid Federal grazing or outfitting/guiding permits could take wolves that were attacking or in the act of attacking livestock on their active Federal allotment or areas of use—without written take authorization. Such taking must be reported within 24 hours & physical evidence of an attack or in the act of an attack by wolves on livestock must be evident.	The 1994 rules mandated that after six breeding pairs of wolves were established in an NEP area, livestock producers & permittees with current valid livestock grazing allotments on public land could get a 45-day written authorization from the Service or our designated agents, to take gray wolves in the act of killing, wounding, or biting livestock. The Service must have verified previous attacks by wolves, & must have completed agency efforts to resolve the problem. No wolves were ever taken under these written authorizations.	Same as 1994 rules, except written authorization to livestock grazing permittees would also allow the killing of wolves attacking herding or guard animals on Federal lands and there are no limitations based upon the number of breeding pairs.
Additional taking by private citizens on their PRIVATE LAND or an active GRAZING ALLOTMENT for chronic wolf depredation.	If we or our designated agent confirm a depredation on livestock or dogs on private property or livestock on a public grazing allotment, & we have confirmed that wolves are routinely present on that property & present a significant risk to livestock or dogs, & have authorized agency lethal control—the private landowner or grazing permittee that experienced the depredation may receive written authorization from us or our designated agent to kill "shoot on sight" those problem wolves on their private land or their grazing allotment, under specified conditions.	There were no specific provision for such written authorizations in the 1994 rules. However, since 1999, about 50 shoot-on-sight written take authorizations (CFR 17.32) have been issued on private land, including adjacent neighbors, with chronic (2 or more) livestock depredations. Eight wolves have been killed.	Same as 1994 rules, but specifically allows written authorization to shoot wolves on sight maybe issued to a private property owner or adjacent private landowners after at least two separate confirmed depredations by wolves on livestock, livestock herding or guarding animals, or dogs, and the Service has determined that wolves are routinely present and present a significant risk to their livestock.

FINAL RULE COMPARED TO THE 1994 EXPERIMENTAL POPULATION SPECIAL RULES AND THE 2003 4(D) RULE—Continued

Refer to the regulations in 50 CFR for the complete wording and reporting requirements.

Provision	Final experimental population rules 50 CFR 17.84(n)	1994 rules 50 CFR 17.84(i)	2003 4(d) Rule 50 CFR 17.40(n)
Government take of PROBLEM WOLVES.	Same as 1994, with wording clarifications. The Service or our designated agent may take any wolves that attack livestock or dogs once on private or public land—or that twice in a calendar year attack domestic animals other than livestock or dogs on private land. Taking may include non-lethal measures such as aversive conditioning, nonlethal control, &/or translocating wolves or lethal control. There are no agency limitations based on the total numbers of wolves or the sex & age of the wolves being controlled. Criteria to determine when take will be initiated are—(1) physical evidence of the attack, (2) reason to believe that additional attacks will occur, (3) no evidence of unusual wolf attractants, & (4) any previously specified animal husbandry practices have been implemented, if on public lands.	"Problem wolves" are defined as wolves that attack livestock once or any domestic animal twice in a calendar year. Depredations on dogs could only be resolved by relocation of the problem wolf. Criteria to determine when take will be initiated are similar to those for the NEP—(1) evidence of the attack, (2) reason to believe that additional attacks will occur, (3) no evidence of unusual wolf attractants, & (4) any previously specified animal husbandry practices have been implemented, if on public lands. Lethal control cannot be used when five or fewer packs are present in the experimental population area, & there is additional protection of females with pups & pups prior to October 1, when five or fewer pack or present in the experimental population area.	Same as 1994 rules, except as in final rule—includes dogs, and livestock herding an guarding animals.
Government removal killing or the translation (capture & moving) of wolves to reduce impacts on wild ungulates.	Similar to the 1994 rules, but wolves may be lethally removed by State or Tribal personnel. If gray wolf predation is negatively impacting localized wild ungulate populations at an unacceptable level, as defined by the States & Tribes (on reservations) wolves maybe lethally removed. Removal can only occur after the States or Tribes have identified other possible mitigative measures or remedies, & they have completed a peer-reviewed written proposal that has undergone public comment. The Service will determine if such removal will inhibit maintaining wolf recovery levels before any such removal could be authorized.	Under the 1994 regulation, the States or Tribes may capture & translocate wolves to other areas within the same NEP area, if the gray wolf predation is negatively impacting localized wild ungulate populations at an unacceptable level, as defined by the States & Tribes. State/Tribal wolf management plans must be approved by the Service before such movement of wolves may be conducted, & the Service must determine that such translations will not inhibit wolf population growth toward recovery levels.	Same as 1994 rules, except after 10 breeding pairs are documented, the Service, in consultation with states and tribes, may relocate wolves that are significantly impacting native ungulate herds.
Incidental take	Same as 1994 rules with minor word changes for clarification. Any person may take a gray wolf if the take is incidental to an otherwise lawful activity, & if reasonable due care was practiced to avoid such taking, & such taking was reported within 24 hours. (We may allow additional time if access is limited.).	The 1994 rules stated—Any person may take a gray wolf if the take is incidental to an otherwise lawful activity, & is accidental, unavoidable, unintentional, not resulting from negligent conduct lacking reasonable due care, & due care was exercised to avoid taking the wolf.	Same as final.
Permits for recovery actions that include take of gray wolves.	Same as the 1994 rules. Available for scientific purposes, enhancement of propagation or survival, zoological exhibition, educational purposes, or other purposes consistent with the Act (50 CFR 17.32).	Available for scientific purposes, enhancement of propagation or survival, zoological exhibition, educational purposes, or other purposes consistent with the Act (50 CFR 17.32).	Same as final.

FINAL RULE COMPARED TO THE 1994 EXPERIMENTAL POPULATION SPECIAL RULES AND THE 2003 4(D) RULE—Continued

Refer to the regulations in 50 CFR for the complete wording and reporting requirements.

Provision	Final experimental population rules 50 CFR 17.84(n)	1994 rules 50 CFR 17.84(i)	2003 4(d) Rule 50 CFR 17.40(n)
Additional taking provisions for agency employees.	Same as the 1994 rules, except provision (H) was added. Any employee or agent of the Service or appropriate Federal, State, or Tribal agency, who is designated in writing for such purposes by the Service, when acting in the course of official duties, may take a wolf from the wild, if such action is for—(A) scientific purposes; (B) to avoid conflict with human activities; (C) to relocate a wolf within the NEP areas to improve its survival & recovery prospects; (D) to return wolves that have wandered outside of the NEP areas; (E) to aid or euthanize sick, injured, or orphaned wolves; (F) to salvage a dead specimen which may be used for scientific study; (G) to aid in law enforcement investigations involving wolves or (H) that allows such take of wolves to prevent wolves with abnormal physical or behavioral characteristics, as determined by the Service.	The 1994 rules permitted—Any employee or agent of the Service or appropriate Federal, State, or Tribal agency, who is designated in writing for such purposes by the Service, when acting in the course of official duties, may take a wolf from the wild, if such action is for—(A) scientific purposes; (B) to avoid conflict with human activities; (C) to relocate a wolf within the NEP areas to improve its survival & recovery prospects; (D) to return wolves that have wandered outside of the NEP areas; (E) to aid or euthanize sick, injured, or orphaned wolves; (F) to salvage a dead specimen which may be used for scientific study; (G) to aid in law enforcement investigations involving wolves.	Same as final.
The States or Tribes can become "designated agents" to implement the 10j regulations through cooperative agreements with the Service or under an MOA with the Secretary of the Interior.	The States & Tribes with approved wolf plans can implement all or select parts of this rule through "designated agent" status in cooperative agreements with the Service. Agency coordination would occur on a daily or weekly basis. The States & Tribes can implement all of this rule including all compatible portions of their approved wolf management plans under an MOA with the Secretary of the Interior. No management outside the provisions of this rule is allowed unless additional public comment is solicited & this rule is modified. Under an MOA, State or Tribal coordination with the Service must only occur on a yearly basis. No public hunting or trapping can occur without a determination of excessive population pressure.	The 1994 rule had no provisions for MOAs but States & Tribes could be designated agents & implement the 10j regulations, & expand certain rule definitions—such as the definition of livestock—under cooperative agreements with the Service. No public hunting or trapping can occur without a determination of excessive population pressure.	Same as 1994 rules but States and Tribes could be designated agents & implement the 4(d) rule.
Land-use restrictions on private or Federal public lands.	Land-use restrictions may only be employed for wolf recovery purposes on National Parks & National Wildlife Refuges except between April 1 & June 30, when land-use restrictions may be employed to prevent lethal take of wolves at active den sites on Federal public lands.	The 1994 rules stated—When five or fewer breeding pairs of wolves are in an experimental population area, temporary land-use restrictions may be employed on Federal public lands to control human disturbance around active wolf den sites. These restrictions may be required between April 1 & June 30, within 1 mile of active wolf den or rendezvous sites, & would only apply to Federal public lands or other such lands designated in State & Tribal wolf management plans. When six or more breeding pairs are established in an experimental population are, no land-use restrictions may be employed on Federal public lands outside of National Parks or National Wildlife Refuges, unless that wolf population fails to maintain positive growth rates for 2 consecutive years.	Same as final.

Required Determinations

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is a significant regulatory action and subject to Office of Management and Budget (OMB) review. An economic analysis is not required because this rule will result in only minor (positive) effects on the very small percentage of livestock producers in Idaho and Montana.

(a) This regulation does not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A brief assessment to clarify the costs and benefits associated with this rule follows.

Costs Incurred

Under this rule, various expenses that are currently incurred by the Service to manage the wolves in the NEPs would be transferred to the States or Tribes, either through a cooperative agreement or under a Memorandum of Agreement (MOA) entered into voluntarily by a State or Tribe. Although potential costs are addressed here, we do not quantify these expected expenditures. Costs would include personnel costs to implement, manage, and monitor the NEP. The personnel costs would be based upon the number of hours (and associated salary) necessary to perform these tasks. Other costs would include transportation and equipment necessary to maintain the NEP. States currently estimate their management costs will be 2–3 times higher than our current costs of $300K per State.

We have funded State and Tribal wolf monitoring, research, and management planning efforts for gray wolves in Montana, Idaho, and Wyoming. For the past several years Congress has targeted funding for wolf management to Montana, Idaho, and Wyoming, and the Nez Perce. In addition, Federal grant programs are available that fund wildlife management programs by the States and Tribes. The Cooperative Endangered Species Conservation Fund, for example, provides funds to states for species and habitat conservation actions for threatened and endangered and other at-risk species.

Benefits Accrued

This rule would have a beneficial economic effect in that it would reduce or remove some regulatory restrictions. The objective of the rule is to maintain wolf recovery in the WDPS, which would result in a variety of benefits. This rule will also reduce the overall level of conflicts between wolves and livestock, particularly on private land. This rule is expected to result in more public removal of problem wolves, thereby reducing the need for reactive agency removal of problem wolves. The methods necessary to quantify these expected benefits would be prohibitively expensive to conduct. Therefore, this section is limited to qualitative analysis. The potential benefits include maintaining a recovered wolf population and reducing conflicts between wolves and humans, leading to higher local tolerance of wolves and perhaps a lower level of illegal killing.

(b) This regulation does not create inconsistencies with other agencies' actions. It is exactly the same as the other NEP rules currently in effect, in regards to agency responsibilities under Section 7 of the ESA. This rule reflects continuing success in recovering the gray wolf through long-standing cooperative and complementary programs by a number of Federal, State, and Tribal agencies. Implementation of Service-approved State or Tribal wolf management plans supports these existing partnerships.

(c) This rule will not alter the budgetary effects or entitlements, grants, user fees, or loan programs, or the rights and obligations of their recipients. Because there are no expected new impacts or restrictions to existing human uses of lands in Idaho or Montana as a result of this rule, nor in Wyoming or any Tribal reservations that remain under the 1994 10(j) rules, no entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients are expected to occur.

(d) This rule does raise novel legal or policy issues. Since 1994, we have promulgated section 10(j) rules for gray wolves in Idaho, Montana, and Yellowstone (Idaho/Wyoming). The gray wolves in the WDPS have achieved their recovery population numbers. A status review of the species' listing status has determined that the species could be delisted once a State wolf management plan has been approved by the Service for Montana, Idaho, and Wyoming. State management plans have been determined by the Service to be the most appropriate means of maintaining a recovered wolf population and of providing adequate regulatory mechanisms post-delisting (*i.e.*, addressing factor D, "inadequacy of existing regulatory mechanisms" of the five listing factors identified under section 4(a)(1) of the Act) because the primary responsibility for management of the species will rest with the States upon delisting and subsequent removal of the protections of the Act. The States of Idaho and Montana have Service-approved wolf management plans. For a variety of reasons, the Service determined that Wyoming's current State law and its wolf management plan do not suffice as an adequate regulatory mechanism for the purposes of delisting (letter from Service Director Steven Williams to Montana, Idaho, and Wyoming, January 13, 2004). The Service developed this rule to assist in management of the recovered wolf population and to begin the transition to increased State and Tribal involvement while we continue our efforts to delist the recovered wolf population.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the Regulatory Flexibility Act to require a certification statement. Based on the information that is available to us at this time, we certify that this regulation will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

The majority of wolves in the West are currently protected under NEP designations that cover Wyoming, most of Idaho, and southern Montana and that treat wolves as a threatened species. Special regulations exist for these experimental populations that currently allow government employees and designated agents, as well as livestock producers, to take problem wolves. This regulation does not change the nonessential experimental designation, but does contain additional special regulations so that States and Tribes with wolf management plans approved by the Service can petition the Service to manage nonessential experimental

wolves under this more flexible rule. These changes only have effect in States or Tribes (on Tribal reservations) that have an approved management plan for gray wolves. Within the Western DPS of the gray wolf, only the States of Idaho and Montana have approved plans. Therefore, the regulation is expected to result in a small economic gain to some livestock producers in States with approved wolf management plans (*i.e.*, Idaho and Montana) within the boundary of the NEPs of gray wolves in the Western DPS (Central Idaho NEP area and Yellowstone NEP area); it will have no economic impact on livestock producers in Wyoming or on any Tribal reservations in Wyoming as at this time their plans have not been approved.

This regulation adopts certain provisions of § 17.40(n), which covers the area in northwestern Montana outside of the two NEP areas mentioned above and adjacent States, providing for more consistent management both inside and outside of the NEP areas, unless identified otherwise. Additionally, new regulations were added that expand or clarify current prohibitions. Secondly, we identify a process for transferring authorities within the experimental population boundaries to States or Tribes with approved plans.

Expanded or clarified prohibitions in this rule include the following. Intentional or potentially injurious harassment can occur by written take authorization on private land and public land. Wolves attacking not only livestock, but also dogs, on private land can be taken without a permit if they are caught in the act of attacking such animals. On public land, some permittees can take wolves attacking livestock without a permit. Written authorizations can be issued by the Service to take wolves on private land if they are a significant risk to livestock or dogs or on public lands if livestock are at risk. The new special regulation clarifies how take of wolves can occur if they are determined to be causing unacceptable impacts to wild ungulate populations. In addition, the new special regulation define livestock to include herding and guarding animals.

The new special regulation provides for States or Tribes with wolf management plans approved by the Service to transition from the provisions of this rule to the provisions of the State or Tribal wolf management plan that are consistent with Federal regulations within the boundaries of the NEP areas. States or Tribes may, at their discretion, administer this transition through new or existing agreements with the Service.

In anticipation of delisting the Western DPS of the gray wolf, we have worked closely with States to ensure that their plans provide the protection and flexibility necessary to manage wolves at or above recovery levels. Approved plans are those plans that have passed peer review and Service scrutiny aimed at ensuring that recovery levels are maintained. It is appropriate to have States which have met this approval standard begin managing wolves according to their approved plans for several reasons. The States already assume an important role in the management of this species, the goals for recovery have been exceeded, and a gradual transfer of responsibilities while the wolves are protected under the Act provides an adjustment period for both the State wildlife agencies, Federal agencies (the Service, USDA), and Tribes. The adjustment period will allow time to work out any unforeseen issues that may arise.

The reduced restrictions on taking problem wolves in this rule will make their control easier and more effective, thus reducing the economic losses that result from wolf depredation on livestock and guard animals and dogs. Furthermore, a private program compensates livestock producers if they suffer confirmed livestock losses by wolves. Since 1995, annual compensation for livestock losses has averaged $17,000 in each recovery area. The potential effect on livestock producers in western States is very small, but more flexible wolf management will be entirely beneficial to the operations of a few individuals.

Small Business Regulatory Enforcement Fairness Act

This regulation is not a major rule under 5 U.S.C. 801 *et seq.*, the SBREFA.

(a) This regulation will not have an annual effect on the economy of $100 million or more and is fully expected to have no significant economic impacts. The majority of livestock producers within the range of the wolf are on small ranches, and the total number of livestock producers that may be affected by wolves is small. The regulation further reduces the effect that wolves will have on individual livestock producers by eliminating some permit requirements. Compensation programs also are in place to offset losses to individual livestock producers. Thus, even if livestock producers affected are small businesses, the combined economic effects are minimal and provide a benefit to small business.

(b) This regulation will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions and will impose no additional regulatory restraints in addition to those already in operation.

(c) This regulation will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises. Based on the analysis of identified factors, we have determined that no individual industries within the United States will be significantly affected and that no changes in the demography of populations are anticipated. The intent of this special rule is to facilitate and continue existing commercial activities while providing for the conservation of species by better addressing the concerns of affected landowners and the impacts of a biologically recovered wolf population.

Unfunded Mandates Reform Act

The regulation defines a process for voluntary and cooperative transfer of management responsibilities for a listed species back to the States. Therefore, in accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. As stated above, this regulation will result in only minor positive economic effects for a very small percentage of livestock producers.

(b) This rule will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. This rule is not expected to have any significant economic impacts nor will it impose any unfunded mandates on other Federal, State or local government agencies to carry out specific activities.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, this rule will not have significant implications concerning taking of private property by the Federal government. This rule will substantially advance a legitimate government interest (conservation and recovery of listed species) and will not present a bar to all reasonable and expected beneficial use of private property. Because of the regulatory flexibility provided by NEP designations under section 10(j) of the Act, we believe that the increased flexibility in this regulation and State or Tribal lead wolf management will reduce regulatory restrictions on private lands and will result in minor positive

economic effects for a small percentage of livestock producers.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, this regulation will not have significant Federalism effects. This rule will not have substantial direct effects on the States, on the relationship between the States and the Federal Government, or on the distribution of power and responsibilities among the various levels of government. The State wildlife agencies in Idaho and Montana requested that we undertake this rulemaking in order to assist the States in reducing conflicts with local landowners and returning the species to State or Tribal management. Maintaining the recovery goals for these wolves will contribute to their eventual delisting and their return to State management. No intrusion on State policy or administration is expected; roles or responsibilities of Federal or State governments will not change; and fiscal capacity will not be substantially directly affected. The special rule operates to maintain the existing relationship between the States and the Federal government and is being undertaken at the request of State agencies. We have endeavored to cooperate with the States in the preparation of this rule. Therefore, this rule does not have significant Federalism effects or implications to warrant the preparation of a Federalism Assessment pursuant to the provisions of Executive Order 13132.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the DOI has determined that this rule does not unduly burden the judicial system and meets the applicable standards provided in sections 3(a) and 3(b)(2) of the order.

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) require that Federal agencies obtain approval from OMB before collecting information from the public. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid control number. This rule does not contain any new collections of information other than those permit application forms already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094, and the collection of information on experimental populations already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0095.

National Environmental Policy Act

In 1994, the Service issued an EIS (Service 1994) that addressed the impacts of introducing gray wolves to Yellowstone National Park and central Idaho and the NEP rule for these reintroductions. The 1994 EIS addressed cooperative agreements whereby the States of Wyoming, Montana, and Idaho could assume the lead for implementing wolf recovery and anticipated that the States and Tribes would be the primary agencies implementing the experimental population rule outside National Parks and National Wildlife Refuges. We evaluated whether any revisions to the EIS were required prior to finalizing this proposed regulation, and determined that there are no new significant impacts or effects caused by this rule beyond those previously identified and evaluated in the Service's 1994 EIS on wolf reintroduction. Thus, we are adopting the prior EIS for this rulemaking because the analysis is still applicable, *i.e.*, the conditions have not changed and the action has not changed significantly.

Government-to-Government Relationship With Tribes (Executive Order 13175)

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we are coordinating this rule with affected Tribes within the Western DPS. We fully considered all of the comments on the proposed special regulation that were submitted during the public comment period and attempted to address those concerns, new data, and new information where appropriate. The Service representatives met with members of the Nez Perce Tribe in October 2004 to discuss wolf management in Idaho.

Energy Supply, Distribution or Use (Executive Order 13211)

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

References Cited

A complete list of all references cited in this rulemaking is available upon request from our Helena office (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Final Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the existing entries in the List of Endangered and Threatened Wildlife under MAMMALS for "Western Distinct Population Segment U.S.A. (CA, ID, MT, NV, OR, WA, WY, UT north of U.S. Highway 50, and CO north of Interstate Highway 70, except where listed as an experimental population)" and "Wolf, gray U.S.A. (WY and portions of ID and MT)" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
MAMMALS							
*	*	*	*	*	*		*
Wolf, gray	*Canis lupus*	Holarctic	Western Distinct Population Segment—U.S.A. (CA, ID, MT, NV, OR, WA, WY, UT north of U.S. Highway 50, and CO north of Interstate Highway 70, except where listed as an experimental population).	T	1, 6, 13, 15, 35, 561, 562, 735, 745	N/A	17.40(n)
*	*	*	*	*	*		*
Wolf, gray	*Canis lupus*	Holarctic	U.S.A. (WY and portions of ID and MT—see 17.84(i)).	XN	561, 562, 745	N/A	17.84(i), 17.84(n)
*	*	*	*	*	*		*

■ 3. Amend 17.84 by adding paragraph (n), including maps, as set forth below:

§ 17.84 Special rules—vertebrates.

* * * * *

(n) Gray wolf (*Canis lupus*). (1) The gray wolves (wolf) identified in paragraphs (n)(9)(i) and (ii) of this section are nonessential experimental populations. These wolves will be managed in accordance with the respective provisions of this paragraph (n) in the boundaries of the nonessential experimental population (NEP) areas within any State or Tribal reservation that has a wolf management plan that has been approved by the Service, as further provided in this paragraph (n). Furthermore, any State or Tribe that has a wolf management plan approved by the Service can petition the Secretary of the Department of the Interior (DOI) to assume the lead authority for wolf management under this rule within the borders of the NEP areas in their respective State or reservation.

(2) The Service finds that management of nonessential experimental gray wolves, as defined in this paragraph (n), will further the conservation of the species.

(3) Definitions of terms used in paragraph (n) of this section follow:

Active den site—A den or a specific above-ground site that is being used on a daily basis by wolves to raise newborn pups during the period April 1 to June 30.

Breeding pair—An adult male and an adult female wolf that, during the previous breeding season, produced at least two pups that survived until December 31 of the year of their birth.

Designated agent—Includes Federal agencies authorized or directed by the Service, and States or Tribes with a wolf management plan approved by the Director of the Service and with established cooperative agreements with us or Memoranda of Agreement (MOAs) approved by the Secretary of the DOI. Federal agencies, States, or Tribes may become "designated agents" through cooperative agreements with the Service whereby they agree to assist the Service to implement some portions of this rule. If a State or Tribe becomes a "designated agent" through a cooperative agreement, the Service will help coordinate their activities and retain authority for program direction, oversight, and guidance. States and Tribes with approved plans also may become "designated agents" by submitting a petition to the Secretary to establish an MOA under this rule. Once accepted by the Secretary, the MOA may allow the State or Tribe to assume lead authority for wolf management and to implement the portions of their State or Tribal plans that are consistent with this rule. The Service oversight (aside from Service law enforcement investigations) under an MOA is limited to monitoring compliance with this rule, issuing written authorizations for wolf take on reservations without approved wolf management plans, and an annual review of the State or Tribal program to ensure the wolf population is being maintained above recovery levels.

Domestic animals—Animals that have been selectively bred over many generations to enhance specific traits for their use by humans, including use as pets. This includes livestock (as defined below) and dogs.

Intentional harassment—The deliberate and pre-planned harassment of wolves, including by less-than-lethal munitions (such as 12-gauge shotgun rubber-bullets and bean-bag shells), that are designed to cause physical discomfort and temporary physical injury but not death. The wolf may have been tracked, waited for, chased, or searched out and then harassed.

In the act of attacking—The actual biting, wounding, grasping, or killing of livestock or dogs, or chasing, molesting, or harassing by wolves that would indicate to a reasonable person that such biting, wounding, grasping, or killing of livestock or dogs is likely to occur at any moment.

Landowner—An owner of private land, or his/her immediate family members, or the owner's employees who are currently employed to actively work on that private land. In addition, the owner(s) (or his/her employees) of livestock that are currently and legally grazed on that private land and other lease-holders on that private land (such as outfitters or guides who lease hunting rights from private landowners), are considered landowners on that private land for the purposes of this regulation. Private land, under this regulation, also includes all non-Federal land and land within Tribal reservations. Individuals legally using Tribal lands in States with approved plans are considered landowners for the purposes of this rule. "Landowner" in this regulation includes legal grazing permittees or their current employees on State, county, or city public or Tribal grazing lands.

Livestock—Cattle, sheep, horses, mules, goats, domestic bison, and herding and guarding animals (llamas, donkeys, and certain breeds of dogs commonly used for herding or guarding livestock). Livestock excludes dogs that are not being used for livestock guarding or herding.

Non injurious—Does not cause either temporary or permanent physical damage or death.

Opportunistic harassment—Harassment without the conduct of prior purposeful actions to attract, track, wait for, or search out the wolf.

Private land—All land other than that under Federal Government ownership and administration and including Tribal reservations.

Problem wolves—Wolves that have been confirmed by the Service or our designated agent(s) to have attacked or been in the act of attacking livestock or dogs on private land or livestock on public land within the past 45 days. Wolves that we or our designated agent(s) confirm to have attacked any other domestic animals on private land twice within a calendar year are considered problem wolves for purposes of agency wolf control actions.

Public land—Federal land such as that administered by the National Park Service, Service, Bureau of Land Management, USDA Forest Service, Bureau of Reclamation, Department of Defense, or other agencies with the Federal Government.

Public land permittee—A person or that person's employee who has an active, valid Federal land-use permit to use specific Federal lands to graze livestock, or operate an outfitter or guiding business that uses livestock. This definition does not include private individuals or organizations who have Federal permits for other activities on public land such as collecting firewood, mushrooms, antlers, Christmas trees, or logging, mining, oil or gas development, or other uses that do not require livestock. In recognition of the special and unique authorities of Tribes and their relationship with the U.S. Government, for the purposes of this rule, the definition includes Tribal members who legally graze their livestock on ceded public lands under recognized Tribal treaty rights.

Remove—Place in captivity, relocate to another location, or kill.

Research—Scientific studies resulting in data that will lend to enhancement of the survival of the gray wolf.

Rule—Federal regulations—"This rule" or "this regulation" refers to this final NEP regulation; "1994 rules" refers to the 1994 NEP rules (50 CFR 17.84(i)); and "4(d) rule" refers to the 2003 special 4(d) regulations for threatened wolves in the Western DPS (50 CFR 17.40(n)), outside of the experimental population areas.

Unacceptable impact—State or Tribally-determined decline in a wild ungulate population or herd, primarily caused by wolf predation, so that the population or herd is not meeting established State or Tribal management goals. The State or Tribal determination must be peer-reviewed and reviewed and commented on by the public, prior to a final determination by the Service that an unacceptable impact has occurred, and that wolf removal is not likely to impede wolf recovery.

Wounded—Exhibiting scraped or torn hide or flesh, bleeding, or other evidence of physical damage caused by a wolf bite.

(4) *Allowable forms of take of gray wolves.* The following activities, only in the specific circumstances described under this paragraph (n)(4), are allowed: opportunistic harassment; intentional harassment; take on private land; take on public land; take in response to impacts on wild ungulate populations; take in defense of human life; take to protect human safety; take by designated agents to remove problem wolves; incidental take; take under permits; take per authorizations for employees of designated agents; and take for research purposes. Other than as expressly provided in this rule, all other forms of take are considered a violation of section 9 of the Act. Any wolf or wolf part taken legally must be turned over to the Service unless otherwise specified in this paragraph (n). Any take of wolves must be reported as outlined in paragraph (n)(6) of this section.

(i) *Opportunistic harassment.* Anyone may conduct opportunistic harassment of any gray wolf in a non-injurious manner at any time. Opportunistic harassment must be reported to the Service or our designated agent(s) within 7 days as outlined in paragraph (n)(6) of this section.

(ii) *Intentional harassment.* After we or our designated agent(s) have confirmed wolf activity on private land, on a public land grazing allotment, or on a Tribal reservation, we or our designated agent(s) may issue written take authorization valid for not longer than 1 year, with appropriate conditions, to any landowner or public land permittee to intentionally harass wolves. The harassment must occur in the area and under the conditions as specifically identified in the written take authorization.

(iii) *Take by landowners on their private land.* Landowners may take wolves on their private land in the following two additional circumstances:

(A) Any landowner may immediately take a gray wolf in the act of attacking livestock or dogs on their private land, provided the landowner provides evidence of livestock or dogs recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agent(s) are able to confirm that the livestock or dogs were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed in order to preserve physical evidence that the take was conducted according to this rule. The take of any wolf without such evidence of a direct and immediate threat may be referred to the appropriate authorities for prosecution.

(B) A landowner may take wolves on his/her private land if we or our designated agent issued a "shoot-on-sight" written take authorization of limited duration (45 days or less), and if:

(*1*) This landowner's property has had at least one depredation by wolves on livestock or dogs that has been confirmed by us or our designated agent(s) within the past 30 days; and

(*2*) We or our designated agent(s) have determined that problem wolves are routinely present on that private property and present a significant risk to the health and safety of other livestock or dogs; and

(*3*) We or our designated agent(s) have authorized agency lethal removal of problem wolves from that same property. The landowner must conduct the take in compliance with the written take authorization issued by the Service or our designated agent(s).

(iv) *Take on public land.* Any livestock producer and public land permittee (*see* definitions in paragraph (n)(3) of this section) who is legally using public land under a valid Federal land-use permit may immediately take a gray wolf in the act of attacking his/her livestock on his/her allotment or other area authorized for his/her use without prior written authorization, provided that producer or permittee provides evidence of livestock recently (less than 24 hours) wounded, harassed, molested, or killed by wolves, and we or our designated agent(s) are able to confirm that the livestock were wounded, harassed, molested, or killed by wolves. The carcass of any wolf taken and the area surrounding it should not be disturbed, in order to preserve physical evidence that the take was conducted according to this rule. The take of any wolf without such evidence may be referred to the appropriate authorities for prosecution.

(A) At our or our designated agent(s)' discretion, we or our designated agent(s) also may issue a shoot-on-sight written take authorization of limited duration (45 days or less) to a public land grazing permittee to take problem wolves on

that permittee's active livestock grazing allotment if:

(*1*) The grazing allotment has had at least one depredation by wolves on livestock that has been confirmed by us or our designated agent(s) within the past 30 days; and

(*2*) We or our designated agent(s) have determined that problem wolves are routinely present on that allotment and present a significant risk to the health and safety of livestock; and

(*3*) We or our designated agent(s) have authorized agency lethal removal of problem wolves from that same allotment.

(B) The permittee must conduct the take in compliance with the written take authorization issued by the Service or our designated agent(s).

(v) *Take in response to wild ungulate impacts.* If wolf predation is having an unacceptable impact on wild ungulate populations (deer, elk, moose, bighorn sheep, mountain goats, antelope, or bison) as determined by the respective State or Tribe, a State or Tribe may lethally remove the wolves in question.

(A) In order for this provision to apply, the States or Tribes must prepare a science-based document that:

(*1*) Describes what data indicate that ungulate herd is below management objectives, what data indicate the impact by wolf predation on the ungulate population, why wolf removal is a warranted solution to help restore the ungulate herd to State or Tribal management objectives, the level and duration of wolf removal being proposed, and how ungulate population response to wolf removal will be measured;

(*2*) Identifies possible remedies or conservation measures in addition to wolf removal; and

(*3*) Provides an opportunity for peer review and public comment on their proposal prior to submitting it to the Service for written concurrence.

(B) We must determine that such actions are scientifically-based and will not reduce the wolf population below recovery levels before we authorize lethal wolf removal.

(vi) *Take in defense of human life.* Any person may take a gray wolf in defense of the individual's life or the life of another person. The unauthorized taking of a wolf without demonstration of an immediate and direct threat to human life may be referred to the appropriate authorities for prosecution.

(vii) *Take to protect human safety.* We or our designated agent(s) may promptly remove any wolf that we or our designated agent(s) determines to be a threat to human life or safety.

(viii) *Take of problem wolves by Service personnel or our designated agent(s).* We or our designated agent(s) may carry out harassment, non lethal control measures, relocation, placement in captivity, or lethal control of problem wolves. To determine the presence of problem wolves, we or our designated agent(s) will consider all of the following:

(A) Evidence of wounded livestock, dogs, or other domestic animals, or remains of livestock, dogs, or domestic animals that show that the injury or death was caused by wolves, or evidence that wolves were in the act of attacking livestock, dogs, or domestic animals;

(B) The likelihood that additional wolf-caused losses or attacks may occur if no control action is taken;

(C) Evidence of unusual attractants or artificial or intentional feeding of wolves; and

(D) Evidence that animal husbandry practices recommended in approved allotment plans and annual operating plans were followed.

(ix) *Incidental take.* Take of a gray wolf is allowed if the take is accidental and incidental to an otherwise lawful activity and if reasonable due care was practiced to avoid such take, and such take is reported within 24 hours. Incidental take is not allowed if the take is not accidental or if reasonable due care was not practiced to avoid such take, or it was not reported within 24 hours (we may allow additional time if access to the site of the take is limited), and we may refer such taking to the appropriate authorities for prosecution. Shooters have the responsibility to identify their target before shooting. Shooting a wolf as a result of mistaking it for another species is not considered accidental and may be referred to the appropriate authorities for prosecution.

(x) *Take under permits.* Any person with a valid permit issued by the Service under § 17.32, or our designated agent(s), may take wolves in the wild, pursuant to terms of the permit.

(xi) *Additional take authorization for agency employees.* When acting in the course of official duties, any employee of the Service or our designated agent(s) may take a wolf or wolf-like canid for the following purposes:

(A) Scientific purposes;

(B) To avoid conflict with human activities;

(C) To further wolf survival and recovery;

(D) To aid or euthanize sick, injured, or orphaned wolves;

(E) To dispose of a dead specimen;

(F) To salvage a dead specimen that may be used for scientific study;

(G) To aid in law enforcement investigations involving wolves; or

(H) To prevent wolves or wolf-like canids with abnormal physical or behavioral characteristics, as determined by the Service or our designated agent(s), from passing on or teaching those traits to other wolves.

(I) Such take must be reported to the Service within 7 days as outlined in paragraph (n)(6) of this section, and specimens are to be retained or disposed of only in accordance with directions from the Service.

(xii) *Take for research purposes.* We may issue permits under § 17.32, or our designated agent(s) may issue written authorization, for individuals to take wolves in the wild pursuant to approved scientific study proposals. Scientific studies should be reasonably expected to result in data that will lend to development of sound management of the gray wolf, and lend to enhancement of its survival as a species.

(5) *Federal land use.* Restrictions on the use of any Federal lands may be put in place to prevent the take of wolves at active den sites between April 1 and June 30. Otherwise, no additional land-use restrictions on Federal lands, except for National Parks or National Wildlife Refuges, may be necessary to reduce or prevent take of wolves solely to benefit gray wolf recovery under the Act. This prohibition does not preclude restricting land use when necessary to reduce negative impacts of wolf restoration efforts on other endangered or threatened species.

(6) *Reporting requirements.* Except as otherwise specified in paragraph (n) of this section or in a permit, any take of a gray wolf must be reported to the Service or our designated agent(s) within 24 hours. We will allow additional reasonable time if access to the site is limited. Report any take of wolves, including opportunistic harassment, to U.S. Fish and Wildlife Service, Western Gray Wolf Recovery Coordinator (100 North Park, Suite 320, Helena, Montana 59601, 406–449–5225 extension 204; facsimile 406–449–5339), or a Service-designated agent of another Federal, State, or Tribal agency. Unless otherwise specified in paragraph (n) of this section, any wolf or wolf part taken legally must be turned over to the Service, which will determine the disposition of any live or dead wolves.

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any wolf or part thereof from the experimental populations taken in violation of the regulations in paragraph (n) of this section or in violation of

applicable State or Tribal fish and wildlife laws or regulations or the Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed any offense defined in this section.

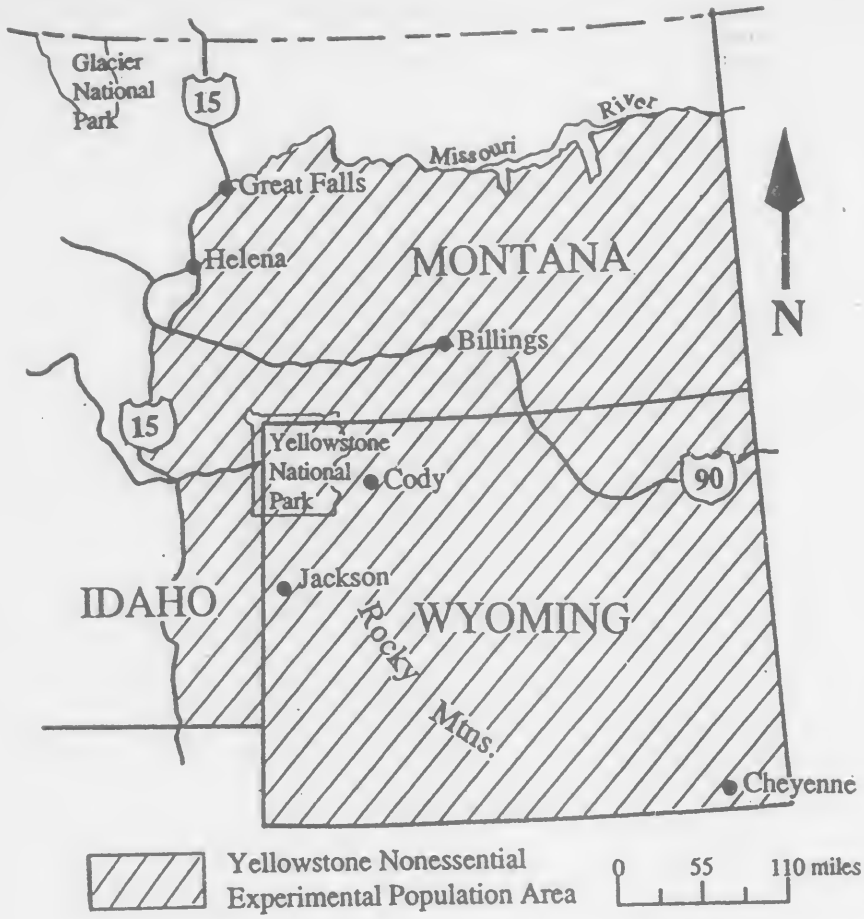
(9) The sites for these experimental populations are within the historic range of the species as designated in § 17.84(i)(7):

(i) The central Idaho NEP area is shown on Map 1. The boundaries of the NEP area are those portions of Idaho that are south of Interstate Highway 90 and west of Interstate 15, and those portions of Montana south of Interstate 90, Highways 93 and 12 from Missoula, Montana, west of Interstate 15.

BILLING CODE 4310–55–P

Map 1

(ii) The Yellowstone NEP is shown on Map 2. The boundaries of the NEP area are that portion of Idaho that is east of Interstate Highway 15; that portion of Montana that is east of Interstate Highway 15 and south of the Missouri River from Great Falls, Montana, to the eastern Montana border; and all of Wyoming.



Map 2

(iii) All wolves found in the wild within the boundaries of these experimental areas are considered nonessential experimental animals. In the Western Gray Wolf Distinct Population Segment (Washington, Oregon, California, Nevada, Montana, Idaho, Wyoming, and Utah and Colorado north of Highway 50 and Interstate 70), any wolf that is outside an experimental area is considered threatened. Disposition of wolves outside the NEP areas may take any of the following courses:

(A) Any wolf dispersing from the experimental population areas into other parts of the Western DPS will be managed under the special 4(d) rule for threatened wolves in the Western DPS (50 CFR 17.40(n)).

(B) Any wolf originating from the experimental population areas and dispersing beyond the borders of the Western DPS may be managed by the wolf management regulations established for that area, or may be returned to the experimental population areas if it has not been involved in conflicts with people, or may be removed if it has been involved with conflicts with people.

(10) Wolves in the experimental population areas will be monitored by radio-telemetry or other standard wolf population monitoring techniques as appropriate. Any animal that is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or our designated agent(s) and given appropriate care. Such an animal will be released back into its respective area as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity or euthanize it.

(11) *Memoranda of Agreement (MOAs).* Any State or Tribe with gray wolves, subject to the terms of this paragraph (n), may petition the Secretary for an MOA to take over lead management responsibility and authority to implement this rule by managing the nonessential experimental gray wolves in that State or on that Tribal reservation, and implement all parts of their approved State or Tribal plan that are consistent with this rule, provided that the State or Tribe has a wolf management plan approved by the Secretary.

(i) A State or Tribal petition for wolf management under an MOA must show:

(A) That authority and management capability resides in the State or Tribe to conserve the gray wolf throughout the geographical range of all experimental populations within the State or within the Tribal reservation.

(B) That the State or Tribe has an acceptable conservation program for the gray wolf, throughout all of the NEP areas within the State or Tribal reservation, including the requisite authority and capacity to carry out that conservation program.

(C) A description of exactly what parts of the approved State or Tribal plan the State or Tribe intends to implement within the framework of this rule.

(D) A description of the State or Tribal management progress will be reported to the Service on at least an annual basis so the Service can determine if State or Tribal management has maintained the wolf population above recovery levels and was conducted in full compliance with this rule.

(ii) The Secretary will approve such a petition upon a finding that the applicable criteria are met and that approval is not likely to jeopardize the continued existence of the gray wolf in the Western DPS, as defined in § 17.11(h).

(iii) If the Secretary approves the petition, the Secretary will enter into an MOA with the Governor of that State or appropriate Tribal representative.

(iv) An MOA for State or Tribal management as provided in this section may allow a State or Tribe to become designated agents and lead management of nonessential experimental gray wolf populations within the borders of their jurisdictions in accordance with the State's or Tribe's wolf management plan approved by the Service, except that:

(A) The MOA may not provide for any form of management inconsistent with the protection provided to the species under this rule, without further opportunity for appropriate public comment and review and amendment of this rule;

(B) The MOA cannot vest the State or Tribe with any authority over matters concerning section 4 of the Act (determining whether a species warrants listing);

(C) The MOA may not provide for public hunting or trapping absent a finding by the Secretary of an extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved; and

(D) In the absence of a Tribal wolf management plan or cooperative agreement, the MOA cannot vest a State with the authority to issue written authorizations for wolf take on reservations. The Service will retain the authority to issue these written authorizations until a Tribal wolf management plan is approved.

(v) The MOA for State or Tribal wolf management must provide for joint law enforcement responsibilities to ensure that the Service also has the authority to enforce the State or Tribal management program prohibitions on take.

(vi) The MOA may not authorize wolf take beyond that stated in the experimental population rules but may be more restrictive.

(vii) The MOA will expressly provide that the results of implementing the MOA may be the basis upon which State or Tribal regulatory measures will be judged for delisting purposes.

(viii) The authority for the MOA will be the Act, the Fish and Wildlife Act of 1956 (16 U.S.C. 742a–742j), and the Fish and Wildlife Coordination Act (16 U.S.C. 661–667e), and any applicable treaty.

(ix) In order for the MOA to remain in effect, the Secretary must find, on an annual basis, that the management under the MOA is not jeopardizing the continued existence of the gray wolf in the Western DPS. The Secretary or State or Tribe may terminate the MOA upon 90 days notice if:

(A) Management under the MOA is likely to jeopardize the continued existence of the gray wolf in the Western DPS; or

(B) The State or Tribe has failed materially to comply with this rule, the MOA, or any relevant provision of the State or Tribal wolf management plan; or

(C) The Service determines that biological circumstances within the range of the gray wolf indicate that delisting the species is not warranted; or

(D) The States or Tribes determine that they no longer want the wolf management authority vested in them by the Secretary in the MOA.

Dated: December 29, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–136 Filed 1–4–05; 8:45 am]

BILLING CODE 4310–55–P

Federal Register

Thursday,
January 6, 2005

Part III

Environmental Protection Agency

40 CFR Part 51

Amendments to Vehicle Inspection Maintenance Program Requirements To Address the 8-Hour National Ambient Air Quality Standard for Ozone; Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7857–4]

RIN 2060–AM21

Amendments to Vehicle Inspection Maintenance Program Requirements To Address the 8-Hour National Ambient Air Quality Standard for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes minor revisions to the Motor Vehicle Inspection/Maintenance (I/M) regulation to update submission and implementation deadlines and other timing-related requirements to more appropriately reflect the implementation schedule for meeting the 8-hour National Ambient Air Quality Standards (NAAQS) for ozone. This proposal is directed specifically at those areas that will be newly required to implement I/M as a result of being designated and classified under the 8-hour ozone standard; the conditions under which an existing I/M program under the 1-hour ozone standard must continue operation under the 8-hour standard are addressed under the anti-backsliding provisions of the April 30, 2004 final rulemaking which established several key requirements for implementing the 8-hour ozone standard (69 FR 23931).[1]

DATES: Written comments on this proposal must be received no later than February 7, 2005.

ADDRESSES: You may submit comments, identified by Docket #OAR–2004–0095, by any of the following methods:

- Federal eRulemaking portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *A-and-R-Docket@epa.gov*. Include Docket #OAR–2004–0095 in the subject line of the message.
- Fax: (202) 566–1741.
- Mail: U.S. Environmental Protection Agency, EPA West (Air Docket), 1200 Pennsylvania Avenue, NW., Room: B108; Mail Code: 6102T, Washington, DC 20460.
- Hand Delivery/Courier: EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room: B108; Mail Code: 6102T, Washington, DC 20004.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://cascade.epa.gov/RightSite/dk_public_home.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://cascade.epa.gov/RightSite/dk_public_home.htm* or EPA Docket Center (Air Docket), U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room: B108; Mail Code: 6102T, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: David Sosnowski, Office of Transportation and Air Quality, Transportation and Regional Programs Division, 2000 Traverwood, Ann Arbor, Michigan 48105. Telephone (734) 214–4823.

SUPPLEMENTARY INFORMATION:

I. Table of Contents

II. Summary of Proposal

On April 30, 2004, EPA published a notice of final rulemaking (69 FR 23931) addressing several key requirements related to the implementation of the 8-hour ozone standard originally promulgated on July 18, 1997 (62 FR 38856). Among other things, the 8-hour ozone standard implementation rule established deadlines for meeting the 8-hour ozone standard based upon an area's designation and classification. The rule also addresses when State Implementation Plans (SIPs) and attainment demonstrations must be submitted. As a general matter, the deadlines associated with implementation of the 8-hour ozone standard relate back to the effective date of an area's designation and classification under the 8-hour ozone standard, and new 8-hour ozone non-attainment areas are given the same amount of time to meet their various obligations as was given to comparably classified non-attainment areas under the 1-hour ozone standard. For example, under the Clean Air Act Amendments of 1990 (CAA), most areas designated and classified as moderate under the 1-hour standard were given 6 years after designation as non-attainment to attain the 1-hour ozone standard. Similarly, under the rule for implementing the 8-hour ozone standard, an area designated and classified as moderate under the 8-hour standard will also have up to 6 years after the effective date of its non-attainment designation to attain the 8-hour ozone standard.

In addition to establishing the above-mentioned deadlines, the April 30, 2004 rulemaking also clarified how the CAA's anti-backsliding provisions would be applied under the 8-hour standard to certain applicable requirements such as I/M once the 1-hour ozone standard is revoked. In general, if an existing I/M area is not able to redesignate to attainment for the 1-hour ozone standard prior to revocation of that standard (and is also designated as non-attainment for the 8-hour standard, regardless of classification or subpart) then that area will be required to continue implementing an I/M program until it has attained the 8-hour ozone standard. Readers interested in learning more about how the Act's anti-backsliding provisions apply to I/M under the 8-hour standard should consult the anti-backsliding provisions of the April 30, 2004 final rulemaking

[1] Additional guidance on anti-backsliding under the 8-hour standard and how it applies to I/M programs can be found in the May 12, 2004 policy memo signed by Tom Helms, Ozone Policy and Strategies Group, and Leila Cook, State Measures and Conformity Group, entitled "1-Hour Ozone Maintenance Plans Containing Basic I/M Programs," a copy of which is contained in the docket for this proposed rulemaking.

as well as the May 12, 2004 policy memo concerning exceptions to the general anti-backsliding policy for certain maintenance areas signed by Tom Helms and Leila Cook entitled "1-Hour Ozone Maintenance Plans Containing Basic I/M Programs," a copy of which is contained in the docket for this proposed rulemaking.

When the rulemaking establishing the requirements for vehicle inspection and maintenance (I/M) programs was first published in November 1992, some of the deadlines were expressed relatively (i.e., "within X years of Y * * *") while others were set as explicit dates (i.e., "no later than November 15, 1993 * * *"). The purpose of today's proposed rulemaking is to revise outdated timing-related references in the I/M rule such as submission dates, start dates, evaluation dates, and other milestones and/or deadlines to make them relevant for those areas that will be newly required to begin I/M programs as a result of being designated and classified under the 8-hour ozone standard. It is not the intention of this proposal to revise or establish new requirements for existing I/M programs established in response to the 1-hour ozone standard. As discussed above, the requirements that apply to existing 1-hour I/M programs that must continue implementation under the 8-hour standard have already been addressed under the anti-backsliding provisions of the April 30, 2004 final rulemaking as well as the May 12, 2004 policy memo entitled "1-Hour Ozone Maintenance Plans Containing Basic I/M Programs," a copy of which is contained in the docket for this proposed rulemaking.

Today's notice proposes to: (1) Revise sections 51.351 and 51.352 (the basic and enhanced I/M performance standards) to update the start date and model year coverage associated with specific elements of the basic and enhanced I/M performance standards as well as to set the benchmark comparison date(s) for performance standard modeling purposes that better reflects milestones associated with the 8-hour ozone standard; (2) revise section 51.353 (network type and program evaluation) to make the deadline for beginning the first round of program evaluation testing (which is currently listed as "no later than November 30, 1998") a relative deadline keyed to the date of program start up; (3) amend section 51.360 (waivers and compliance via diagnostic inspection) so that the deadline for establishing full waiver limits for those basic I/M programs choosing to allow waivers (currently, "no later than January 1, 1998") becomes "January 1, 1998, or coincident with program start up, whichever is later"; (4) update section 51.372 (state implementation plan submissions) to set the I/M SIP submission deadline for areas newly required to adopt I/M programs under the 8-hour ozone standard as 1 year after the effective date of EPA's final action on today's proposal or 1 year after the effective date of designation and classification under the 8-hour standard (whichever is later); (5) update section 51.373 (implementation deadlines) to establish the implementation deadline for new I/M programs required under the 8-hour standard as 4 years after the effective date of designation and classification under the 8-hour ozone standard; and (6) revise section 51.373 (implementation deadlines) to clarify that the deadline for beginning OBD testing for areas newly required to implement I/M as a result of being designated and classified under the 8-hour ozone standard is "coincident with program start up."

III. Authority

Authority for the rule changes proposed in this notice is granted to EPA by sections 182, 184, 187, and 118 of the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*).

IV. Background of the Proposed Amendments

On July 18, 1997, EPA revised the National Ambient Air Quality Standard (NAAQS) for ozone (62 FR 38856) by promulgating a standard of 0.08 parts per million (ppm) as measured over an 8-hour period. At the time, EPA indicated its belief that the 8-hour ozone NAAQS should be implemented under the less prescriptive requirements of subpart 1 of part D of title I of the CAA rather than the more prescriptive mandates of subpart 2 of that part. For mandatory I/M—which falls under subpart 2, as opposed to the more flexible subpart 1—this approach to implementing the 8-hour ozone NAAQS solely under subpart 1 would have meant that I/M would not be mandatory for any area that was newly designated under the 8-hour ozone standard (unless the area in question had previously been required to implement I/M under the 1-hour standard, in which case the Act's anti-backsliding provisions would apply).

Various industry groups and states challenged EPA's final rule promulgating the 8-hour ozone NAAQS, which eventually led to a Supreme Court ruling, issued in February 2001. Among other things, the Supreme Court found that EPA's original implementation approach, which did not provide a role for subpart 2 in implementing the 8-hour NAAQS, was unreasonable. Specifically, the Court noted EPA could not ignore the provisions of subpart 2 that "eliminate[] regulatory discretion" allowed by subpart 1. The Court also identified several portions of the CAA's classification scheme under subpart 2 that are "ill-fitted" to the revised standard and remanded the implementation rule to EPA for the development of a reasonable approach for implementation. *Whitman* v. *American Trucking Assoc.*, 121 S.Ct. 916–919 (2001) (Whitman).

The Agency's 8-hour ozone implementation proposal was published in the **Federal Register** on June 2, 2003 (68 FR 32802). Key portions of the June 2, 2003 proposal relevant to I/M (and other subpart 2 requirements) were subsequently promulgated as final in a rulemaking published in the **Federal Register** on April 30, 2004 (69 FR 23951). It is, therefore, appropriate and timely for EPA to update the I/M rule to clarify the requirements for areas newly required to implement I/M as a result of being designated and classified under the 8-hour ozone standard. It is not, however, the intention of this proposal to address requirements for existing, 1-hour I/M programs which must continue under the 8-hour standard; those requirements are already addressed under the anti-backsliding provisions of the April 30, 2004 final rulemaking as well as the May 12, 2004 policy memo entitled "1-Hour Ozone Maintenance Plans Containing Basic I/M Programs."

Today's proposed revisions to the I/M rule and EPA's rationale for each are discussed under separate headings below.

A. Amendments to the I/M Performance Standards

1. What Is an I/M Performance Standard?

An I/M performance standard is a collection of program design elements (such as start date, test type, network type, vehicle coverage, etc.) which defines a benchmark program to which a state's proposed program is compared in terms of its potential to reduce emissions of carbon monoxide (CO) and/or the ozone precursors, hydrocarbons (HC) and oxides of nitrogen (NO_X) by certain benchmark comparison dates (also known as "evaluation dates"). Unless an alternative method or model has been approved by EPA, the mechanism used to compare the performance standard program to a state's proposed program is

the currently applicable version of EPA's mobile source emission factor model—currently, MOBILE6.2. The MOBILE model uses input files that include descriptions of the program design elements but which also include locally variable parameters, such as the age distribution of the local fleet, average temperature of the local area, local fuel characteristics, etc.

To determine whether or not a given program meets the performance standard, it is necessary to produce three MOBILE input files: (1) The applicable performance standard benchmark program; (2) the state's proposed program; and (3) a no-I/M scenario which characterizes the emissions from the local fleet with no I/M program in place. Once these input files have been created, the MOBILE model is then run to produce assessments of the emission levels expected with the performance standard in place, with the proposed program in place, and with no I/M program in place. The emission reduction "credits" associated with the performance standard and proposed program are calculated by subtracting the emission levels projected with either program in place from the emission levels projected with no I/M program in place. If the emission reduction credits associated with the state's proposed program are equal to or greater than those associated with the performance standard, then the state's proposed program is considered to have met its performance standard.

2. What Are "I/M Program Design Elements" and How Do They Interact With "Locally Variable Parameters"?

I/M program design elements are program features most likely to have a direct impact on the ability of the program to reduce levels of the three criteria pollutants (CO, HC, and NO_X). Factors that directly influence the level of emission reductions associated with a given I/M program design include but are not limited to the following: test frequency, compliance rate, vehicle type coverage, model year coverage, start date, evaluation date, and test type [*e.g.*, idle, IM240, Acceleration Simulation Mode (ASM), onboard diagnostics (OBD)].

To illustrate how an I/M program design element can interact with a "locally variable parameter," consider model year (MY) coverage and a local variable such as in-use fleet age distribution. Generally speaking, the more model years covered, the greater the potential for reducing emissions, though not all model years are considered equal in this regard. For example, testing the newest vehicles only provides marginal, additional emission reductions because new cars are unlikely to have accumulated the wear and tear that typically lead to high emissions. On the opposite end of the spectrum, testing the very oldest cars may not provide much in the way of emission reductions either, given the small number of such vehicles still capable of being driven and their limited contribution to a given non-attainment area's overall vehicle miles traveled (VMT). What constitutes optimal model year coverage will vary from area to area, depending upon the characteristics of the local, in-use fleet. This local variability (and its impact on the emission reductions that can potentially be achieved by a given I/M program) is one of the reasons why the input files used to demonstrate compliance with an I/M performance standard must include both the I/M program design elements that define the programs being compared and the local variables likely to affect the mobile source emission inventory, like local in-use fleet age distribution, VMT distribution, average temperature, and local fuel composition.

3. How Much Discretion Does EPA Have in Deciding What I/M Program Design Elements To Include in a Performance Standard?

In mandating that EPA establish performance standards for I/M programs, the Clean Air Act Amendments of 1990 were fairly prescriptive with regard to several of the I/M program design elements that must be included. For example, EPA's I/M performance standard for areas designated and classified as having "serious" or worse air quality (*i.e.*, the "enhanced" I/M performance standard) is required by the statute to include annual vehicle testing with at least two tests per vehicle (an emissions test and a component check to detect tampering and/or misfueling) covering both passenger cars and light-duty trucks, with no allowance for any model year exemptions. EPA was given more discretion, however, when it came to determining what specific emission test and failure threshold combination would apply for any given model year covered by the performance standard, so that older vehicles certified to more lenient emission standards would not be subject to the same stringent I/M testing criteria established for newer, more technologically advanced vehicles.

4. How Much Discretion Does a State Have in Deciding the Design of Its Actual I/M Program?

The 1990 CAA specifies certain minimum program design requirements that must be part of a state's I/M program. For example, all mandatory I/M programs must include some level of OBD testing, while all enhanced I/M programs are required to include some form of on-road testing. Nevertheless, states have far more latitude in designing their own programs than EPA has in setting the performance standard. For example, states can adopt biennial programs provided equivalent emission reductions are achieved and can exempt the newest and/or oldest model years, while EPA's performance standard was required to be annual and was not allowed to exempt vehicles based upon model year. As long as a state's program meets the 1990 CAA's minimum requirements and can be shown through modeling to achieve the same or better emission reductions as the applicable performance standard, the actual design of the I/M program (whether annual or biennial, with or without model year exemptions, centralized or decentralized, allowing waivers or not, using dynamometer-based testing or not, covering heavy-duty trucks or not, etc.) is for the state to decide. The criteria that a subject area should consider in designing (or redesigning) its I/M program are discussed below, under item 10 of this subsection.

5. Why Do EPA's Current Performance Standards Need To Be Revised for Areas Newly Required To Do I/M Under the 8-Hour Ozone NAAQS?

The current I/M performance standards were written to reflect the deadlines set by the 1990 CAA for 1-hour ozone non-attainment areas. For example, the start dates for various elements of the current performance standards reflect either the actual mandated start dates for those elements, or what were considered reasonable start dates for areas newly required to do I/M under the 1-hour standard. These date assumptions do not make sense under the schedule promulgated for meeting the 8-hour standard. For example, one current enhanced I/M performance standard assumes a start date of no later than 1995, while current 8-hour ozone non-attainment areas were not even designated and classified until 2004 and are not expected to submit attainment plans until 2007. It is therefore essential to revise the timing assumptions associated with the I/M performance standards so that they

make sense for 8-hour ozone non-attainment areas new to I/M.

6. What Regulatory Change Does EPA Propose?

EPA proposes to make the following regulatory changes to the basic I/M performance standard for areas newly required to implement a basic I/M program as a result of being designated and classified moderate non-attainment under the 8-hour ozone NAAQS (and meeting the existing I/M population criteria): (1) Start date: four years after the effective date of designation and classification under the 8-hour ozone standard; (2) emission test types: Model Year (MY) 1968–2000—idle, MY 2001 and newer—onboard diagnostic (OBD) check; (3) evaluation date: six years after the effective date of designation and classification under the 8-hour ozone standard rounded to the nearest July. All other basic I/M performance design elements shall be the same as previously promulgated for 1-hour ozone non-attainment areas (see 40 CFR 51.352).

For areas newly required to implement an enhanced I/M program as a result of being designated and classified as serious or higher non-attainment under the 8-hour ozone NAAQS (and meeting the existing I/M population criteria for enhanced I/M areas), EPA proposes that an 8-hour ozone enhanced I/M performance standard be established assuming the same program design elements as the current low enhanced I/M performance standard defined at 40 CFR 51.351 (g) but with the following exceptions: (1) Start date: four years after the effective date of designation and classification under the 8-hour ozone standard; (2) emission test types: MY 1968–2000—idle, MY 2001 and newer—onboard diagnostic (OBD) check; (3) evaluation dates: six years after the effective date of designation and classification under the 8-hour ozone standard rounded to the nearest July and the applicable attainment date, also rounded to the nearest July.

A state's program will be deemed in compliance with the 8-hour ozone enhanced I/M performance standard if it can demonstrate through modeling that the proposed program will achieve the same percent reduction in HC and NO_X: (1) As achieved by the performance standard program based upon an evaluation date set to the six year anniversary of the effective date of the area's designation and classification under the 8-hour ozone standard, rounded to the nearest July and (2) can demonstrate through modeling that the same percent reduction as achieved under number 1 is still being achieved as of the first July following the area's attainment date under the 8-hour ozone standard.

7. Why Does EPA Propose That Only MY 2001 and Newer Vehicles Be Subjected To the OBD–I/M Check as Part of the Proposed I/M Performance Standards for Areas New to I/M Under the 8-Hour Ozone Standard When Vehicles Have Included OBD Systems Since MY 1996? Does This Reflect EPA's Recommended MY Coverage for Such Testing? Is There Something Which Prevents Successful Testing of Older (i.e., pre-2001) OBD-Equipped Vehicles?

EPA's proposed MY coverage for OBD-I/M testing in the 8-hour I/M performance standards does not reflect the Agency's recommended MY coverage for such testing nor does it suggest a problem with testing pre-2001 OBD-equipped vehicles. Since 2000, I/M programs across the country have been successfully testing MY 1996 and newer vehicles using the OBD-I/M test, in accordance with EPA requirements and guidance. Although older OBD-equipped vehicles tend to have higher failure rates than newer OBD-equipped vehicles, this relationship holds true for all older versus newer vehicles.

The reason EPA proposes to limit coverage of the OBD test as part of the proposed 8-hour I/M performance standards goes to the heart of why the CAA required EPA to establish performance standards as opposed to mandating program designs: Flexibility. Test type coverage is one of the mechanisms used in setting an I/M performance standard that can either increase or all but eliminate the level of flexibility states will have in designing their own I/M programs. If, for example, EPA established a performance standard using maximum MY coverage of the most rigorous test available, the performance standard would effectively cease to be a "performance standard" and would become, instead, a mandatory program design.

In 1992 when the original I/M performance standards were established, OBD testing was included in the performance standards only as an uncredited placeholder because, at the time, no OBD-equipped vehicles were available for test credit assessment. Since that time, however, EPA has done extensive testing of OBD-equipped vehicles and the effectiveness of OBD testing. As a result, EPA's mobile source emission factor model (currently MOBILE6.2) affords OBD testing the maximum credit available to any I/M test. This, in turn, means that what was previously an uncredited placeholder has now become the driving factor in determining how much or how little flexibility is reflected in the I/M performance standards.

EPA is proposing MY 2001 and newer as the model year coverage for the OBD test in the 8-hour I/M performance standards because that is the level of coverage that has been found (through modeling) to afford 8-hour areas newly subject to I/M the same level of flexibility included in the existing I/M regulations and currently available to I/M programs required under the 1-hour standard. MY 2001 was chosen to ensure that new and existing programs are held to comparable standards. EPA invites commenters interested in proposing alternative ranges of model year coverage to provide their recommendations, including an explanation addressing why the alternative is preferable to today's proposal.

8. How Much Flexibility Will States Have in Designing Their Newly Required, 8-Hour I/M Programs To Meet EPA's Proposed I/M Performance Standards Under the 8-Hour Ozone Standard?

Under EPA's proposal, areas newly subject to I/M under the 8-hour ozone standard will have approximately the same level of flexibility that currently exists for areas subject to I/M as a result of the 1-hour standard. That said, designing a new I/M program will nevertheless involve facing different opportunities and/or challenges than were faced in the mid-1990's when many of today's current programs were designed. This is because the vehicle fleet is not static; as time passes—and standards and requirements change—the relative proportion of old to new technology vehicles is constantly changing, with the percent and number of older technology vehicles shrinking as newer technology vehicles begin to dominate the in-use fleet.

In the mid-1990's, fleet turnover was not much of an issue when it came to designing I/M programs because even though testing technology had evolved considerably since the simple idle test, the new tests were, for the most part, downwardly compatible. An IM240 could be used to test a 1968 model year vehicle just as readily as it could test a 1993 model year vehicle. Such is no longer the case with the OBD test, which, while inexpensive, accurate, easy, and effective, can only be performed on OBD-equipped vehicles (*i.e.*, light-duty vehicles and trucks, MY 1996 and newer). Given the substantial difference in capital investment involved in traditional tailpipe testing

(and especially dynamometer-based testing like the IM240 and ASM) versus that associated with the OBD test, areas newly required to implement I/M under the 8-hour standard will face a challenge not faced by I/M programs which began testing in the 1990's or earlier—namely, how to take full advantage of the evolving nature of the in-use fleet. As suggested earlier, one important characteristic of that evolving in-use fleet is the rate at which OBD-equipped vehicles are becoming an increasing proportion of any fleet while non-OBD-equipped vehicles play an ever shrinking role, in terms of absolute numbers as well as overall contribution to an area's VMT and the local mobile source emission inventory. This trend toward an OBD majority in-use fleet will only become more pronounced as time goes on, making the prospect of an I/M program that relies exclusively (or nearly exclusively) on OBD testing an attractive alternative to traditional, tailpipe-based testing.

Based upon the time period associated with implementing the 8-hour ozone standard and the national default rate of fleet turnover from non-OBD-equipped to OBD-equipped vehicles, EPA believes that both of today's proposed basic and enhanced I/M performance standards can be met by a state program that exempts model year 1995 and older vehicles from testing and only performs the OBD and gas cap test on MY 1996 and newer, OBD-equipped vehicles. The degree to which the proposed standards also allow for other forms of flexibility (such as allowing newer model year exemptions, and/or permitting the testing of vehicles biennially as opposed to annually) will depend largely upon an area's locally variable parameters, such as local fleet age and VMT distributions. Whether adopting such a program will meet the area's other Clean Air Act goals, however, will vary on a case-by-case basis. Item 10 of this subsection will discuss some of the criteria states should consider as they begin the process of developing their newly required I/M programs (as well as revamping existing programs to capitalize on evolving vehicle and vehicle testing technology).

9. Is EPA Barring 8-Hour Ozone Non-Attainment Areas Newly Required To Adopt I/M From Performing Tailpipe Testing?

No. EPA does not have the authority to prohibit I/M programs from tailpipe testing, nor would it be appropriate to do so. Instead, EPA is merely providing the flexibility needed to allow areas to exempt vehicles from tailpipe testing in favor of OBD testing on vehicles MY 1996 and newer, if a state so desires. However, EPA does recommend that 8-hour non-attainment areas newly required to implement I/M programs look closely at their local fleet characteristics such as age distributions, the fraction of local VMT attributable to MY 1995 and older vehicles, and the rate of fleet turn-over from non-OBD-equipped vehicles to OBD-equipped vehicles to assess the financial viability of various program designs before deciding on an appropriate program design. For example, based upon the number of such vehicles in the local fleet, can the cost of starting up and running a dynamometer-based testing network dedicated to MY 1995 and older vehicles be recouped without charging an exorbitant per-vehicle test fee or subsidizing the program through some alternative funding mechanism, such as an across-the-board increase in vehicle registration fees?

10. What Are Some of the Factors That Should Be Considered as Areas New to I/M Begin Designing Their Vehicle Inspection Programs in Response to the 8-Hour Ozone Standard?

As newly required (as well as existing) I/M programs look at ways to optimize those programs, it is appropriate to consider what programmatic and financial efficiencies and other improvements might be feasible. To facilitate this process, in 2002, EPA (in consultation with the states and other stakeholders) developed a list of questions and/or issues states should consider as they make choices about their existing and/or future I/M programs, entitled "Considerations for State I/M Program Optimization," [2] an abbreviated version of which is provided in the list of criteria below.

In providing this list, it is not EPA's intention to advocate for one I/M program type or element versus another, or to make formal recommendations. The history of I/M has clearly shown that what is appropriate for one area is not always appropriate for another. The following list is therefore intended merely to outline the various factors that should be taken into consideration when designing (or redesigning) the optimal I/M program for a given area. It should be used to supplement whatever I/M optimization efforts may already be underway, to raise issues that may have been overlooked, and to otherwise ensure that the optimization process is as comprehensive as possible and does not lead to unintended consequences.

Although today's proposal focuses on those 8-hour ozone non-attainment areas brand-new to I/M, the list of criteria provided below includes considerations that may be relevant to both new and/or existing I/M programs.[3] States should consult with their EPA Regional offices early in the I/M optimization process, and such efforts should be conducted taking the following factors into consideration:

- What portion of the state's emissions inventories for ozone, CO, and/or air toxics do on-road mobile sources constitute?
- What portion of the state's attainment, maintenance, and/or Rate-of-Progress (ROP) plans does and/or will I/M constitute?
- How important will I/M reductions be in demonstrating attainment and transportation conformity?
- Are there additional emission reduction benefits an area may need from an I/M program in addition to what is needed to meet the performance standard?
- Alternatively, how much credit can an area afford to lose without negatively affecting these plans?
- If an area with an existing I/M program is redesignated to attainment, what changes (if any) can be made without backsliding or interfering with any other CAA requirement?
- Even if an existing I/M program plays a relatively modest role in a state's 1-hour ozone standard attainment strategy, what role will it play in attaining the 8-hour ozone standard?
- Is the I/M program useful in meeting an area's goal for reducing air toxics? Will an OBD-only program meet this goal?
- What are the legal and/or contractual constraints associated with optimizing the I/M program?
- What number of MYs should be exempted to strike the right balance among competing factors such as the likelihood of failure, equity to vehicle owners of exposure to program requirements, and the cost of testing clean vehicles?
- What is the proportion of pre- to post-MY 1996 vehicles in the local fleet? When will post-MY 1996 vehicles predominate?
- How do the pre- and post-MY 1996 fleets compare in terms of the VMT attributed to each? When will MY 1996

[2] A copy of the full document from which these criteria are drawn is located in the docket for this action (Docket # OAR–2004–0095).

[3] It should be noted that any revision to an existing I/M program which is part of a previously approved SIP will require the submission and approval of a SIP revision prior to those revisions going into effect.

and newer vehicles make up the majority of the area's VMT?

• What proportion of the local mobile source emission inventory is attributable to pre- vs. post-MY 1996 vehicles?

• What are the projected failure rates for the pre- vs. post-MY 1996 fleets?

• If an area already has an I/M program, how recent was the last change to the program? Will changing the program again undermine public confidence in the program? Will voluntarily changing the program make it vulnerable to pressure to incorporate additional, unwelcome changes?

• Will changing an existing program require changes to the program's legal authority?

B. Amendments to Program Evaluation Requirements

1. What Is the Program Evaluation Requirement?

Section 182(c)(3)(C) of the 1990 CAA requires that each state subject to enhanced I/M shall "biennially prepare a report to the Administrator which assesses the emission reductions achieved by the program required under this paragraph based upon data collected during the inspection and repair of vehicles. The methods used to assess the emission reductions shall be those established by the Administrator." Section 51.353 of EPA's current I/M rule (network type and program evaluation) provides additional detail on how this requirement is to be met, including minimum sampling requirements and specific deadlines by which program evaluation testing must begin. Currently, section 51.353(c)(4) of the I/M rule specifies that the first round of program evaluation testing is to begin "no later than November 30, 1998."

2. What Regulatory Change Does EPA Propose?

EPA proposes to revise section 51.353(c)(4) of the I/M rule which currently indicates that the first round of program evaluation testing is to begin "no later than November 30, 1998" to "no later than 1 year after program start up." This 12 month period prior to the beginning of program evaluation testing is comparable to that permitted under the original I/M program evaluation requirements and is intended to allow new programs under the 8-hour ozone standard the opportunity to resolve the sorts of start-up problems typical of such programs in their first few months of implementation.

C. Amendments to the Basic I/M Waiver Requirements

1. What Are the Basic I/M Waiver Requirements?

Neither the 1990 CAA nor the existing I/M rule require (or prohibit) basic I/M programs to grant waivers from the program's repair requirements once a minimum dollar limit has been spent toward repairs relevant to the cause of failure. To help ensure that the issuance of waivers did not become excessive in the basic I/M programs that chose to allow them, EPA established specific repair expenditure levels that had to be met prior to a waiver's being granted in a basic I/M program as part of its original 1992 I/M rule. Specifically, for pre-1981 model year vehicles, a minimum of $75 has to be spent on relevant repairs while for 1981 and newer vehicles, the minimum expenditure level is $200. Because several basic I/M programs were already operating at the time the 1992 rule was promulgated—some complying with the waiver allowances provided in the rule, some not—EPA also established a deadline by which the new requirements were to be met (*i.e.*, "no later than January 1, 1998").

2. What Regulatory Change Does EPA Propose?

EPA proposes to amend section 51.360(a)(6) which sets the deadline for establishing waiver limits for those basic I/M programs choosing to allow waivers (currently, "no later than January 1, 1998") to read "January 1, 1998, or coincident with program start up, whichever is later." Since all existing programs should already be meeting these requirements and requiring spending limits prior to waiver will impose no additional program implementation delay in areas newly starting programs, EPA sees no reason to delay implementation of these requirements for either new or existing programs.

D. Amendments to Update SIP Submission Deadlines

1. What Are the Current SIP Submission Deadlines?

Under the CAA as amended in 1990, areas required to implement basic I/M programs were to submit SIP revisions for such programs "immediately after the date of enactment" of the 1990 Act. The basic I/M programs submitted under this provision were to be based upon pre-existing EPA I/M guidance that was in effect immediately before passage of the 1990 Act. As a separate (but related) matter, the 1990 CAA required EPA to revise this pre-1990 I/M guidance within 12 months of enactment. Enhanced I/M SIPs were required to be submitted 1 year after EPA was to have published its revised I/M guidance (*i.e.*, two years after enactment). Previously submitted basic I/M SIPs were required to be revised to incorporate EPA's revised I/M guidance.

The Act did not define what was meant by the term "immediately," nor did it attempt to explain how such a requirement might be met, especially for areas new to the I/M requirement and therefore lacking the necessary legal authority and implementing regulations. To provide basic I/M program areas a reasonable amount of time in which to prepare and submit the required basic I/M SIP, EPA proposed to use its authority to grant conditional approvals under section 110(k)(4) of the 1990 CAA to give these areas up to 1 year after conditional approval of a so-called "committal SIP".[4] EPA was challenged on its attempt to extend I/M SIP deadlines through the SIP approval process and although the court found that 110(k)(4) could not be used to effect such extensions, in its decision, the court identified the states' need for further guidance from EPA in the case of enhanced I/M programs as the deciding factor regarding whether or not a given I/M deadline extension was justified. See *Natural Resources Defense Council, Inc.* v. *EPA, et al.*, 22 F.3d 1125 (D.C. Cir. 1994). Because existing pre-1990 I/M policy was adequate for a state to develop and submit a basic I/M SIP, the court ruled that EPA's attempt to extend the basic I/M SIP submittal deadline was unjustified in that case. In the case of enhanced I/M programs, however, existing pre-1990 I/M policy was not adequate and enhanced I/M areas could not proceed with SIP development until after EPA published its revised guidance. In this latter case, therefore, the court ruled that although 110(k)(4) should not have been used, extending the SIP submittal deadline for enhanced I/M SIPs was justified, given that EPA's guidance was not published until 10 days before those SIPs were due.

Unlike 1990 when basic and enhanced I/M programs differed with regard to the availability of adequate existing EPA guidance from which to proceed with SIP development, under the 8-hour ozone standard newly required I/M programs of either variety are equally dependent upon EPA's

[4] A "committal SIP" consisted of a commitment from a state's governor or his/her designee to meet a list of milestones leading to the submittal of a full SIP within 1 year.

revising its existing I/M regulations. As previously discussed, many of the timing-related requirements of the I/M rule are no longer relevant within the context of the 8-hour ozone standard and must therefore be revised before states can proceed with I/M SIP development. For example, if we were to apply the existing basic I/M performance standard (as written) to a newly required, basic I/M program area under the new standards, that area would be required to demonstrate that back in 1996 (when it had no I/M program in place) it was nevertheless achieving the same or better emission reductions from that non-existent program as it would have achieved if the performance standard program had been in place. Clearly, this would be an absurd requirement, and that is why EPA is proposing to adopt a more rational approach, as discussed below. Thus EPA believes that consistent with the NRDC case, it is appropriate to interpret the I/M SIP submittal requirement of the CAA to allow areas subject to that requirement to have a reasonable time after promulgation of EPA's revised I/M rulemaking to adopt and submit such programs. EPA concludes that any other interpretation of the statute would produce absurd results.

2. What Regulatory Change Does EPA Propose?

Because areas newly required to adopt either basic or enhanced I/M programs under the 8-hour ozone standard are unable to produce a complete and approvable SIP until EPA has revised its existing I/M regulations, EPA proposes to update section 51.372 (state implementation plan submissions) to clarify that such areas are required to submit their I/M SIPs, whether basic or enhanced, within 1 year after the effective date of EPA's taking final action on the I/M rule revisions proposed here today. For areas newly designated as non-attainment under the 8-hour ozone standard after finalization of this proposal, we propose that those areas submit their I/M SIPs within 1 year of the effective date of their designation and classification. Based upon its experience with the submission of I/M SIPs in response to the 1990 Act's requirements for 1-hour I/M programs, EPA deems this to be a reasonable amount of time in which to develop and submit an I/M SIP, given the states' need to secure legal authority, develop implementing regulations, provide notice-and-comment opportunity, etc. As noted by EPA both in its general preamble published after the 1990 amendments to the Act and in the 1992 I/M rules, 57 FR 13498, 13517 and 57 FR 52950, 52970, respectively, EPA has long believed that one year is an appropriate time period for states to obtain necessary legislative authority to adopt and submit an I/M program.

E. Amendments To Update Implementation Deadlines

1. What Are the Current Implementation Deadlines?

Under section 51.373 of the 1992 I/M rule, non-attainment areas required to begin (or upgrade) basic I/M programs as a result of their classification under the 1990 CAA were given until January 1994 to begin implementing if a decentralized program was adopted, or July 1994, if a centralized program was adopted. Areas newly required to adopt basic I/M as a result of being designated and classified after promulgation of the 1992 I/M rule were required to begin implementation one year after obtaining legal authority (if a decentralized program was adopted) or two years after obtaining legal authority (if a centralized program was adopted). Enhanced I/M program areas required as a result of being designated and classified under the 1990 CAA were allowed to phase-in implementation of the enhanced I/M program between January 1, 1995 and January 1, 1996, provided at least 30% of the I/M vehicle population was subject to the full requirements of the program as of January 1, 1995. Areas newly required to adopt enhanced I/M as a result of being designated and classified after promulgation of the 1992 I/M rule were required to begin implementation two years after obtaining legal authority. Separately, section 51.373 of the I/M rule established a range of deadline options for implementation of the OBD checks required of all I/M programs under the 1990 CAA. While the deadline for requiring repairs based upon the OBD test varied depending upon the phase-in option chosen by the program, all I/M programs required as a result of being designated and classified under the 1-hour ozone standard were required to begin some form of OBD testing no later than January 1, 2003.

2. What Regulatory Change Does EPA Propose?

EPA proposes to revise section 51.373 (implementation deadlines) to replace the current fixed implementation deadlines for I/M programs required as a result of designation and classification after 1992 with a new, relative implementation deadline for areas newly subject to I/M as a result of being designated non-attainment under the 8-hour ozone standard and classified as moderate non-attainment or higher. Specifically, EPA proposes that all I/M programs newly required based upon their designation and classification under the 8-hour ozone standard—whether basic or enhanced—begin full implementation of the required program within 4 years after the effective date of designation and classification under the 8-hour ozone standard. EPA believes that the proposed implementation deadline is reasonable and necessary to allow for sufficient time to construct and start-up a program after program adoption following EPA promulgation of final guidance, as well as to provide a minimum of one full, biennial test cycle prior to the first milestone date for newly required I/M programs under the 8-hour ozone standard (*i.e.*, the attainment deadline for moderate 8-hour ozone non-attainment areas, which is 6 years after the effective date of designation and classification, as described below).

Additionally, EPA proposes to clarify that the deadline for beginning pass-fail OBD checks for areas newly required to perform I/M testing as a result of being designated and classified under the 8-hour ozone standard is coincident with implementation of all other program elements, *i.e.*, within 4 years after the effective date of designation and classification. Since current model year vehicles are all OBD equipped and viable OBD test methods have been available for a number of years EPA sees no reason to delay start up of OBD testing beyond the start date of the program as a whole.

V. Discussion of Major Issues

A. Impact on Existing I/M Programs

The proposed amendments to the I/M rule do not change the requirements that currently apply to existing I/M programs required as a result of being classified under the 1-hour ozone standard. The proposed amendments are directed specifically at those areas that will be newly required to implement I/M as a result of being designated and classified under the 8-hour ozone standard. The intention of these proposed amendments is to ensure that these new program areas are afforded generally the same level of flexibility in program design and implementation as is currently available to existing, 1-hour I/M programs. Readers interested in learning the conditions under which an existing 1-hour I/M program must continue operation under the 8-hour standard should consult the anti-backsliding provisions of the April 30, 2004 final rulemaking which

established several key requirements for implementing the 8-hour ozone standard (69 FR 23931).[5]

B. Impact on Future I/M Programs

The proposed amendments are intended specifically for those areas which currently do not perform I/M testing, but will be required to do so as a result of being designated and classified under the 8-hour ozone standard. Should they be made final, these amendments will allow future I/M program areas the flexibility necessary to design from the ground up reasonable, cost effective, motorist-friendly I/M programs that take full advantage of advances in vehicle and vehicle-testing technology, as well as fleet turnover. The level of flexibility proposed to be provided for these new program areas is comparable to the level of flexibility already available to existing 1-hour I/M programs.

VI. Economic Costs and Benefits

Today's proposed revisions provide states with an incentive to increase the cost effectiveness and efficiency of future I/M programs. The proposal, if finalized, will lessen rather than increase the potential economic burden on states of implementing such programs. Furthermore, states are under no obligation, legal or otherwise, to modify existing plans meeting the previously applicable requirements as a result of today's proposal.

VII. Public Participation

EPA desires full public participation in arriving at final decisions in this rulemaking action. EPA solicits comments on all aspects of this proposal from all parties. Wherever applicable, full supporting data and detailed analysis should also be submitted to allow EPA to make maximum use of the comments. All comments should be directed to the Air Docket, Docket No. OAR–2004–0095.

VIII. Administrative Requirement

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines significant "regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or otherwise adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

There are no additional information requirements in this proposed rule beyond those already imposed by the existing I/M rule which require the approval of the Office of Management and Budget under the Paperwork Reduction Act 44 U.S.C. 3501 *et seq.*

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this proposal will not have a significant economic impact on a substantial number of small entities and, therefore, is not subject to the requirement of a Regulatory Impact Analysis. A small entity may include a small government entity or jurisdiction. This certification is based on the fact that the I/M areas impacted by the proposed rulemaking do not meet the definition of a small government jurisdiction, that is, "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." The basic and enhanced I/M requirements only apply to urbanized areas with population in excess of 200,000 depending on location. Furthermore, the impact created by the proposed action does not increase the preexisting burden of the existing rules which this proposal seeks to amend.

D. Unfunded Mandates Reform Act

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. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule itself does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The primary purpose of this proposed rule is to amend the existing federal I/M regulations to provide flexibility in how the regulations cover areas newly designated non-attainment under the 8-hour ozone ambient air quality standards. Clean Air Act sections 182(b)(4) and 182(c)(3) require the applicability of I/M to such areas. Thus, although this rule explains how I/M

[5] Additional guidance on anti-backsliding under the 8-hour standard and how it applies to I/M programs can be found in the May 12, 2004 policy memo signed by Tom Helms, Ozone Policy and Strategies Group, and Leila Cook, State Measures and Conformity Group, entitled "1-Hour Ozone Maintenance Plans Containing Basic I/M Programs," a copy of which is contained in the docket for this proposed rulemaking.

should be conducted, it merely implements already established law that imposes I/M requirements and does not itself impose requirements that may result in expenditures of $100 million or more in any year. The intention of this proposal is to improve the I/M regulation by implementing the rule in a more practicable manner and/or to clarify I/M requirements that already exist. None of these proposed amendments impose any additional burdens beyond that already imposed by applicable federal law; thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA and EPA has not prepared a statement with respect to budgetary impacts.

E. Executive Order 13132: Federalism

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

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This proposed rule, that amends a regulation that is required by statute, will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Clean Air Act requires I/M to apply in certain non-attainment areas as a matter of law, and this proposed rule merely provides areas newly designated as non-attainment under the 8-hour ozone standard additional flexibility with regard to meeting their existing statutory obligations.

In summary, this proposed rule is required primarily by the statutory requirements imposed by the Clean Air Act, and the proposed rule by itself will not have a substantial impact on States. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175: "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000) requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's amendments to the I/M rule do not significantly or uniquely affect the communities of Indian tribal governments. Specifically, this proposed rule would incorporate into the I/M rule flexible provisions addressing newly designated 8-hour ozone non-attainment areas subject to I/M requirements under the Act, and these provisions would not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Accordingly, the requirements of Executive Order 13175 are not applicable to this proposal.

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

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866 and does not involve the consideration of relative environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, "Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355; May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy. Further, we have determined that this proposed rule is not likely to have any significant adverse effects on energy supply.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and

business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, the use of voluntary consensus standards does not apply to this proposed rule.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Transportation.

Dated: December 22, 2004.

Michael O. Leavitt,

Administrator.

For the reasons set out in the preamble, part 51 of chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

2. Section 51.351 is proposed to be amended by revising paragraph (c) and adding a new paragraph (i) to read as follows:

§ 51.351 Enhanced I/M performance standard.

* * * * *

(c) *On-board diagnostics (OBD).* For those areas required to implement an enhanced I/M program prior to the effective date of designation and classifications under the 8-hour ozone standard, the performance standard shall include inspection of all model year 1996 and later light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357, and assuming a start date of 2002 for such testing. For areas required to implement enhanced I/M as a result of designation and classification under the 8-hour ozone standard, the performance standard defined in paragraph (i) of this section shall include inspection of all model year 2001 and later light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357, and assuming a start date of 4 years after the effective date of designation and classification under the 8-hour ozone standard.

* * * * *

(i) *Enhanced performance standard for areas designated and classified under the 8-hour ozone standard.* Areas required to implement an enhanced I/M program as a result of being designated and classified under the 8-hour ozone standard, must meet or exceed the HC and NO_X emission reductions achieved by the model program defined below:

(1) *Network type.* Centralized testing.

(2) *Start date.* 4 years after the effective date of designation and classification under the 8-hour ozone standard.

(3) *Test frequency.* Annual testing.

(4) *Model year coverage.* Testing of 1968 and newer vehicles.

(5) *Vehicle type coverage.* Light duty vehicles, and light duty trucks, rated up to 8,500 pounds GVWR.

(6) *Emission test type.* Idle testing (as described in appendix B of subpart S) for 1968–2000 vehicles; onboard diagnostic checks on 2001 and newer vehicles.

(7) *Emission standards.* Those specified in 40 CFR part 85, subpart W.

(8) *Emission control device inspections.* Visual inspection of the positive crankcase ventilation valve on all 1968 through 1971 model year vehicles, inclusive, and of the exhaust gas recirculation valve on all 1972 and newer model year vehicles.

(9) *Evaporative system function checks.* None, with the exception of those performed by the OBD system on vehicles so-equipped and only for model year 2001 and newer vehicles.

(10) *Stringency.* A 20% emission test failure rate among pre-1981 model year vehicles.

(11) *Waiver rate.* A 3% waiver rate, as a percentage of failed vehicles.

(12) *Compliance rate.* A 96% compliance rate.

(13) *Evaluation date.* Enhanced I/M program areas subject to the provisions of this paragraph (i) shall be shown to obtain the same or lower emission levels for HC and NO_X as the model program described in this paragraph assuming an evaluation date set 6 years after the effective date of designation and classification under the 8-hour ozone standard (rounded to the nearest July) to within +/− 0.02 gpm. Subject programs shall demonstrate through modeling the ability to maintain this percent level of emission reduction (or better) through their attainment date for the 8-hour ozone standard, also rounded to the nearest July.

* * * * *

3. Section 51.352 is proposed to be amended by revising paragraph (c) and adding a new paragraph (e) to read as follows:

§ 51.352 Basic I/M performance standard.

* * * * *

(c) *On-board diagnostics (OBD).* For those areas required to implement a basic I/M program prior to the effective date of designation and classification under the 8-hour ozone standard, the performance standard shall include inspection of all model year 1996 and later light-duty vehicles equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357, and assuming a start date of 2002 for such testing. For areas required to implement basic I/M as a result of designation and classification under the 8-hour ozone standard, the performance standard defined in paragraph (e) of this section shall include inspection of all model year 2001 and later light-duty vehicles equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357, and assuming a start date of 4 years after the effective date of designation and classification under the 8-hour ozone standard.

* * * * *

(e) *Basic performance standard for areas designated non-attainment for the 8-hour ozone standard.* Areas required to implement a basic I/M program as a result of being designated and classified under the 8-hour ozone standard, must meet or exceed the emission reductions achieved by the model program defined below for the applicable ozone precursor(s):

(1) *Network type.* Centralized testing.

(2) *Start date.* 4 years after the effective date of designation and classification under the 8-hour ozone standard.

(3) *Test frequency.* Annual testing.

(4) *Model year coverage.* Testing of 1968 and newer vehicles.

(5) *Vehicle type coverage.* Light duty vehicles.

(6) *Emission test type.* Idle testing (as described in appendix B of subpart S) for 1968–2000 vehicles; onboard diagnostic checks on 2001 and newer vehicles.

(7) *Emission standards.* Those specified in 40 CFR part 85, subpart W.

(8) *Emission control device inspections.* None.

(9) *Evaporative system function checks.* None, with the exception of those performed by the OBD system on vehicles so-equipped and only for model year 2001 and newer vehicles.

(10) *Stringency.* A 20% emission test failure rate among pre-1981 model year vehicles.

(11) *Waiver rate.* A 0% waiver rate, as a percentage of failed vehicles.

(12) *Compliance rate.* A 100% compliance rate.

(13) *Evaluation date.* Basic I/M program areas subject to the provisions of this paragraph (e) shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by an evaluation date set 6 years after the effective date of designation and classification under the 8-hour ozone standard (rounded to the nearest July) for the applicable ozone precursor(s).

* * * * *

4. Section 51.353 is proposed to be amended by revising paragraph (c)(4) to read as follows:

§ 51.353 Network type and program evaluation.

* * * * *

(c) * * *

(4) The program evaluation test data shall be submitted to EPA and shall be capable of providing accurate information about the overall effectiveness of an I/M program, such evaluation to begin no later than 1 year after program start-up.

* * * * *

5. Section 51.360 is proposed to be amended by revising paragraph (a)(6) to read as follows:

§ 51.360 Waivers and compliance via diagnostic inspection.

* * * * *

(a) * * *

(6) In basic programs, a minimum of $75 for pre-81 vehicles and $200 for 1981 and newer vehicles shall be spent in order to qualify for a waiver. These model year cutoffs and the associated dollar limits shall be in full effect by January 1, 1998, or coincident with program start-up, whichever is later. Prior to January 1, 1998, States may adopt any minimum expenditure commensurate with the waiver rate committed to for the purposes of modeling compliance with the basic I/M performance standard.

* * * * *

6. Section 51.372 is proposed to be amended by removing and reserving paragraph (b)(1) and (b)(3) and by revising paragraph (b)(2) to read as follows:

§ 51.372 State implementation plan submissions.

* * * * *

(b) * * *

(2) A SIP revision required as a result of designation for a National Ambient Air Quality Standard in place prior to implementation of the 8-hour ozone standard and including all necessary legal authority and the items specified in paragraphs (a)(1) through (a)(8) of this section, shall be submitted no later than November 15, 1993. For non-attainment areas designated and classified under the 8-hour ozone standard, a SIP revision including all necessary legal authority and the items specified in paragraphs (a)(1) through (a)(8) of this section, shall be submitted by [insert date 12 months after the effective date of EPA's final action on this proposal] or 1 year after the effective date of designation and classification under the 8-hour ozone National Ambient Air Quality Standard, whichever is later.

* * * * *

7. Section 51.373 is proposed to be amended by removing and reserving paragraph (e), by revising paragraphs (b), and (d), and by adding a new paragraph (h), all to read as follows:

§ 51.373 Implementation deadlines.

* * * * *

(b) For areas newly required to implement basic I/M as a result of designation under the 8-hour ozone standard, the required program shall be fully implemented no later than 4 years after the effective date of designation and classification under the 8-hour ozone standard.

* * * * *

(d) For areas newly required to implement enhanced I/M as a result of designation under the 8-hour ozone standard, the required program shall be fully implemented no later than 4 years after the effective date of designation and classification under the 8-hour ozone standard.

* * * * *

(h) For areas newly required to implement either a basic or enhanced I/M program as a result of being designated and classified under the 8-hour ozone standard, such programs shall begin OBD testing on subject OBD-equipped vehicles coincident with program start-up.

* * * * *

[FR Doc. 05–177 Filed 1–5–05; 8:45 am]

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H.J. Res. 102/P.L. 108–479

Recognizing the 60th anniversary of the Battle of Peleliu and the end of Imperial Japanese control of Palau during World War II and urging the Secretary of the Interior to work to protect the historic sites of the Peleliu Battlefield National Historic Landmark and to establish commemorative programs honoring the Americans who fought there. (Dec. 21, 2004; 118 Stat. 3905)

H.R. 2457/P.L. 108–480

To authorize funds for an educational center for the Castillo de San Marcos National Monument, and for other purposes. (Dec. 23, 2004; 118 Stat. 3907)

H.R. 2619/P.L. 108–481

Kilauea Point National Wildlife Refuge Expansion Act of 2004 (Dec. 23, 2004; 118 Stat. 3910)

H.R. 3632/P.L. 108–482

Intellectual Property Protection and Courts Amendments Act of 2004 (Dec. 23, 2004; 118 Stat. 3912)

H.R. 3785/P.L. 108–483

To authorize the exchange of certain land in Everglades National Park. (Dec. 23, 2004; 118 Stat. 3919)

H.R. 3818/P.L. 108–484

Microenterprise Results and Accountability Act of 2004 (Dec. 23, 2004; 118 Stat. 3922)

H.R. 4027/P.L. 108–485

To authorize the Secretary of Commerce to make available to the University of Miami property under the administrative jurisdiction of the National Oceanic and Atmospheric Administration on Virginia Key, Florida, for use by the University for a Marine Life Science Center. (Dec. 23, 2004; 118 Stat. 3932)

H.R. 4116/P.L. 108–486

American Bald Eagle Recovery and National Emblem Commemorative Coin Act (Dec. 23, 2004; 118 Stat. 3934)

H.R. 4548/P.L. 108–487

To authorize appropriations for fiscal year 2005 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes. (Dec. 23, 2004; 118 Stat. 3939)

H.R. 4569/P.L. 108–488

To provide for the development of a national plan for the control and management of Sudden Oak Death, a tree disease caused by the fungus-like pathogen Phytophthora ramorum, and for other purposes. (Dec. 23, 2004; 118 Stat. 3964)

H.R. 4657/P.L. 108–489

District of Columbia Retirement Protection Improvement Act of 2004 (Dec. 23, 2004; 118 Stat. 3966)

H.R. 5204/P.L. 108–490

To amend section 340E of the Public Health Service Act (relating to children's hospitals) to modify provisions regarding the determination of the amount of payments for indirect expenses associated with operating approved graduate medical residency training programs. (Dec. 23, 2004; 118 Stat. 3972)

H.R. 5363/P.L. 108–491

To authorize salary adjustments for Justices and judges of the United States for fiscal year 2005. (Dec. 23, 2004; 118 Stat. 3973)

H.R. 5382/P.L. 108–492

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H.R. 5394/P.L. 108–493

To amend the Internal Revenue Code of 1986 to modify the taxation of arrow components. (Dec. 23, 2004; 118 Stat. 3984)

H.R. 5419/P.L. 108–494

To amend the National Telecommunications and Information Administration Organization Act to facilitate the reallocation of spectrum from governmental to commercial users; to improve, enhance, and promote the Nation's homeland security, public safety, and citizen activated emergency response capabilities through the use of enhanced 911 services, to further upgrade Public Safety Answering Point capabilities and related functions in receiving E-911 calls, and to support in the construction and operation of a ubiquitous and reliable citizen activated system; and to provide that funds received as universal service contributions under section 254 of the Communications Act of 1934 and the universal service support programs established pursuant thereto are not subject to certain provisions of title 31, United States Code, commonly known as the Antideficiency Act, for a period of time. (Dec. 23, 2004; 118 Stat. 3986)

S. 1301/P.L. 108–495

Video Voyeurism Prevention Act of 2004 (Dec. 23, 2004; 118 Stat. 3999)

S. 2657/P.L. 108–496

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S. 2781/P.L. 108–497

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S. 2856/P.L. 108–498

To limit the transfer of certain Commodity Credit Corporation funds between conservation programs for technical assistance for the programs. (Dec. 23, 2004; 118 Stat. 4020)

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