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Presidential Documents

Title 3—

The President

Executive Order 13340 of May 18, 2004

Establishment of Great Lakes Interagency Task Force and Promotion of a Regional Collaboration of National Significance for the Great Lakes

By the authority vested in me as President by the Constitution and the laws of the United States of America, and to help establish a regional collaboration of national significance for the Great Lakes, it is hereby ordered as follows:

Section 1. *Policy.* The Great Lakes are a national treasure constituting the largest freshwater system in the world. The United States and Canada have made great progress addressing past and current environmental impacts to the Great Lakes ecology. The Federal Government is committed to making progress on the many significant challenges that remain. Along with numerous State, tribal, and local programs, over 140 Federal programs help fund and implement environmental restoration and management activities throughout the Great Lakes system. A number of intergovernmental bodies are providing leadership in the region to address environmental and resource management issues in the Great Lakes system. These activities would benefit substantially from more systematic collaboration and better integration of effort. It is the policy of the Federal Government to support local and regional efforts to address environmental challenges and to encourage local citizen and community stewardship. To this end, the Federal Government will partner with the Great Lakes States, tribal and local governments, communities, and other interests to establish a regional collaboration to address nationally significant environmental and natural resource issues involving the Great Lakes. It is the further policy of the Federal Government that its executive departments and agencies will ensure that their programs are funding effective, coordinated, and environmentally sound activities in the Great Lakes system.

Sec. 2. *Definitions.* For purposes of this order:

(a) "Great Lakes" means Lake Ontario, Lake Erie, Lake Huron (including Lake Saint Clair), Lake Michigan, and Lake Superior, and the connecting channels (Saint Marys River, Saint Clair River, Detroit River, Niagara River, and Saint Lawrence River to the Canadian Border).

(b) "Great Lakes system" means all the streams, rivers, lakes, and other bodies of water within the drainage basin of the Great Lakes.

Sec. 3. *Great Lakes Interagency Task Force.*

(a) Task Force Purpose. To further the policy described in section 1 of this order, there is established, within the Environmental Protection Agency for administrative purposes, the "Great Lakes Interagency Task Force" (Task Force) to:

(i) Help convene and establish a process for collaboration among the members of the Task Force and the members of the Working Group that is established in paragraph b(ii) of this section, with the Great Lakes States, local communities, tribes, regional bodies, and other interests in the Great Lakes region regarding policies, strategies, plans, programs, projects, activities, and priorities for the Great Lakes system.

(ii) Collaborate with Canada and its provinces and with bi-national bodies involved in the Great Lakes region regarding policies, strategies, projects, and priorities for the Great Lakes system.

(iii) Coordinate the development of consistent Federal policies, strategies, projects, and priorities for addressing the restoration and protection of the Great Lakes system and assisting in the appropriate management of the Great Lakes system.

(iv) Develop outcome-based goals for the Great Lakes system relying upon, among other things, existing data and science-based indicators of water quality and related environmental factors. These goals shall focus on outcomes such as cleaner water, sustainable fisheries, and biodiversity of the Great Lakes system and ensure that Federal policies, strategies, projects, and priorities support measurable results.

(v) Exchange information regarding policies, strategies, projects, and activities of the agencies represented on the Task Force related to the Great Lakes system.

(vi) Work to coordinate government action associated with the Great Lakes system.

(vii) Ensure coordinated Federal scientific and other research associated with the Great Lakes system.

(viii) Ensure coordinated government development and implementation of the Great Lakes portion of the Global Earth Observation System of Systems.

(ix) Provide assistance and support to agencies represented on the Task Force in their activities related to the Great Lakes system.

(x) Submit a report to the President by May 31, 2005, and thereafter as appropriate, that summarizes the activities of the Task Force and provides any recommendations that would, in the judgment of the Task Force, advance the policy set forth in section 1 of this order.

(b) Membership and Operation.

(i) The Task Force shall consist exclusively of the following officers of the United States: the Administrator of the Environmental Protection Agency (who shall chair the Task Force), the Secretary of State, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Homeland Security, the Secretary of the Army, and the Chairman of the Council on Environmental Quality. A member of the Task Force may designate, to perform the Task Force functions of the member, any person who is part of the member's department, agency, or office and who is either an officer of the United States appointed by the President or a full-time employee serving in a position with pay equal to or greater than the minimum rate payable for GS–15 of the General Schedule. The Task Force shall report to the President through the Chairman of the Council on Environmental Quality.

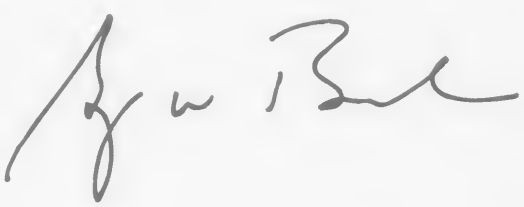
(ii) The Task Force shall establish a "Great Lakes Regional Working Group" (Working Group) composed of the appropriate regional administrator or director with programmatic responsibility for the Great Lakes system for each agency represented on the Task Force including: the Great Lakes National Program Office of the Environmental Protection Agency; the United States Fish and Wildlife Service, National Park Service, and United States Geological Survey within the Department of the Interior; the Natural Resources Conservation Service and the Forest Service of the Department of Agriculture; the National Oceanic and Atmospheric Administration of the Department of Commerce; the Department of Housing and Urban Development; the Department of Transportation; the Coast Guard within the Department of Homeland Security; and the Army Corps of Engineers within the Department of the Army. The Working Group will coordinate and make recommendations on how to implement the policies, strategies, projects, and priorities of the Task Force.

(c) Management Principles for Regional Collaboration of National Significance. To further the policy described in section 1, the Task Force shall recognize and apply key principles and foster conditions to ensure successful collaboration. To that end, the Environmental Protection Agency will coordinate the development of a set of principles of successful collaboration.

Sec. 4. *Great Lakes National Program Office.* The Great Lakes National Program Office of the Environmental Protection Agency shall assist the Task Force and the Working Group in the performance of their functions. The Great Lakes National Program Manager shall serve as chair of the Working Group.

Sec. 5. *Preservation of Authority.* Nothing in this order shall be construed to impair or otherwise affect the functions of the Director of the Office of Management and Budget relating to budget, administrative, regulatory, and legislative proposals. Nothing in this order shall be construed to affect the statutory authority or obligations of any Federal agency or any bi-national agreement with Canada.

Sec. 6. *Judicial Review.* This order is intended only to improve the internal management of the Federal Government and is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or in equity by a party against the United States, its departments, agencies, instrumentalities or entities, its officers or employees, or any other person.



THE WHITE HOUSE,
May 18, 2004.

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Rules and Regulations

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–SW–08–AD; Amendment 39–13637; AD 2004–10–07]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD) for Bell Helicopter Textron Canada (BHTC) Model 407 helicopters which requires a one-time replacement of certain oil cooler blower bearings. Also, the existing AD requires adding a limitation and caution to the rotorcraft flight manual (RFM) and inspecting, replacing, and lubricating certain bearings at specified intervals. This amendment adds certain segmented drive shaft bearings to the applicability and requires modifying the oil cooler blower inlet ducts and airflow shields and replacing certain bearings. Thereafter, this amendment requires removing the current temporary limitations and inserting revised limitations into the RFM. This amendment also requires revising the inspection and lubrication requirements. This amendment is prompted by several cases of bearing failure. The addition of certain segmented drive shaft bearings is due to two recent failures. The actions specified by this AD are intended to prevent failure of a bearing, loss of tail rotor drive, and a subsequent loss of directional control of the helicopter.

DATES: Effective June 4, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 4, 2004.

Comments for inclusion in the Rules Docket must be received on or before July 19, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2004–SW–08–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.*

The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; 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: Monica Merritt, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5115, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On February 10, 2000, the FAA issued AD 2000–02–12, Amendment 39–11579, (65 FR 8032, February 17, 2000), Docket No. 99–SW–79–AD, to require inspecting each oil cooler blower bearing for roughness and replacing any rough bearing before further flight. That AD was prompted by reports of bearing failure. Subsequently, the FAA received additional reports of bearing failures that may have been caused by engine exhaust gas ingestion. Therefore, the FAA issued superseding Emergency AD 2002–06–52 on March 15, 2002, to require replacing certain bearings, adding a limitation and caution to the RFM, and at specified intervals inspecting, lubricating, and replacing the bearings. That Emergency AD was published as a Final Rule; Request for Comments on April 17, 2002 (67 FR 18815). That action was prompted by several cases of bearing failures. The requirements of that AD are intended to prevent oil cooler blower bearing failure, loss of tail rotor drive, and a subsequent forced landing.

Since issuing that AD, the FAA has received more reports of bearing failure. Since the initial reports of in-flight oil cooler bearing failures, we have received recent reports of in-flight bearing failures occurring on the segmented tail rotor drive shaft. In response to the failures, the manufacturer has introduced improvements to the oil cooler inlet airflow. Also, the manufacturer prescribes replacing bearings, part number (P/N) 406–040–339–ALL, 407–340–339–101 and 407–340–339–103, with improved bearings, P/N 407–340–339–107. BHTC has revised its Alert Service Bulletins for the Model 407 helicopters as follows:

- Alert Service Bulletin (ASB) 407–02–54, Revision A, dated October 10, 2002, specifies installing the oil cooler blower inlet ducts and airflow shields for helicopters, serial number (S/N) 53000 through 53518 (excluding S/N 53108). Performing the specifications of this ASB is considered terminating action to ASB 407–02–49, Revision A, dated March 12, 2002.
- ASB 407–04–63, Revision A, dated March 3, 2004, specifies replacing bearings, P/N 407–340–339–101 and 407–340–339–103, with bearings, 407–340–339–107, and inspecting and lubricating the bearings. This ASB supersedes ASB 407–01–44, Revision C, dated September 23, 2003; ASB 407–01–47, Revision B, dated June 24, 2003; and TB 407–03–43, dated September 22, 2003.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on these helicopters models. Transport Canada advises that service history has shown high failure rates of bearings, P/N 407–340–339–101 and –103, at the oil cooler blower location. Service history also indicates bearings, P/N 407–340–339–101 and 407–340–339–103, located on the segmented tail rotor drive shaft have failed in flight. Transport Canada classified the ASBs as mandatory and issued AD CF–2002–18R2, dated November 5, 2003, and

superseding AD CF–2002–18R3, dated March 26, 2004, to ensure the continued airworthiness of these helicopters.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, 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.

This previously described unsafe condition is likely to exist or develop on other helicopters of the same type design. The actions must be done following the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability or structural integrity of the helicopter. Therefore, this AD supersedes AD 2002–06–52 to require the following actions:

- On or before May 31, 2004, or within 200 hours time-in-service (TIS), whichever occurs first, modify the oil cooler fairing inlet ducts and airflow shields. Also, replace the oil cooler blower and segmented shaft bearings, P/N 406–040–339–ALL, 407–340–339–101 and 407–340–339–103, with improved bearings, P/N 407–340–339–107, and replace the warning lubrication decal. Also, replace temporary revision (TR)–9, dated January 15, 2002, that contains limitations prohibiting operations with a sustained tailwind greater than 5 knots, in the RFM, with TR–10, dated July 25, 2002. TR–10 eliminates the limitation on the prohibition on tailwind operation in TR–9 because of the incorporation of oil cooler blower inlet ducts and bearing airflow shields.
- At specified intervals, inspect bearings, P/N 406–040–339–ALL, 407–340–339–101, –103, and –107. If the bearing is rough, a seal is torn, the expelled grease has turned black, or metal particles are visible in the expelled grease, before further flight, replace the affected bearings with airworthy bearings, P/N 407–340–339–107, along with the modifications to the oil cooler inlet airflow. At specified intervals, lubricate the bearings.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days. The FAA estimates that this AD will:

- Affect 281 helicopters of U.S. registry;
- Take 50 work hours to modify the oil cooler fairing inlet ducts and to install the shields and 6.5 work hours to replace the bearings at an average labor rate of $65 per work hour; and
- Cost $6,500 for the 25-hour inspection and lubrication, assuming 100 helicopters are affected and must be inspected and lubricated once and it takes approximately ½ work hour for each lubrication and ½ work hour for each inspection and the average labor rate is $65 per work hour.
- Cost $3,419 for parts.

Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $1,999,212 to modify the entire fleet and assuming that the 100-hour repetitive inspections add no additional cost.

The cost impact figure listed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD. However, numerous operators have previously accomplished the intent of this AD; therefore, the cost impact of the AD may be reduced accordingly.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2004–SW–08–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, 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 removing Amendment 39–12711 (67 FR 18815, April 17, 2002), and by adding a new airworthiness directive (AD), to read as follows:

2004–10–07 Bell Helicopter Textron Canada: Amendment 39–13637. Docket No. 2004–SW–08–AD. Supersedes AD 2002–06–52, Amendment 39–12711, Docket No. 2002–SW–08–AD.

Applicability: Model 407 helicopters, with bearing, part number (P/N) 406–040–339–ALL, 407–340–339–101, 407–340–339–103, or 407–340–339–107 installed on the oil cooler blower bearing assembly or segmented tail rotor drive shaft assembly, certificated in any category.

Compliance: Required as indicated.

(a) Until the oil cooler inlet airflow improvements as required by paragraph (c)(1) of this AD have been installed, before further flight, unless accomplished previously, and thereafter, at intervals not to exceed 25 hours time-in-service (TIS):

(1) Inspect each oil cooler blower bearing and each segmented drive shaft bearing, P/N 406–040–339–ALL, 407–340–339–101, and 407–340–339–103, by following the Accomplishment Instructions, Part IV, paragraph 2.a. through 2.g., of Bell Helicopter Textron Alert Service Bulletin (ASB) 407–04–63, Revision A, dated March 3, 2004 (ASB 407–04–63). If a bearing is rough, a seal is torn, the expelled grease has turned black, or metal particles are visible in the expelled grease, before further flight:

(i) Replace with an airworthy bearing, P/N 407–340–339–107, both oil cooler blower bearings and each affected segmented drive shaft bearing and perform an operational test, and

(ii) Install the oil cooler inlet airflow improvements as required by paragraph (c) of this AD.

(2) Lubricate each bearing by following the Accomplishment Instructions, Part V, paragraph 2. of ASB 407–04–63.

(b) For helicopters that have installed the oil cooler inlet airflow improvements as required by paragraph (c) of this AD, before further flight, unless accomplished previously, and thereafter at intervals not to exceed 100 hours TIS:

(1) Inspect each oil cooler blower bearing and each segmented drive shaft bearing, P/N 407–340–339–101 and 407–340–339–107, by following the Accomplishment Instructions, Part IV, paragraph 2.a. through 2.g., of ASB 407–04–63. If a bearing is rough, a seal is torn, the expelled grease has turned black, or metal particles are visible in the expelled grease, before further flight, replace the affected bearing with an airworthy bearing, P/N 407–340–339–107.

(2) Lubricate each bearing by following the Accomplishment Instructions, Part V, paragraph 2., of ASB 407–04–63.

(c) Unless accomplished previously, on or before May 31, 2004, or within 200 hours TIS, whichever occurs first:

(1) Install oil cooler inlet airflow improvements by following the Accomplishment Instructions, Parts I through VI, excluding paragraph 4 of Part VI, of ASB 407–02–54, Revision A, dated October 10, 2002 (ASB 407–02–54).

Note 1: Bell Helicopter Textron Maintenance Manual BHT–407-MM–7, Revision 12, paragraph 65–31. Oil Cooler Blower–Disassembly, pertains to removing the bearings and hangers from the oil cooler blower.

(2) Replace each oil cooler blower bearings and each segmented drive shaft bearing, P/N 406–040–339–ALL, 407–340–339–101, and 407–340–339–103, with a bearing, P/N 407–340–339–107, and perform an operational test.

(3) Lubricate each bearing, P/N 407–340–339–107, by following the Accomplishment Instructions, Part V, paragraph 2., of ASB 407–04–63.

(4) Replace each warning lubrication decal 31–112–2 with decal 31–116–1 by following the Accomplishment Instructions, Part III, paragraphs 1. through 4., of ASB 407–04–63.

(5) Replace Temporary Revision (TR)—9, dated January 15, 2002, that contains limitations prohibiting operations with a sustained tailwind greater than 5 knots, in the Rotorcraft Flight Manual. Replace TR–9 with TR–10, dated July 25, 2002. TR–10 eliminates limitation on the prohibition on tailwind operation in TR–9 because of the incorporation of oil cooler blower inlet ducts and bearing airflow shields.

(d) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

(e) Special flight permits will not be issued.

(f) The modifications, bearing replacements, inspections, and lubrication shall be done following Bell Helicopter Textron Alert Service Bulletins 407–02–54, Revision A, dated October 10, 2002, and 407–04–63, Revision A, dated March 3, 2004. The Director of the Federal Register approved this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4, telephone (450) 437–2862 or (800) 363–8023, fax (450) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; 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.*

Note 2: The subject of this AD is addressed in Transport Canada AD CF–2002–18R3, dated March 26, 2004.

(g) This amendment becomes effective on June 4, 2004.

Issued in Fort Worth, Texas, on May 10, 2004.

Kim Smith,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 04–11039 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–291–AD; Amendment 39–13640; AD 2004–10–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes Equipped With Certain Honeywell Start Converter Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes equipped with certain Honeywell start converter units (SCU). This amendment requires replacement of the SCU of the auxiliary power unit (APU) located in the electrical and electronics (E/E) compartment with a new or modified SCU. This action is necessary to prevent overheating of the electrical connector of the SCU, which could create an ignition source and possible fire in the E/E compartment and cause damage to certain electrical wire bundles on the E2–2 shelf. Such damage could result in loss of power from the APU generator, failure of electrically powered airplane systems, and consequent reduction in the ability of the flight crew to control the airplane in certain adverse operating conditions. This action is intended to address the identified unsafe condition.

DATES: Effective June 24, 2004.

ADDRESSES: Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6480; 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 737–600, –700, –700C, –800, and –900 series airplanes equipped with certain Honeywell start converter units (SCU) was published in the **Federal Register** on August 9, 2002 (67 FR

51785). That action proposed to require replacement of certain SCUs with new, improved SCUs. The SCUs would be required to be replaced according to the Boeing 737–600/700/800/900 Aircraft Maintenance Manual (AMM) (the AMM includes procedures for Model 737–700C series airplanes).

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.

Requests To Extend the Compliance Time

Several commenters request that the compliance time of 18 months specified in the notice of proposed rulemaking (NPRM) be extended. The following justifications were provided by several commenters in support of their request to extend the compliance time from the proposed 18 months to compliance times ranging from 36 to 60 months.

One commenter states that, rather than specifying new replacement SCUs as described in the "Cost Impact" section of the NPRM, the SCUs should be described as "modified." The commenter indicates that the time for rotation of an SCU through the modification program ranges from 40 to 45 days. The commenter expresses concern that the SCU manufacturer may not be able to support the proposed 18-month compliance time for all affected airplanes. For these reasons, the commenter requests that the FAA review any proprietary failure analysis of the airplane manufacturer to support a request for extension of the compliance time to 42 months.

One commenter states that it has two spare SCUs to be used in its replacement program, and that 54 airplanes of its fleet of 77 Model 737–800 series airplanes would require replacement. The commenter indicates that in order to meet the proposed 18-month compliance time, an additional two SCUs would have to be purchased at a cost of $420,000. The commenter requests that, to prevent such an expense, the compliance time be extended to 36 months.

One commenter estimates that the time from shipment of a discrepant SCU to the SCU manufacturer for modification and acquisition of the modified part would be 45 days. The operator states that it would need the compliance time extended to 42 months in order to replace all 42 of its SCUs.

Another commenter states that it would need the compliance time extended from 18 months due to the large number of SCUs that it will have to modify. Additionally, the commenter states that it would need the compliance time extended because of the effect the large worldwide volume of SCUs will have on the SCU manufacturer's turnaround times. Therefore, the commenter prefers that the compliance time be extended to 60 months, if possible, but adds that it would be acceptable to extend the compliance time to 36 months.

Additional Requests and Reasons for Extending the Compliance Time

One commenter states that the service history of the Model 737–600, –700, and –800 series airplanes has shown that, in most cases, typical maintenance and operating procedures have limited the damage caused by failed electromagnetic interference (EMI) filter capacitors to the capacitors themselves. The commenter states that burning of the wire harness appears to occur only in conjunction with a high number of auxiliary power unit (APU) restart attempts with an illuminated APU fault light. The commenter states further that, of the six incidents that were reported as of the date of its comment submittal, only one resulted in burning the wire harness. That incident was discovered on an airplane that was being introduced into a domestic operator's fleet after having been operated by a non-U.S. airline. The commenter suspects that the SCU connector failure on that airplane was the result of being mishandled possibly by nonqualified personnel as evidenced by the 12 to 20 APU restart attempts made with an illuminated APU fault light.

One commenter, the SCU manufacturer, also states that the risk of an SCU connector overheat event that progresses to the point where aircraft wiring is damaged is considerably reduced if repeated APU start attempts are not made. The commenter also advises that it has issued a service information letter (SIL) that provides operators of the affected airplanes with direction regarding this issue. The commenter further states that, although the SIL is not an alternative method of compliance with the AD, it does provide additional protection against the identified unsafe condition. The commenter further states that the two events that occurred since the issuance of the service letter (August 16, 2000) were of reduced severity and no damage to the airplane wiring was recorded.

Another commenter, the airplane manufacturer, contends that, even in a worst case scenario, the risk to the fleet is minimal because the wiring damage does not present a hazard to the airplane or occupants. The commenter advises that an analysis was done for each system that could be affected and it was found that sufficient redundancy exists such that all potential combinations of lost functionality were extremely improbable. The commenter further advises that, since the SCU automatically removes power for this condition within 300 milliseconds, which limits smoke emission, the hazard presented by smoke or the smell of burning wires is minimized. Also, the wiring is self extinguishing and will not propagate fire and there are no flammable materials in the area. The commenter further notes that the electrical/electronic (E/E) bay is visually inspected per the zonal inspection program every 18 months or 4,000 flight cycles, whichever occurs first, for obvious unsatisfactory conditions, damage, failures, irregularities and/or discrepancies. In addition, the commenter specifies that the smoke clearing procedure can be used to eliminate any accumulated smoke and/or fumes.

Another commenter requests that the FAA review any failure analysis and extend the compliance time from 18 to 42 months.

The FAA agrees with the commenters' requests to extend the compliance time. However, we do not agree with certain commenters' justification for extending the compliance time solely on the basis of the potential disruption or negative impact on operator flight and maintenance schedules, or on other non-safety related aspects of airline operations. Those commenters did not address the impact that the requested increases in compliance time would have on airplane safety, or describe compensatory factors that would mitigate the increased exposure of the fleet to the potential unsafe condition as the result of a lengthened compliance time.

In addition, we reviewed the manufacturer's electrical power system safety assessment (which includes a failure analysis) for Boeing Model 737–600, –700, and –800 series airplanes. However, based on that review, we have determined that the safety assessment does not address all of the specific concerns that prompted the initiation of this AD.

We do agree that the compliance time may be extended based on the capability of the SCU manufacturer to perform the SCU modifications, the updated information provided by the airplane manufacturer regarding the number of SCU failures to date, the number of SCUs that have yet to receive the corrective modifications, and the rate at

which the SCU manufacturer is currently able to perform the modifications.

Therefore, we have determined that the compliance time may be extended from 18 months to 36 months. We consider a 36-month compliance time will provide an acceptable level of safety, yet will allow operators sufficient time to process the remaining 514 unmodified in-service and spare SCUs through the SCU manufacturer's modification program without undue disruption of airline operations. We have revised paragraph (a) of the final rule accordingly.

Request To Revise Paragraph (a) of the NPRM

One commenter requests that the FAA remove reference to the issuance date of Chapter 49–41–61 of the AMM specified in paragraph (a) of the NPRM. The commenter notes that by specifying a particular issuance date, operators are required to use that specific revision of the AMM. The commenter states that if the specific date was removed, operators could perform the replacement of the SCU per the latest revision of Chapter 49–41–61.

We do not agree that reference to the particular issuance date of Chapter 49–41–61 should be removed. In this case, that particular date is the specific revision of the chapter that we have reviewed and determined to be an appropriate source of service information for accomplishing the replacement of the SCU of the APU. To allow operators to use future revisions of Chapter 49–41–61, either we must revise the AD to reference specific later revisions, or operators must request approval to use later revisions as an alternative method of compliance with this AD under the provisions of paragraph (b) of this AD. Since the issuance of the NPRM, we have reviewed the current revision of Chapter 49–41–61, dated October 10, 2003, and have determined that it is also an acceptable source of service information. We have revised paragraph (a) of the final rule to specify that replacing the SCU of the APU must be accomplished per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. However, we have also specified that Chapter 49–41–61, dated June 5, 1998, or dated October 10, 2003, is an approved method for the accomplishment of the requirements of paragraph (a) of this final rule.

Request To Revise Paragraph (b) of the NPRM

Two commenters request that the compliance time specified in paragraph (b) of the NPRM be revised to match the compliance time specified in paragraph (a) of the NPRM for replacement of the affected SCUs. The commenters state that it is unrealistic to specify that, "as of the effective date of the AD, no person shall install on any airplane * * *," due to the turnaround time to remove, modify, and install the SCUs (discussed in comments previously).

We acknowledge that, because of a possible delay in modifying the SCUs, the compliance time of the "spares" paragraph (b) in the NPRM is unrealistic. We consider that a condition could occur where operators remove the SCUs for modification and no modified spares are available for installation, effectively, grounding the airplane. Generally, the purpose of the "spares" paragraph is to ensure that unmodified or identified "unsafe" parts are not installed/reinstalled on airplanes, and specifically, prior to the compliance time specified for modification in paragraph (a) of the final rule. Therefore, there is no reason to include a "spares" paragraph in this AD with a compliance time that is identical to the threshold compliance time required by paragraph (a) of this AD. We have determined that, in this case, removal of the prohibition to install certain SCU part numbers as of the effective date of the AD is warranted, and we have removed paragraph (b) from the final rule and reidentified subsequent paragraphs accordingly.

Request To Withdraw the NPRM

One commenter states that, given the proven service experience of the Model 737 (NG) series airplanes and the limited number of burnt harnesses (one) reported, continuing to upgrade the SCUs at the normal attrition rate will provide an adequate level of safety. We infer that the commenter is requesting that we withdraw the NPRM.

We do not agree. We consider the SCU connector failures to be a safety issue of sufficient significance to warrant the removal, modification, and replacement of the SCUs via regulatory requirement rather than by relying on passive means such as attrition. Such reliance on attrition does not ensure that the affected airplanes will receive appropriately modified SCUs in a timely manner, or at all.

Request To Revise the Airplane Flight Manual (AFM)

One commenter suggests that flight safety can be best preserved by amending the AFM to limit the number of start attempts with a consecutive fault illumination to a total of three including two restarts. The commenter states that requiring such an AFM limitation would be a more immediate action than waiting for the 18-month compliance time to replace/modify the SCUs, and would ensure that a burning harness would not occur in flight. The commenter notes that the Non-Normal Procedures Section of the Model 737 series airplane AFM currently allows restart attempts five minutes after the APU switch is placed in the "OFF" position and the APU fault light extinguishes.

We do not agree that adding a requirement to revise the AFM is appropriate at this time. An AFM limitation might reduce the short-term likelihood of filter capacitor failures, however, the limitation would be difficult to define since the number of repetitive start attempts after which the filter capacitors have been degraded to the point of failure has not been conclusively determined. Furthermore, an AFM limitation would not address long-term exposure of the fleet to the potential unsafe condition, since the cumulative effects of non-consecutive APU restart attempts on the filter capacitors also has not been determined. No change to the final rule is necessary.

Request To Clarify the "Airworthiness Directives" Heading

One commenter, the SCU manufacturer, requests that the "Airworthiness Directives" heading be revised. The commenter suggests that the heading be revised to add the word "certain," as follows: "Airworthiness Directives: Boeing Model 737–600, –700, –700C, –800, and –900 Series Airplanes Equipped" with "Certain" Honeywell Start Converter Units." The commenter explains that adding the word "certain," clarifies that not "all" SCU part numbers are affected on the applicable airplanes.

We agree with the commenter's request and have revised the heading accordingly.

Request To Revise Wording Describing the Action To Replace

One commenter, the SCU manufacturer, requests that the wording describing the replacement of the SCU with "a new, improved SCU" be revised to read, "a modified SCU." The commenter indicates that, by specifying

"a modified SCU," operators would not be mislead into thinking that the SCU manufacturer would replace the existing SCU at no charge to the operators with SCUs that may be manufactured with technological advances over and above the SCUs specified in the NPRM.

We understand the commenter's position and agree that clarification is necessary. Since certain "new" production SCU part numbers incorporate design features that preclude the unsafe condition, we consider those "new" SCU part numbers to be acceptable replacements, and the table titled "SCU Part Numbers" of the final rule identifies the SCU part numbers that are acceptable as replacements. Therefore, we have revised the "Summary" section of the final rule to specify that replacement shall be with "a new or modified SCU." Since the wording specified in the "Supplementary Information" section of the NPRM that discussed replacement with "a new, improved SCU" does not reappear in the final rule, it is not necessary to revise the final rule further in this regard.

Request To Revise the "Discussion" Section of the NPRM

One commenter, the SCU manufacturer, requests that the "Discussion" section of the NPRM be revised to specify the number of incidents and APU operating hours. The commenter suggests that the FAA state that there have been six reported incidents of SCU ARINC connector overheating in approximately 5 million APU operating hours (to September 6, 2002), and that two of these events showed visual damage to adjacent electrical wire bundles on certain Boeing Model 737–700 and –800 series airplanes. The commenter states that such revision of the "Discussion" section is necessary to minimize the possibility of misunderstanding the scope of the issue.

We do not agree that the "Discussion" section of the NPRM should be revised. We acknowledge that the number of incidents of SCU connector failure that resulted in the APU generator failures might provide additional useful background information. However, we note that we have recently received updated information from the airplane manufacturer regarding additional SCU connector failure events. In fact, as of October 3, 2003, the total number of SCU connector failure events had risen from six (as reported by the commenter) to ten. The number of events in which heat damage propagated to electrical wiring external to the SCU also increased from two to three. As discussed previously, the "Discussion" section does not reappear in the final rule. Therefore, no change to the final rule is necessary in this regard.

Request To Add a Note to "Discussion" Section

The same commenter, the SCU manufacturer, requests that a note be added at the end of the "Discussion" section of the NPRM to specify that during the investigation it was recognized that the extent of heat damage resulting from the event is proportional to the number of restarting attempts performed with an already failed unit. The commenter advises that Honeywell Service Information Letter (SIL) SIL 49–C–139 was issued to instruct the operator to recognize the fault indication and cease further starting attempts until troubleshooting can be performed. The commenter also states that events that occurred after the issue of SIL (2 events) were of reduced severity, and no damage to aircraft wiring was recorded. The commenter contends that observing the procedures described in the SIL effectively limits the extent of overheat damage.

We do not agree that the "Discussion" section of the NPRM should be revised per the commenter. No data has been submitted to the FAA to support the statement that the extent of heat damage resulting from an event is proportional to the number of restart attempts with an already failed unit. We do acknowledge, however, potential safety benefits of recognizing SCU failure indications in conjunction with terminating subsequent APU start attempts until appropriate maintenance and troubleshooting has been performed, as recommended in the above referenced Honeywell SIL. We consider that implementation of the procedures described in the Honeywell SIL until replacement of the SCUs may reduce the likelihood of SCU connector failures during the compliance period. As discussed previously, the "Discussion" section does not reappear in the final rule. Therefore, no change is necessary to the final rule in this regard.

Request To Revise Estimated Number of Affected Airplanes

One commenter, the SCU manufacturer, requests that the estimated number of airplanes currently affected by the NPRM be revised. The commenter states that it has completed modification of 198 SCU units since it submitted the original estimate of affected airplanes.

We agree that the estimated number of affected airplanes can be reduced. We also received updated information from the airplane manufacturer that confirmed a reduction of the number of affected airplanes. Therefore, we have revised the Cost Impact section of the final rule accordingly. See "Editorial Change to Labor Rate Estimate" paragraph below for other changes to the Cost Impact paragraph of this final rule.

Request To Revise SCU Part Numbers Specified in Paragraph (a) of the NPRM

One commenter, the SCU manufacturer, requests that the second column of the table in paragraph (a) of the NPRM be removed and replaced with certain other "acceptable" replacement part numbers. The commenter states that the table in paragraph (a) of the NPRM could be misleading by indicating that affected part numbers can only be replaced with the corresponding number in the right column. The commenter further states that listing the acceptable part numbers separately would clarify the requirement and indicate all acceptable SCU part numbers that may be installed on the airplane.

We agree that clarification is necessary. Based on information received from the airplane manufacturer, we have determined that SCUs having part numbers 1151858–241 (of any series) are not interchangeable with SCUs having part numbers 1152426–245 (of any series) or 1152466–250 (of any series). However, all SCUs having part numbers 1152426–245 and 1152466–250 of any series are interchangeable. Therefore, to prevent confusion regarding the selection of appropriate replacement SCUs, the table in paragraph (a) of the final rule has been revised to illustrate this clarification.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has 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.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods

of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Editorial Change to Labor Rate Estimate

After the NPRM was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

There are approximately 403 airplanes of the affected design in the worldwide fleet. The FAA estimates that 250 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will be provided by the parts manufacturer at no cost to operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $65,000, or $260 per airplane.

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

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, 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:

2004–10–10 Boeing: Amendment 39–13640. Docket 2001–NM–291–AD.

Applicability: Model 737–600, –700, –700C, –800, and –900 series airplanes; certificated in any category; equipped with start converter units (SCUs) having Honeywell part number (P/N) 1151858–241, Series 1 through 9 inclusive, or P/N 1152426–245, Series 1 through 6 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the electrical connector of the SCU, which could create an ignition source and possible fire in the electrical and electronics (E/E) compartment and cause damage to certain electrical wire bundles on the E2–2 shelf, accomplish the following:

Replacement

(a) Within 36 months after the effective date of this AD: Replace the SCU of the auxiliary power unit located in the E/E compartment per a method approved by the Manager, Seattle Aircraft Certification Office (ACO). FAA. Boeing 737–600/700/800/900 Maintenance Manual, Chapter 49–41–61, dated June 5, 1998; and Aircraft Maintenance Manual, Chapter 49–41–61, dated October 10, 2003, are approved methods of compliance with the requirements of this paragraph. Replace the applicable SCU listed in the "Existing Honeywell P/N" column below, with the corresponding SCU listed in the "Replacement Honeywell P/N" column below, as follows:

SCU Part Numbers

Existing Honeywell P/N	Replacement Honeywell P/N
1151858–241, of any series 1 through 9 inclusive	1151858–241, series 10 or 1151858–241, series 11 or 1151858–241, series 12.
1152426–245, of any series 1 through 6 inclusive	1152426–245, series 7 or 1152426–245, series 8 or 1152466–250, series 1 or 1152466–250, series 2 or 1152466–250, series 3.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Effective Date

(d) This amendment becomes effective on June 24, 2004.

Issued in Renton, Washington, on May 10, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11287 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–161–AD; Amendment 39–13430; AD 2004–01–16]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error that appeared in airworthiness directive (AD) 2004–01–16 that was published in the **Federal Register** on January 20, 2004 (69 FR 2659). The error resulted in the omission of the phrase "as applicable." This AD is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes. This AD requires revising the wire connection stackups for the terminal strip of the generator feeder tail compartment of the auxiliary power unit (APU), and removing a nameplate, as applicable. For certain airplanes, this AD also requires replacing the terminal strips and revising the terminal hardware stackup for the feeder of the center cargo loading system.

DATES: Effective February 24, 2004.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2004–01–16, amendment 39–13430, applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes, was published in the **Federal Register** on January 20, 2004 (69 FR 2659). That AD requires revising the wire connection stackups for the terminal strip of the generator feeder tail compartment of the auxiliary power unit (APU), and removing a nameplate, as applicable. For certain airplanes, that AD also requires replacing the terminal strips and revising the terminal hardware stackup for the feeder of the center cargo loading system.

As published, the phrase "as applicable" was inadvertently omitted from paragraph (a)(2) of AD 2004–01–16. As specified in the referenced service bulletin (McDonnell Douglas Alert Service Bulletin MD11–24A173, Revision 02, dated May 2, 2002), the inspection area is defined as follows:

1. For Group 1 airplanes: The aft cargo compartment; and

2. For Group 2 airplanes: Both the aft and center cargo compartments.

Without the phrasing "as applicable," operators of Group 1 airplanes may misinterpret that both the aft and center cargo compartments must be inspected.

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective date of this AD remains February 24, 2004.

PART 39—[AMENDED]

§ 39.13 [Corrected]

■ On page 2661, in the first column, paragraph (a)(2) of AD 2004–01–16 is corrected to read as follows:

* * * * *

(2) Do a general visual inspection to detect arcing damage of the surrounding structure, adjacent system components, and electrical cables in the center cargo and aft cargo compartments, as applicable.

* * * * *

Issued in Renton, Washington, on May 10, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11285 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–48–AD; Amendment 39–13107; AD 2003–07–11]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Models BR700–710A1–10 and BR700–710A2–20 Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes corrections to Airworthiness Directive (AD) 2003–07–11. That AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce Deutschland GmbH, formerly BMW Rolls-Royce GmbH) models BR700–710A1–10 and BR700–710A2–20 turbofan engines. That AD was published in the **Federal Register** on April 11, 2003 (68 FR 17727). Subsequently, two correction documents were published in the **Federal Register**, on April 23, 2003 (68 FR19944) and May 9, 2003 (68 FR 24861) that made corrections to the compliance section. This document corrects incomplete RRD Service Bulletin (SB) number references in 14 locations of the compliance section. In all other respects, the original document, with the corrections published on April 23, 2003 and May 9, 2003, remains the same.

EFFECTIVE DATE: Effective May 20, 2004.

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: A final rule AD, FR Doc. 03–8327, that applies to RRD models BR700–710A1–10 and BR700–710A2–20 turbofan engines, was published in the **Federal Register** on April 11, 2003 (68 FR 17727). The following corrections are needed:

PART 39—[AMENDED]

§ 39.13 [Corrected]

■ On page 17728, in the third column, in paragraph (a)(1), "SB–BR700–900229" is corrected to read "SB–BR700–72–900229" in two locations.

■ On page 17729, in the first column, in paragraphs (a)(2), (a)(3), (b)(1) through (b)(3), and (c)(1), "SB–BR700–900229" is corrected to read "SB–BR700–72–900229" in nine locations.

■ On page 17729, in the second column, in paragraphs (c)(2), (f), and (h), "SB–BR700–900229" is corrected to read "SB–BR700–72–900229" in three locations.

Issued in Burlington, MA, on May 13, 2004.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–11407 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–26–AD; Amendment 39–13643; AD 2004–10–13]

RIN 2120–AA64

Airworthiness Directives; CFM International, S.A. CFM56–2–C, –3 Series, and –5 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that applies to CFM International, S.A., CFM56–2–C, –3 series, and –5 series turbofan engines. This amendment requires removing from service main fuel pumps with bronze gear-stage bearings and installing main fuel pumps with bi-metal, aluminum/bronze bearings. This amendment results from several reports of main fuel pump bronze bearing failures. We are issuing this AD to prevent main fuel pump bearing failures resulting in fuel nozzle clogging, low pressure turbine (LPT) case burn-through, and damage to the airplane.

DATES: Effective June 24, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800; fax (513) 552–2816. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert Green, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7754; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that applies to CFM International, S.A., CFM56–2–C, –3 series, and –5 series turbofan engines was published in the **Federal Register** on May 16, 2003, (68 FR 26553). That action proposed to require removing from service main fuel pumps with bronze bearings and installing main fuel pumps with aluminum/bronze bearings.

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 To Update Service Bulletins to the Latest Revisions

Two commenters request that the proposed terminating action reference main fuel pump configurations introduced in conjunction with FAA AD 2000–15–01. CFM56–3 Service Bulletin (SB) 73–0120, Revision 4, dated July 27, 2000, and CFM56–5 SB 73–0126, Revision 3, dated September 25, 2000, did not include the part configurations introduced by CFM56–3/3B/3C SB 73–A129 or CFM56–5 SB 73–A143. Comments were specifically related to CFM56–3/3B/3C SB 73–0120, Revision 4, and SB 73–A129.

The FAA agrees. Since the issuance of the proposed rule, CFM56–3 SB 73–0120, Revision 4, dated July 27, 2000, and CFM56–5 SB 73–0126, Revision 3, dated September 25, 2000, have been revised to include hardware defined by CFM56–3/3B/3C SB 73–A129 and CFM56–5 SB 73–A143. The latest revisions of CFM56–2 SB 73–0104, CFM56–3 SB 73–0120, and CFM56–5 SB 73–0126 are referenced in the final rule.

Request for Additional Replacement Parts as Alternative Method of Compliance (AMOC)

Three commenters request that additional replacement parts be specified as AMOCs. The commenters believe that dual-sourced parts can be less costly.

The FAA does not agree. The AD does not make specific hardware replacement recommendations. The AD mandates that unserviceable parts be replaced with serviceable parts. The AD did not change as a result of this comment.

Main Fuel Pump Failure Mode Clarification

One commenter provided additional information on the documented failure modes and requests that the Summary and Discussion statements be modified. The modification would note that the bi-metal bearing was introduced to prevent main fuel pump failures that result in a fuel flow degradation. This degradation could lead to diminished engine start or in-flight restart capability.

The FAA agrees. The initial introduction of the bi-metal bearing was intended to address a specific failure mode that is not the subject of this AD. A further benefit of the bi-metal, aluminum/bronze bearings is that they are less likely to generate debris and create the unsafe condition that this AD addresses. The Summary paragraph in the AD has been modified to better describe the debris-related failure mode. We have noted the commenter's request to clarify the Discussion section of the NPRM; however, the Discussion section does not carry over to the final rule.

Request To Modify the Economic Analysis

One commenter believes that the number of engines affected is incorrect. The commenter has provided additional information on the quantity of engines affected and the cost of incorporating bi-metal aluminum/bronze bearings. The commenter believes that there would be no additional labor or material costs for converting affected main fuel pumps because the conversion should occur within the scheduled refurbishment of the pump.

The FAA partially agrees. We agree that the initial estimate of the number of engines affected was too high and that the assumption that an affected main fuel pump would be replaced with a new, zero-time part was unrealistic. However, we do not agree that all of the material costs associated with the conversion of a main fuel pump to a serviceable part would be achieved during regularly scheduled maintenance. The number of affected engines and total cost of incorporating the bi-metal bearings have been adjusted based on the estimated hardware consumption to date. The corrective action cost was also adjusted to reflect bearing incorporation by refurbishment. The bearing hardware has been treated as an incremental cost as there will be unscheduled conversions either because of forced main fuel pump removals or differing workscope practices. The Economic Analysis has been revised in the final rule.

Request To Clarify Part Number Effectivity for CFM56–2–C Engines

One commenter requests that compliance paragraph (a)(2) end with the phrase "if SB 73–081 is accomplished." The commenter believes that by adding this phrase the part numbers to be removed from service will be clarified.

The FAA does not agree. Compliance paragraph (a)(2) states the following: "For all CFM56–2–C series engines that have incorporated CFM International Service Bulletin (SB) (CFM56–2) 73–081 * * *". The final rule did not change as a result of this comment.

Request To Clarify Part Number Effectivity for CFM56–3 Engines

One commenter requests that compliance paragraph (b)(3) end with the phrase "if SB 73–087 is accomplished." The commenter believes that by adding this phrase, the part numbers to be removed from service will be clarified.

The FAA does not agree. Compliance paragraph (b)(3) states the following: "For all CFM56–3 series engines that have incorporated SB (CFM56–3) 73–087 * * *". The final rule did not change as a result of this comment.

One commenter requests that compliance paragraph (b)(3) include a phrase to reference the lack of compliance with CFM56–3 SB 73–120. The commenter believes that by adding the phrase "but have not incorporated SB 73–120," as a qualification for Compliance paragraph (b)(3), the part numbers to be removed from service will be clarified.

The FAA does not agree. The referenced part numbers in paragraph (b)(3) reflect the lack of compliance with CFM56–3 SB 73–120. The final rule did not change as a result of this comment.

Request To Modify the Compliance Statement

One commenter requests that the compliance statement in the Regulatory section of the AD be changed from "required at the next engine removal, engine module removal, or main fuel pump removal" to "required at the next shop visit, or main fuel pump replacement." The commenter suggests that the next shop visit should be defined as removal from the aircraft for the purposes of maintenance and inspection except when removed for the purpose of performing field maintenance type activities at a maintenance facility in lieu of performing them on wing. The commenter suggests that a main fuel pump shop visit would be defined as removal of the pump for the purpose of sending it to a shop capable of performing the specified modification regardless of other planned pump maintenance. The commenter suggests that an engine module would be clarified as the fan, core, or low-pressure turbine to avoid confusion with any other parts of the engine that might be referred to as a module. The commenter feels that these changes would allow easier scheduling of the required corrective actions.

The FAA partially agrees. We agree that next engine shop visit or main fuel pump replacement is a better description of the intended threshold. However we do not agree with the proposed qualifications for each action. For simplification and to assure expedient incorporation at the first opportunity, we have revised the compliance statement to "next engine shop visit or main fuel pump replacement, whichever comes earlier." We have added a definitions paragraph (e) to the Regulatory Section that defines "engine shop visit" as any maintenance that includes the separation of an engine casing flange.

Request To Extend the Compliance Terminating Action Date

Two commenters state that the compliance terminating action date will result in premature main fuel pump removals. One of the commenters requests that the compliance terminating action date of January 1, 2007, be extended.

The FAA disagrees. The corrective action compliance period allows for sufficient planning for main fuel pump replacement during regularly scheduled maintenance. The projected incorporation rate does not allow an extension of the terminating action date.

Request To Include Downstream Fuel Filter as an AMOC

One commenter requests the corrective action requirement be revised to include the incorporation of a downstream fuel filter as an AMOC to preclude fuel nozzle clogging and related LPT overtemperature damages. The commenter referenced CFM56–3 SB 73–0134. The commenter states that together with the main fuel pump interstage filter, the addition of a downstream fuel filter will provide greater engine protection. The commenter also states that a downstream fuel filter is more economical than the proposed main fuel pump modification.

The FAA does not agree. Analysis based on fleet experience indicates safety margins are maintained with the conversion of the bi-metal, gear-stage bearings. Vendor data shows that the main fuel pump gear-stage bearings would normally be replaced during pump refurbishment. Recommending incorporation of the downstream fuel filter is not justified at this time. The AD did not change as a result of this comment.

Typographical Error Corrected for CFM56–2–C Engine

After the issuance of the NPRM, we discovered that the CFM56–2–C engine had been incorrectly listed as CFM56–2C. We have corrected the engine model in the AD.

Regulatory Text Corrections

Paragraph (a)(2) of the NPRM Regulatory text for the CFM56–2–C included pump part numbers (P/Ns) 301–778–801–0, 301–778–802–0, 301–778–804–0, and 301–778–805–0 with pumps that had incorporated CFM56–2 SB 73–081. Further review revealed these parts were originally CFM56–3 hardware that could incorporate bronze bearings following CFM56–3 SB 73–087. CFM56–2 SB 73–0070 subsequently released these parts for use on the CFM56–2–C engine. We have added a new Regulatory text paragraph (a)(3) in the AD to highlight that these pumps could incorporate bronze bearings by a CFM56–3 SB. The codification of paragraph (a) is changed from (a)(1), (2), (3), (4) to (a)(1), (2), (3), (4), and (5) in the AD as a result of this comment.

The addition of Regulatory text paragraph (a)(3) in the AD results in the addition of Regulatory text paragraph (d)(3) in the AD. The codification of paragraph (d) is changed from (d)(1), (2), and (3) to (d)(1), (2), (3), and (4) in the AD.

Paragraph (a)(3) of the NPRM Regulatory text for the CFM56–2–C inadvertently referenced CFM56–2–C SB 73–078 as defining P/N 301–779–006–0. That SB is incorrect. The correct SB that defines P/N 301–779–006–0 is CFM56–2 SB 73–A113. We have corrected the SB reference in the newly recodified paragraph (a)(4) of the AD.

Paragraph (b)(2) of the NPRM Regulatory text for the CFM56–3 inadvertently referenced CFM56–3 SB 73–082 as defining pump P/N 301–779–006–0. That SB is incorrect. The correct SB that defines pump P/N 301–779–006–0 is CFM56–3 SB 73–A129. We have corrected the SB reference in paragraph (b)(2) of the AD.

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

Economic Analysis

There are approximately 6,160 CFM56–2–C, –3 series, and –5 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 975 engines installed on airplanes of U.S. registry would be affected by this AD. Assuming an average incorporation rate of 325 pumps per year and an incremental material cost of $8,000, the cost for U.S.

operators to replace the bronze bearings is estimated to be $2,600,000 per year.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

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 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. A final evaluation has been prepared for this action and it 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.

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 a new airworthiness directive to read as follows:

2004–10–13 CFM International, S.A.: Amendment 39–13643. Docket No. 2002–NE–26–AD.

Applicability

This airworthiness directive (AD) applies to CFM International, S.A. CFM56–2–C, –3 series, and –5 series turbofan engines. These engines are installed on, but not limited to, Airbus Industrie A319 and A320, Boeing 737, and McDonnell Douglas DC–8 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required at the next engine shop visit, or main fuel pump replacement, whichever is earlier, after the effective date of this AD, but no later than January 1, 2007, unless already done.

To prevent main fuel pump bearing failures resulting in fuel nozzle clogging, low pressure turbine (LPT) case burn-through, and damage to the airplane, do the following:

Main Fuel Pumps Installed on CFM56–2–C Engines

(a) For CFM56–2–C engines, do the following:

(1) Remove from service main fuel pumps part number (P/N) 301–779–002–0.

(2) For all CFM56–2–C series engines that have incorporated CFM International Service Bulletin (SB) (CFM56–2) 73–081, remove from service main fuel pumps P/N 301–776–101–0, P/N 301–776–102–0, P/N 301–776–103–0, P/N 301–776–104–0, P/N 301–776–105–0, P/N 301–776–106–0, P/N 301–776–108–0, P/N 301–776–109–0, P/N 301–776–110–0, P/N 301–776–111–0, P/N 301–776–112–0, and P/N 301–776–113–0.

(3) For all CFM56–2-C series engines that have incorporated SB (CFM56–3) 73–087, remove from service main fuel pumps P/N 301–778–801–0, P/N 301–778–802–0, P/N 301–778–804–0, and P/N 301–778–805–0.

(4) For all CFM56–2–C engines that have incorporated SB (CFM56–2–C) 73–A113, remove from service main fuel pumps P/N 301–779–006–0.

(5) Install a serviceable main fuel pump. Information on converting removed pumps into serviceable pumps can be found in SB (CFM56–2) 73–0104, Revision 3, dated December 17, 2003.

Main Fuel Pumps Installed on CFM56–3 Series Engines

(b) For CFM56–3 series engines, do the following:

(1) Remove main fuel pumps P/N 301–779–002–0.

(2) For all CFM56–3 series engines that have incorporated SB (CFM56–3) 73–A129, remove from service main fuel pumps P/N 301–779–006–0.

(3) For all CFM56–3 series engines that have incorporated SB (CFM56–3) 73–087, remove from service main fuel pumps P/N 301–778–801–0, P/N 301–778–802–0, P/N 301–778–804–0, and P/N 301–778–805–0.

(4) Install a serviceable main fuel pump. Information on converting removed pumps into serviceable pumps can be found in SB (CFM56–3) 73–0120, Revision 5, dated December 17, 2003.

Main Fuel Pumps Installed on CFM56–5 Series Engines

(c) For CFM56–5 series engines, do the following:

(1) Remove main fuel pumps P/N 301–785–502–0.

(2) For all CFM56–5 series engines that have incorporated SB (CFM56–5A) 73–A143, remove from service main fuel pumps P/N 301–785–504–0.

(3) Install a serviceable main fuel pump. Information on converting removed pumps into serviceable pumps can be found in SB (CFM56–5A) 73–0126, Revision 4, dated December 17, 2003.

Do Not Install Main Fuel Pumps

(d) After the effective date of this AD, do not install the following P/N main fuel pumps onto any engine:

(1) For all engines: P/N 301–779–002–0, P/N 301–779–006–0, P/N 301–785–502–0, and P/N 301–785–504–0.

(2) For CFM56–2–C engines that have incorporated SB (CFM56–2–C) 73–081 but have not incorporated SB (CFM56–2–C) 73–0104: P/N 301–776–101–0. P/N 301–776–102–0, P/N 301–776–103–0, P/N 301–776–104–0, P/N 301–776–105–0, P/N 301–776–106–0, P/N 301–776–108–0, P/N 301–776–109–0, P/N 301–776–110–0, P/N 301–776–111–0, P/N 301–776–112–0, and P/N 301–776–113–0.

(3) For CFM56–2–C engines that have incorporated SB (CFM56–3) 73–087 but have not incorporated SB (CFM56–3) 73–0120: P/N 301–778–801–0. P/N 301–778–802–0, P/N 301–778–804–0, and P/N 301–778–805–0.

(4) For CFM56–3 series engines that have incorporated SB (CFM56–3) 73–087 but have not incorporated SB (CFM56–3) 73–0120: P/N 301–778–801–0, P/N 301–778–802–0, P/N 301–778–804–0, and P/N 301–778–805–0.

Definition

(e) An engine shop visit is defined as any maintenance that includes the separation of an engine casing flange.

Alternative Methods of Compliance (AMOC)

(f) An AMOC or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated by Reference

(h) None.

Effective Date

(i) This amendment becomes effective on June 24, 2004.

Issued in Burlington, Massachusetts, on May 13, 2004.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–11405 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17261; Airspace Docket No. 2004–ASW–09]

Establishment to Class D Airspace; Denton, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes the Class D airspace area at Denton Municipal Airport, Denton, TX (DTO). Establishing an Airport Traffic Control Tower at Denton Municipal Airport, Denton, TX, has made this rule necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Denton Municipal Airport, Denton, TX.

DATES: Effective 0901 UTC, August 5, 2004.

Comments for inclusion in the Rules Docket must be received on or before July 19, 2004.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2004–17261/Airspace Docket No. 2004–ASW–09, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing any comments received and this Direct Final Rule in person at the Dockets Office between 9 a.m. and 5 p.m., Monday thorough Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated previously.

An informal docket may also be examined during normal business hours at the office of the Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX. Call the manager, Airspace Branch, ASW–520, telephone (817) 222–5520; fax (817) 222–5981, to make arrangements for your visit.

FOR FURTHER INFORMATION CONTACT: Joseph R. Yadouga, Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone: (817) 222–5597.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 establishes a Class D airspace designation for an airspace area from the surface up to but not including 2,500 feet MSL at Denton Municipal Airport, Denton, TX and will be published in paragraph 5000 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1.

The Direct Final Rule Procedure

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

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications must identify both docket numbers. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significiant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

Paragraph 5000 Class D airspace areas extending upward from the surface of the Earth.

* * * * *

ASW TX D Denton, TX [New]

Denton Municipal Airport, TX
Lat. 32°12′02.60″ N, long. 97°11′52.72″ W

That airspace extending upward from the surface up to but not including 2,500 feet MSL within a 4-mile radius of Denton Municipal Airport, Denton, TX. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on May 10, 2004.

Donald R. Smith,

Acting Director of Central En Route and Oceanic Operations.

[FR Doc. 04–11450 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15246; Airspace Docket No. 2003–ASW–05 (Formerly 2003–ASW–1]

Amendment to Class E Airspace; Angel Fire, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: this action revises the Class E airspace area at Angel Fire Airport, Angel Fire, NM (AXX) to provide adequate controlled airspace for the area navigation (RNAV) global positioning system (GPS) standard instrument approach procedure (SIAP).

EFFECTIVE DATE: The direct final rule published at 69 FR 10328, March 5, 2004, is effective 0901 UTC, April 15, 2004.

FOR FURTHER INFORMATION CONTACT: Joseph R. Yadouga, Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone: (817) 222–5597.

SUPPLEMENTARY INFORMATION:

The FAA published this direct final rule with a request for comments in the **Federal Register** on March 5, 2004 (69 FR 10328). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 15, 2004. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Fort Worth, TX on May 10, 2004.

Donald R. Smith,

Acting Director of Central En Route and Oceanic Area Operations.

[FR Doc. 04–11451 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17260; Airspace Docket No. 2004–ASW–08]

Establishment to Class E Airspace; Clayton, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes the Class E airspace area at Clayton Municipal Airport, Clayton, NM (CAO) to provide adequate controlled airspace for the area navigation (RNAV) global positioning system (GPS) standard instrument approach procedure (SIAP).

DATES: Effective 0901 UTC, August 5, 2004.

Comments for inclusion in the Rules Docket must be received on or before July 19, 2004.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2004–17260/Airspace Docket No. 2004–ASW–08, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing any comments received and this direct final rule in person at the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated previously.

An informal docket may also be examined during normal business hours at the office of the Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, 2601 Meacham Boulevard, Fort Worth, TX. Call the manager, Airspace Branch, ASW–520, telephone (817) 222–5520; fax (817) 222–5981, to make arrangements for your visit.

FOR FURTHER INFORMATION CONTACT: Joseph R. Yadouga, Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone: (817) 222–5597.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 establishes a Class E airspace area extending upward from 700 feet above the surface of Clayton, NM and will be published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in an adverse or negative comment, and, therefore, issues it as a direct final rule. 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. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive,

within the comment period, an adverse or negative comment, or written notice of an intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications must identify both docket numbers. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does not have a substantial direct effective 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

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

* * * * *

ASW NM E5 Clayton, NM [New]

Clayton Municipal Airport, NM
Lat. 36°26′43″ N, long. 103°9′1″ W

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Clayton Municipal Airport; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 36°41′37″ N., long. 103°11′20″ W., to lat. 35°59′43″ N., long. 103°33′44″ W., to lat. 36°7′10″ N., long. 102°52′7″ W., to lat. 36°15′19″ N., long. 102°47′41″ W., to the point of beginning; excluding that airspace within Federal Airways.

* * * * *

Issued in Fort Worth, TX, on May 10, 2004.

Donald R. Smith,

Acting Director of Central En Route and Oceanic Operations.

[FR Doc. 04–11449 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17259; Airspace Docket No. 2004–ASW–07]

Establishment of Class E Airspace; Galliano, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action establishes the Class E airspace area at Air Logistics Galliano Heliport, Galliano, LA (2LS0) to provide adequate controlled airspace for the area navigation (RNAV) global positioning system (GPS) standard instrument approach procedure (SIAP).

DATES: Effective 0901 UTC August 5, 2004.

Comments for inclusion in the Rules Docket must be received on or before July 19, 2004.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2004–17259/Airspace Docket No. 2004–ASW–01, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing any comments received and this direct final rule in person at the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated previously.

An informal docket may also be examined during normal business hours at the office of the Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region. 2601 Meacham Boulevard, Fort Worth, TX. Call the manager, Airspace Branch, ASW–520, telephone (817) 222–5520; fax (817) 222–5981, to make arrangements for your visit.

FOR FURTHER INFORMATION CONTACT: Joseph R. Yadouga, Air Traffic Division, Airspace Branch, Federal Aviation Administration, Southwest Region, Fort Worth, TX 76193–0520; telephone: (817) 222–5597.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 establishes a Class E airspace area extending upward from 700 feet above

the surface of Galliano, LA and will be published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1.

The Direct Final Rule Procedure

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

Comments Invited

Although this action is in the form of a direct final rule, and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications must identify both docket numbers. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does 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. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action' under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

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

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

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

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

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

* * * * *

ASW LA E5 Galliano, LA [New]

Air Logistics Galliano Heliport, LA
Lat. 29°24′44″ N, long. 90°17′40″ W

That airspace extending upward from 700 feet above the surface within a 6.6 mile radius of Air Logistics Galliano Heliport, LA, excluding that portion of airspace that over lies existing Class E airspace for the South La Fourche Airport, Galliano, LA.

* * * * *

Issued in Fort Worth, TX, on May 10, 2004.

Donald R. Smith,

Acting Director of Central En Route and Oceanic Area Operations.

[FR Doc. 04–11448 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Parts 602, 603, 604, and 611

RIN 3084–AA94

Amendment of Rules Under the FACT Act

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Final rules.

SUMMARY: The Fair and Accurate Credit Transactions Act of 2003 requires the FTC to adopt a number of rules to implement its provisions amending the Fair Credit Reporting Act. In this action, the FTC is revising the title or location of two previously-issued rules in the Code of Federal Regulations, and adding two technical provisions that apply generally to all rules issued by the Commission under the FCRA.

DATES: These rules are effective on June 21, 2004.

FOR FURTHER INFORMATION CONTACT: Clarke Brinckerhoff, Attorney, Division of Financial Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3224.

SUPPLEMENTARY INFORMATION: The recently enacted Fair and Accurate Credit Transactions Act of 2003 ("FACT Act") requires the FTC to adopt a number of rules to implement several of its provisions, which amend the Fair Credit Reporting Act ("FCRA"). The Commission has published one final rule, Effective Dates for the FACT Act (69 FR 6526; Feb. 11, 2004) (the "effective dates rule") and one interim final rule, Prohibition Against Circumventing Treatment as a Nationwide Consumer Reporting

Agency (69 FR 8532; Feb. 24, 2004) (the "circumvention rule"). All FACT Act rules will be published in Title 16, Chapter I, Subchapter F, of the Code of Federal Regulations ("CFR"), which is labeled "Fair Credit Reporting Act." In the CFR, the effective dates rule was designated as Part 602; the circumvention rule was designated as Part 603. Subsequently, the Commission published more proposed rules, including Free Annual File Disclosures (69 FR 13192; Mar. 19, 2004) (the "free reports rule") and Identity Theft Definitions (69 FR 23369; Apr. 28, 2004) (the "definitions rule"). In the CFR, the proposed free reports rule was designated as Part 610; the proposed definitions rule was designated as Part 603.

In this document, the Commission makes non-substantive revisions to the effective dates rule in Part 602, and establishes a new Part 611, containing the provisions of the circumvention rule previously issued as Part 603. In addition, the Commission revises Part 603 (*i.e.*, the heading and § 603.1) to state that terms defined in the FCRA have the same meaning in the FCRA rules unless otherwise stated in those rules. Finally, the Commission adds a new Part 604, which states that any court ruling staying or invalidating any provision of any FCRA rule has no impact on the continuing effectiveness of any other provision or rule (new § 604.1). The above changes are described in greater detail below.

I. Reorganization of FCRA Rules

To achieve a clearer and more logical structure for its FCRA rules, the Commission is making certain non-substantive, technical changes to several CFR parts in which those rules appear. Specifically, the Commission is making three technical revisions to 16 CFR Part 602, which contains the effective dates rule. First, the Commission is changing the heading of that part from "Fair Credit Reporting Act," which unnecessarily duplicates the heading of Subchapter F, to "Fair and Accurate Credit Transactions Act of 2003," which more specifically describes the nature of the rules that are subject to the effective dates set forth in Part 602. Second, the Commission is changing the heading of § 602.1 from "Purpose, scope, and effective dates" to "Effective dates" and deleting references to topics other than effective dates, because there are no provisions on other topics in this section. Third, it changes the description of §602.1(c)(3)(xi) from "concerning enhanced disclosure of the means available to opt out of prescreened lists' to "concerning duration of elections" to more accurately describe the FACT Act provision involved. This revision is purely descriptive in nature and is intended neither to alter any effective date adopted jointly by the Commission and the Federal Reserve Board, nor to have any other effect whatsoever on any legal rights or obligations that may arise under any rule or other requirement arising under the FACT Act.

Further, the Commission is changing the designation of the previously issued circumvention rule,[1] by revising Part 603 to eliminate those provisions from that part and incorporating them instead into a new Part 611. This change will avoid any conflict with the proposed definitions rule, which, if finally adopted, will be issued in Part 603. This change allows for a rational arrangement of the Commission's FCRA rules in 16 CFR, whereby rules of general applicability would be contained in Parts 600–609, and rules applying to consumer reporting agencies would start with the proposed free reports rule in Part 610. Thus, the rule against circumventing the duty to provide free reports (Part 611) would immediately follow the free reports rule. The Commission anticipates proposing as Part 612 a rule concerning a reasonable fee for disclosure of scores by consumer reporting agencies, pursuant to Section 212(b) of the FACT Act, and has already proposed two rules relating to identity theft as Part 613 (Duration of Active Duty Alerts) and Part 614 (Appropriate Proof of Identity) (69 FR 23369; Apr. 28, 2004).

II. Provision for Statutorily Defined Terms and Severability

Aside from the above organizational changes, the Commission is adding certain provisions that, without making substantive alterations, clarify the relationship between the statutory definitions and the Commission's rules, and the effect, if any, on those rules if a particular rule provision were to be invalidated.

The Commission anticipates that some of its FACT Act rules may use terms that are already defined in the FCRA. Accordingly, the Commission is amending Part 603 (which no longer contains the circumvention rule) to revise the heading (to "Definitions") and specify in § 603.1 that any term used in any Commission FACT Act (or other FCRA) rule has the same meaning as in the FCRA unless otherwise specified in that rule. This provision will make it unnecessary for each rule to state that terms have the same meaning as in the FCRA.

Finally, the Commission adds a new Part 604 and § 604.1 containing a severability provision similar to that in other recent Commission rules. (See, *e.g.*, the Telemarketing Sales Rule, 16 CFR 310.8.) This provision will ensure the effectiveness of all the Commission's FCRA rules, in the event that any rule (or any provision of any rule) is declared invalid by a court.

III. Good Cause for Final Rule

The Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, generally requires an agency to publish a notice of a proposed rule and afford interested persons an opportunity to provide comments prior to promulgation of the rule. Notice of the proposed rule and an opportunity for public comment are not required "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3)(B).

The Commission finds good cause for adopting these rules without advance public notice or comment. The FACT Act requires the Commission to promulgate a large number of rules implementing various amendments to the FCRA, all of which will appear in 16 CFR, Chapter I, Subchapter F, "Fair Credit Reporting Act." It has finalized some rules, proposed others, and will propose and finalize more in the coming months. It is important that FACT Act rules be appropriately organized and labeled in the CFR so they can be easily accessed by the public. Similarly, addition of the severability and FCRA definitions provisions will avoid possible uncertainties relating to the Commission's FACT Act rules. The revisions described above, however, are purely technical in nature, and are not intended to make any substantive change in the legal rights or obligations as defined or to be defined by the Commission's rules. Rather, the changes merely clarify the organizational structure and relationship of the rules, including the severability of its provisions, and to reiterate relevant terms already defined by statute. For these reasons, the FTC finds that issuing these rule changes with prior notice and comment is unnecessary, and would be contrary to the public interest to the

[1] This Commission action, changing the circumvention rule's location in the CFR, does not affect its classification as an interim final rule. Similarly, it has no impact on the Commission's invitation for comments to assit it in ascertaining facts necessary to reach a determination whether to adopt it as a final rule. 69 FR 8532 (Feb. 24, 2004). The Commission will address those comments and any needed substantive changes in the circumvention rule at a later date.

extent it would delay publication of the clarifications and interfere with the timely and orderly promulgation of the relevant substantive rules. 5 U.S.C. 553(b)(3)(B). Accordingly, the Commission finds that there is good cause for adopting these rules as effective without prior public comment.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3506; 5 CFR 1320 Appendix A.1, the FTC has reviewed these final rule changes. The Commission has determined that these changes neither affect nor contain any collection of information requirements subject to Office of Management and Budget review under the Paperwork Reduction Act. The rule changes do not require any entity to collect, maintain, disclose, or submit any records or other information.

V. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis with a proposed rule and a Final Regulatory Flexibility Analysis with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 603–605. The FTC certifies that these rules are entirely technical in nature and thus will not have a significant economic impact on a substantial number of small entities. This document serves as notice to the Small Business Administration of the agency's certification of no effect.

List of Subjects in 16 CFR Parts 602, 603, 604, and 611

Consumer reports, Consumer reporting agencies, Credit, Information furnishers, Identity theft, Trade practices.

■ Accordingly, for the reasons set forth in the preamble, the FTC revises 16 CFR Parts 602 and 603, and adds new Parts 604 and 611, to read as follows:

■ 1. Revise Part 602 to read as follows:

PART 602—FAIR AND ACCURATE CREDIT TRANSACTIONS ACT OF 2003

Authority: 15 U.S.C. 1681s; sec. 3, Pub. L. 108–159; 117 Stat. 1953.

§ 602.1 Effective dates.

(a)–(b) [Reserved]

(c) The applicable provisions of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act), Pub. L. 108–159, 117 Stat. 1952, shall be effective in accordance with the following schedule:

(1) *Provisions effective December 31, 2003.*

(i) Sections 151(a)(2), 212(e), 214(c), 311(b), and 711, concerning the relation to state laws; and

(ii) Each of the provisions of the FACT Act that authorizes an agency to issue a regulation or to take other action to implement the applicable provision of the FACT Act or the applicable provision of the Fair Credit Reporting Act, as amended by the FACT Act, but only with respect to that agency's authority to propose and adopt the implementing regulation or to take such other action.

(2) *Provisions effective March 31, 2004.*

(i) Section 111, concerning the definitions;

(ii) Section 156, concerning the statute of limitations

(iii) Sections 312(d), (e), and (f), concerning the furnisher liability exception, liability and enforcement, and rule of construction, respectively;

(iv) Section 313(a), concerning action regarding complaints;

(v) Section 611, concerning communications for certain employee investigations; and

(vi) Section 811, concerning clerical amendments.

(3) *Provisions effective December 1, 2004.*

(i) Section 112, concerning fraud alerts and active duty alerts;

(ii) Section 114, concerning procedures for the identification of possible instances of identity theft;

(iii) Section 115, concerning truncation of the social security number in a consumer report;

(iv) Section 151(a)(1), concerning the summary of rights of identity theft victims;

(v) Section 152, concerning blocking of information resulting from identity theft;

(vi) Section 153, concerning the coordination of identity theft complaint investigations;

(vii) Section 154, concerning the prevention of repollution of consumer reports;

(viii) Section 155, concerning notice by debt collectors with respect to fraudulent information;

(ix) Section 211(c), concerning a summary of rights of consumers;

(x) Section 212(a)–(d), concerning the disclosure of credit scores;

(xi) Section 213(c), concerning duration of elections;

(xii) Section 217(a), concerning the duty to provide notice to a consumer;

(xiii) Section 311(a), concerning the risk-based pricing notice;

(xiv) Section 312(a)–(c), concerning procedures to enhance the accuracy and integrity of information furnished to consumer reporting agencies;

(xv) Section 314, concerning improved disclosure of the results of reinvestigation;

(xvi) Section 315, concerning reconciling addresses;

(xvii) Section 316, concerning notice of dispute through reseller; and

(xviii) Section 317, concerning the duty to conduct a reasonable reinvestigation.

■ 2. Revise Part 603 to read as follows:

PART 603—DEFINITIONS

Authority: Pub. L. 108–159, sec. 111; 15 U.S.C. 1681a.

§ 603.1 Terms defined in the Fair Credit Reporting Act.

Any term used in any part in this subchapter, if defined in the Fair Credit Reporting Act (FCRA) and not otherwise defined in that rule, has the same meaning provided by the FCRA.

■ 3. Add new Part 604 to read as follows:

PART 604—FAIR CREDIT REPORTING ACT RULES

Authority: Pub. L. 108–159, secs. 3, 111, 112, 114, 151, 153, 211, 212, 213, 214, 216, 311, 315; 15 U.S.C. 1681s.

§ 604.1 Severability.

All parts and subparts of this subchapter are separate and severable from one another. If any part or subpart is stayed or determined to be invalid, the Commission intends that the remaining parts and subparts shall continue in effect.

■ 4. Add a new part 611 to read as follows:

PART 611—PROHIBITION AGAINST CIRCUMVENTING TREATMENT AS A NATIONWIDE CONSUMER REPORTING AGENCY

Sec.

611.1 Rule of construction.
611.2 General prohibition.
611.3 Limitation on applicability.

Authority: Pub. L. 108–159, sec. 211(b); 15 U.S.C. 1681x.

§ 611.1 Rule of construction.

The examples in this part are illustrative and not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part.

§ 611.2 General prohibition.

(a) A consumer reporting agency shall not circumvent or evade treatment as a "consumer reporting agency that compiles and maintains files on

consumers on a nationwide basis' as defined under section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p), by any means, including, but not limited to:

(1) Corporate organization, reorganization, structure, or restructuring, including merger, acquisition, dissolution, divestiture, or asset sale of a consumer reporting agency; or

(2) Maintaining or merging public record and credit account information in a manner that is substantially equivalent to that described in paragraphs (1) and (2) of section 603(p) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(p).

(b) *Examples:*

(1) *Circumvention through reorganization by data type.* XYZ Inc. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. It restructures its operations so that public record information is assembled and maintained only by its corporate affiliate, ABC Inc. XYZ continues operating as a consumer reporting agency but ceases to comply with the FCRA obligations of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, asserting that it no longer meets the definition found in FCRA section 603 (p), because it no longer maintains public record information. XYZ's conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(2) *Circumvention through reorganization by regional operations.* PDQ Inc. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. It restructures its operations so that corporate affiliates separately assemble and maintain all information on consumers residing in each state. PDQ continues to operate as a consumer reporting agency but ceases to comply with the FCRA obligations of a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, asserting that it no longer meets the definition found in FCRA section 603(p), because it no longer operates on a nationwide basis. PDQ's conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(3) *Circumvention by a newly formed entity.* Smith Co. is a new entrant in the marketplace for consumer reports that bear on a consumer's credit worthiness, standing and capacity. Smith Co. organizes itself into two affiliated companies: Smith Credit Co. and Smith Public Records Co. Smith Credit Co. assembles and maintains credit account information from persons who furnish that information regularly and in the ordinary course of business on consumers residing nationwide. Smith Public Records Co. assembles and maintains public record information on consumers nationwide. Neither Smith Co. nor its affiliated organizations comply with FCRA obligations of consumer reporting agencies that compile and maintain files on consumers on a nationwide basis. Smith Co."s conduct is a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, and thus violates this section.

(4) Bona fide, arms-length transaction with unaffiliated party. Foster Ltd. is a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. Foster Ltd. sells its public record information business to an unaffiliated company in a bona fide, arms-length transaction. Foster Ltd. ceases to assemble, evaluate and maintain public record information on consumers residing nationwide, and ceases to offer reports containing public record information. Foster Ltd."s conduct is not a circumvention or evasion of treatment as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis. Foster Ltd."s conduct does not violate this part.

§ 611.3 Limitation on applicability.

Any person who is otherwise in violation of § 611.2 shall be deemed to be in compliance with this part if such person is in compliance with all obligations imposed upon consumer reporting agencies that compile and maintain files on consumers on a nationwide basis under the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–11329 Filed 5–19–04; 8:45 am]

BILLING CODE 6750–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 211, 231, and 241

[Release Nos. 33–8422; 34–49708; FR–73]

Commission Guidance Regarding the Public Company Accounting Oversight Board's Auditing and Related Professional Practice Standard No. 1

AGENCY: Securities and Exchange Commission.

ACTION: Interpretation.

SUMMARY: The Commission is publishing interpretive guidance regarding Auditing and Related Professional Practice Standard No. 1, *References in Auditors' Reports to the Standards of the Public Company Accounting Oversight Board* ("Auditing Standard No. 1") of the Public Company Accounting Oversight Board (the "PCAOB").

DATES: *Effective Date:* May 14, 2004.

FOR FURTHER INFORMATION CONTACT: Questions about specific filings should be directed to staff members responsible for reviewing the documents the registrant files with the Commission. General questions about this release should be referred to Consuelo Hitchcock, Division of Corporation Finance, at (202) 942–2960 or to Esmeralda Rodriguez, Office of the Chief Accountant, at (202) 942–4400, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549–0401.

SUPPLEMENTARY INFORMATION:

I. Background

Section 103(a) of the Sarbanes-Oxley Act of 2002 (the "Act") authorized the PCAOB to establish auditing and related professional practice standards to be used by registered public accounting firms.[1] On December 23, 2003, the PCAOB filed with the Commission proposed Auditing Standard No. 1, *References in Auditing Reports to the Standards of the Public Company Accounting Oversight Board.*[2] After soliciting comments on the proposed standard,[3] the Commission today approved Auditing Standard No. 1, effective for auditors' reports issued or reissued on or after May 24, 2004.[4] Auditing Standard No. 1 directly impacts certain of the Commission's

[1] Pub. L. 107–204, 116 Stat. 745 (2002).

[2] The PCAOB approved Auditing Standard No. 1 on December 17, 2003. PCAOB Release No. 2003–25 (December 17, 2003) (the "PCAOB Adopting Release").

[3] Release No. 34–49528 (April 6, 2004).

[4] Release No. 34–49707 (May 14, 2004).

rules, regulations, releases and staff bulletins (collectively referred to in this release as "Commission rules and staff guidance") and certain provisions in the federal securities laws, which refer to Generally Accepted Auditing Standards ("GAAS") and to specific standards under GAAS (including related professional practice standards), because it directs auditors to cease referring to GAAS in audit reports relating to financial statements of issuers and instead to refer to the "standards of the Public Company Accounting Oversight Board (United States)."[5] The Commission is therefore issuing interpretive guidance to avoid confusion on the part of issuers, auditors and investors. The guidance in this release is applicable only to auditors' engagements that are governed by PCAOB rules.[6]

II. Discussion

A. References to GAAS in Commission Rules and Staff Guidance and in the Federal Securities Laws

PCAOB Rule 3100 requires registered public accounting firms and their associated persons to comply with all applicable auditing and related professional practice standards established or adopted by the PCAOB. Because of this and because the PCAOB has adopted interim standards incorporating generally accepted auditing standards, references to GAAS and standards established by the American Institute of Certified Public Accountants (the "AICPA") are now superseded. Auditing Standard No. 1 requires that an auditor's report issued in connection with any engagement performed in accordance with the auditing and related professional practice standards of the PCAOB state that the engagement was performed in accordance with "the standards of the Public Company Accounting Oversight Board (United States)."[7] In addition, Auditing Standard No. 1 states that "a reference to generally accepted auditing standards in auditors' reports is no longer appropriate or necessary."[8]

Many parts of Commission rules and staff guidance include direct references to GAAS. For example, Regulation S–X, which, together with the Commission's Financial Reporting Releases, sets forth the form and content of and requirements for financial statements required to be filed with the Commission,[9] includes Rule 2–02 regarding the accountant's report.[10] Rule 2–02 of Regulation S–X states in relevant part:

"*Representations as to the audit.* The accountant's report: (1) Shall state whether the audit was made in accordance with generally accepted auditing standards * * *."[11]

Moreover, some Commission rules and staff guidance refer to specific auditing standards under GAAS. For example, Accounting Series Release No. 296, which is now in Section 601 of Financial Reporting Codification, references AU 220.03 of the Codification of Auditing Standards published by the AICPA.[12] Finally, some parts of Commission rules and staff guidance could be said to include indirect references to GAAS because in releases or staff bulletins the Commission or its staff has interpreted rules and regulations by directing registrants, auditors and investors to GAAS.

In addition, the federal securities laws refer to GAAS. Specifically Section 10A(a) of the Securities Exchange Act of 1934 states:

"[e]ach audit required pursuant to this title of the financial statements of an issuer by a registered public accounting firm shall include [the following procedures and an evaluation], in accordance with generally accepted auditing standards, as may be modified or supplemented from time to time by the Commission * * *."[13]

Given the possible confusion between Commission rules and staff guidance and references in the federal securities laws, on the one hand, and the PCAOB's rules, on the other hand, the Commission believes it is necessary to publish the guidance in this release. Effective immediately, references in Commission rules and staff guidance and in the federal securities laws to GAAS or to specific standards under GAAS, as they relate to issuers, should be understood to mean the standards of the PCAOB plus any applicable rules of the Commission. The Commission intends to codify this interpretation in the near future.

It should be noted that although the PCAOB has stated that Auditing Standard No. 1 supersedes references to "generally accepted auditing standards," "U.S. generally accepted auditing standards," "auditing standards generally accepted in the United States of America," and "standards established by the AICPA,"[14] Auditing Standard No. 1 does not supersede Commission rules or regulations. Section 3(c) of the Act provides that "[n]othing in this Act or the rules of the Board shall be construed to impair or limit * * * (2) the authority of the Commission to set standards for accounting or auditing practices or auditor independence, derived from other provisions of the securities laws or the rules or regulations thereunder, for purposes of the preparation and issuance of any audit report, or otherwise under applicable law * * *." When an independent accountant prepares a report for submission or filing with the Commission, the independent accountant would be considered to be representing that it has complied with the applicable federal securities laws and Commission rules and guidance, as well as with the standards of the Public Company Accounting Oversight Board (United States), as referenced explicitly in Auditing Standard No. 1. In a note to PCAOB Rule 3600T, Interim Independence Standards, the Board specifically provided that the PCAOB's rules do not supersede the Commission's rules, and, therefore, registered public accounting firms must comply with the more restrictive of the Commission's or the Board's rules.

B. Incorporation by Reference

Some registrants are able to incorporate by reference previously issued and filed reports by including an auditor's consent to the use of their report in the registrant's filing that requires the audit report. If a registrant incorporates by reference a report previously filed with the Commission, rather than including a new report in the filing, the report incorporated by reference would not need to include the otherwise-required reference to the standards of the PCAOB.

List of Subjects

17 CFR Part 211

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 231 and 241

Securities.

Amendments to the Code of Federal Regulations

■ For the reasons set forth above, the Commission is amending title 17,

[5] PCAOB Adopting Release at A–2.

[6] The PCAOB, for example, has not established particular auditing standards for non-issuer broker-dealers or investment advisers. This release is not applicable to such engagements and related filings.

[7] PCAOB Adopting Release at A–2.

[8] *Id.* at 7.

[9] 17 CFR 210.1–01.

[10] 17 CFR 210.2–02.

[11] *Id.*

[12] FRC 601. AU 220.03 is among the standards adopted by the PCAOB on an interim, transitional basis.

[13] 15 U.S.C. 78j–1.

[14] PCAOB Adopting Release at 3.

chapter II of the Code of Federal Regulations as set forth below:

PART 211—INTERPRETATIONS RELATING TO FINANCIAL REPORTING MATTERS

■ 1. Part 211, Subpart A, is amended by adding Release No. FR–73 and the release date of May 14, 2004 to the list of interpretive releases.

PART 231—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES ACT OF 1933 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 2. Part 231 is amended by adding Release No. 33–8422 and the release date of May 14, 2004 to the list of interpretive releases.

PART 241—INTERPRETATIVE RELEASES RELATING TO THE SECURITIES EXCHANGE ACT OF 1934 AND GENERAL RULES AND REGULATIONS THEREUNDER

■ 3. Part 241 is amended by adding Release No. 34–49708 and the release date of May 14, 2004 to the list of interpretive releases.

Dated: May 14, 2004.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11399 Filed 5–19–04; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9129]

RIN 1545–BB63

Uniform Capitalization of Interest Expense in Safe Harbor Sale and Leaseback Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the capitalization of interest expense incurred in sale and leaseback transactions under the Economic Recovery Tax Act of 1981 (ERTA) safe harbor leasing provisions. The regulations affect taxpayers that provide purchase money obligations in connection with these transactions. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**. The final regulations consist of technical revisions to reflect the issuance of the temporary regulations.

DATES: *Effective Date:* These regulations are effective May 20, 2004.

Applicability Dates: For dates of applicability, *see* § 1.263A–15T(a)(3).

FOR FURTHER INFORMATION CONTACT: Grant Anderson, 202–622–4930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 263A(f) of the Internal Revenue Code (Code) relating to the treatment of certain interest expense incurred by the lessor in a sale and leaseback transaction under the ERTA safe harbor leasing provisions (former section 168(f)(8), as enacted by section 201(a) of ERTA, Public Law 97–34, 95 Stat. 214).

Section 263A (the uniform capitalization rules) generally requires the capitalization of direct costs and indirect costs properly allocable to real property and tangible personal property produced by a taxpayer.

Section 263A(f) and the regulations thereunder provide special rules for capitalizing interest to property produced by a taxpayer. In general, section 263A(f) only requires the capitalization of interest that is paid or incurred during the production period of certain property (referred to as designated property). Designated property includes all real property and certain tangible personal property. *See* § 1.263A–8(b) of the Income Tax Regulations.

In general, interest incurred on debt that is directly attributable to production expenditures with respect to designated property (traced debt) is capitalized first. *See* section 263A(f)(2)(A)(i). If production expenditures with respect to designated property exceed the amount of traced debt, interest on any other debt of the taxpayer is capitalized to the extent that the interest could have been reduced if production expenditures had not been incurred. *See* section 263A(f)(2)(A)(ii). The amount of interest required to be capitalized under section 263A(f) is calculated by reference to eligible debt. *See* § 1.263A–9(a)(4). Eligible debt generally includes all outstanding debt of the taxpayer. Certain types of debt (listed in paragraphs (i) to (viii) of § 1.263A–9(a)(4)), however, are excluded from the definition of eligible debt.

The ERTA safe harbor leasing provisions were intended to permit owners of property to transfer the tax benefits of ownership (depreciation and the investment credit) to other persons. The ERTA safe harbor leasing provisions operate by guaranteeing that, for federal tax purposes, (i) a transaction meeting certain stated qualifications (a qualifying transaction) will be treated as a lease even though the qualifying transaction otherwise would not be considered a lease, and (ii) the nominal lessor will be treated as the owner of the property even though the nominal lessee is in substance the owner of the property.

Regulations issued under the ERTA safe harbor leasing provisions clarify that a qualifying transaction may be part of a sale and leaseback transaction, in which the nominal lessee sells the underlying property for Federal tax purposes to the nominal lessor for a cash payment and an interest bearing note (purchase money note), and the nominal lessor simultaneously leases the property back to the nominal lessee. *See* § 5c.168(f)(8)–1(e) *Example 2*. Generally, the nominal lessor deducts, and the nominal lessee includes in income, the interest accruing on the purchase money note, subject to certain limitations. *See* § 5c.168(f)(8)–7.

Explanation of Provisions

The temporary regulations provide that eligible debt under section 263A(f) does not include a purchase money obligation given by the lessor to the lessee (or a party related to the lessee) in a sale and leaseback transaction under former section 168(f)(8) as enacted by ERTA. Accordingly, these obligations are excluded from the definition of eligible debt, and the interest accruing on the obligations is not subject to capitalization with respect to designated property under section 263A(f).

The temporary regulations apply to interest incurred in taxable years beginning on or after May 20, 2004, except that, in the case of property that is inventory in the hands of the taxpayer, the temporary regulations apply to taxable years beginning on or after May 20, 2004. However, taxpayers may elect to apply the temporary regulations to interest incurred in taxable years beginning on or after January 1, 1995, or, in the case of property that is inventory in the hands of the taxpayer, to taxable years beginning on or after January 1, 1995 (the general effective date of the interest capitalization regulations).

For purposes of § 1.263A–15(a)(2), the exclusion of purchase money obligations given by the lessor to the lessee (or a party related to the lessee) in a sale and leaseback transaction under former section 168(f)(8) as enacted by ERTA will be considered to be a reasonable position for the application of section 263A(f) in taxable years beginning before January 1, 1995. Consequently, a taxpayer changing a method of accounting for property that is not inventory in the hands of the taxpayer to conform to the temporary regulations may elect to include interest incurred after December 31, 1986, in taxable years beginning on or after December 31, 1986 (the general effective date of section 263A), and before January 1, 1995, in the determination of its adjustment under section 481(a). A taxpayer changing a method of accounting for property that is inventory in the hands of the taxpayer to conform to the temporary regulations must revalue its beginning inventory in the year of change as if the new method of accounting had been in effect during all prior years.

Special Analyses

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

Drafting Information

The principal author of these regulations is Grant Anderson of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

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

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

■ **Par. 2.** Section 1.263A–9 is amended by revising paragraphs (a)(4)(vii), and (viii) and adding paragraph (a)(4)(ix) to read as follows:

§ 1.263A–9 The avoided cost method.

(a) * * *

(4) * * *

(vii) Reserves, deferred tax liabilities, and similar items that are not treated as debt for Federal income tax purposes, regardless of the extent to which the taxpayer's applicable financial accounting or other regulatory reporting principles require or support treating these items as debt;

(viii) Federal, State, and local income tax liabilities, deferred tax liabilities under section 453A, and hypothetical tax liabilities under the look-back method of section 460(b) or similar provisions; and

(ix) [Reserved]. For further guidance, see § 1.263A–9T(a)(4)(ix).

* * * * *

■ **Par. 3.** Section 1.263A–9T is added to read as follows:

§ 1.263A–9T The avoided cost method (temporary).

(a) (1) through (3) [Reserved]. For further guidance, see § 1.263A–9(a)(1) through (3).

(4) *Definition of eligible debt.* Except as provided in this paragraph (a)(4), *eligible debt* includes all outstanding debt (as evidenced by a contract, bond, debenture, note, certificate, or other evidence of indebtedness). Eligible debt does not include—

(i) through (viii) [Reserved]. For further guidance, see § 1.263A–9(a)(4)(i) through (viii).

(ix) A purchase money obligation given by the lessor to the lessee (or a party that is related to the lessee) in a sale and leaseback transaction involving an agreement qualifying as a lease under § 5c.168(f)(8)–1 through § 5c.168(f)(8)–11 of this chapter. See § 5c.168(f)(8)–1(e) *Example (2)* of this chapter.

(b) through (g) [Reserved]. For further guidance, see § 1.263A–9(b) through (g).

■ **Par. 4.** Section 1.263A–15T is added to read as follows:

§ 1.263A–15T Effective dates, transitional rules, and anti-abuse rule (temporary).

(a)(1) and (2) [Reserved]. For further guidance, see § 1.263A–15(a)(1) and (2).

(3) Section 1.263A–9T applies to interest incurred in taxable years beginning on or after May 20, 2004, except that, in the case of property that is inventory in the hands of the taxpayer, § 1.263A–9T applies to taxable years beginning on or after May 20, 2004. However, taxpayers may elect to apply § 1.263A–9T to interest incurred in taxable years beginning on or after January 1, 1995, or, in the case of property that is inventory in the hands of the taxpayer, to taxable years beginning on or after January 1, 1995. A change in a taxpayer's treatment of interest to a method consistent with § 1.263A–9T is a change in method of accounting to which sections 446 and 481 apply.

(b) and (c) [Reserved]. For further guidance, see § 1.263A–15(b) and (c).

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: May 10, 2004.

Gregory F. Jenner,

Acting Assistant Secretary of the Treasury.

[FR Doc. 04–11360 Filed 5–19–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Southeast Alaska 04–001]

RIN 1625–AA00

Safety Zone; Peril Strait, Cozian Reef, Motor Vessel LeConte, Southeast Alaska

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing an emergency temporary safety zone in an area one-half mile around the Motor Vessel LeConte, which ran aground in Peril Strait, Alaska. The Motor Vessel LeConte is currently aground on Cozian Reef and has sustained damage. The temporary safety zone is necessary to protect mariners from the dangers associated with ongoing operations and to allow workers to safely conduct salvage and pollution prevention operations. This action will restrict vessels from approaching within one-half mile of the Motor Vessel LeConte at all times until salvage and pollution prevention operations are complete.

DATES: This rule is effective from May 10, 2004, until June 30, 2004.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP

Southeast Alaska 04–001 and are available for inspection or copying at USCG Marine Safety Juneau, 2760 Sherwood Lane, Suite 2A, Juneau, Alaska, between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Stephanie Conrad, project officer, USCG Marine Safety Office Juneau, at (907) 463–2450.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The Coast Guard is taking this action for the immediate protection of vessels and personnel operating in the vicinity of the grounded Motor Vessel LeConte.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to provide for the safety of persons and vessels conducting salvage and environmental clean-up operations in the vicinity of the Motor Vessel LeConte. Because of the danger posed by the damaged vessel, immediate action is necessary to provide for the safety of mariners.

Background and Purpose

The Coast Guard is establishing a temporary safety zone that will restrict vessel traffic in the vicinity of Cozian Reef, Peril Strait, within one-half mile of the Motor Vessel LeConte. Vessels are prohibited from entering the zone without the permission of the Captain of the Port, Southeast Alaska. The temporary safety zone is necessary to protect mariners from the hazards associated with the ongoing operations around the Motor Vessel LeConte. Public notifications will be made via marine broadcasts and other advisories so mariners can adjust their plans accordingly. Coast Guard vessels operating in the vicinity of Cozian Reef will also advise mariners of the area closure.

Discussion of Rule

The Coast Guard is establishing a safety zone around the Motor Vessel LeConte, which has run aground on Cozian Reef in position 57°34′ N, 135°26′ W. The zone will comprise an area one-half mile around the Motor Vessel LeConte. Within the zone, only vessels with the permission of the Captain of the Port, Southeast Alaska are permitted to enter. The limited size of the zone is designed to minimize the impact on other vessels transiting the area.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). This finding is based on the limited size of the safety zone. Because the zone is so small, transiting vessels will be able to transit around the zone, thus it will have minimal, if any, impact on vessels transiting the waters of Peril Strait. Marine information broadcasts will advise mariners of the safety zone and its restrictions.

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 may affect the owners or operators of vessels intending to transit in the vicinity of Cozian Reef, some of which may be small entities. This safety zone will not have a significant economic impact on these entities because marine traffic will still be able to transit around the area while operations are ongoing.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. This rule creates no additional vessel traffic and thus imposes no additional burdens on the environment. It simply provides guidelines for vessels transiting in Peril Strait so that vessels may transit safely in the vicinity of the Motor Vessel LeConte. Under figure 2–1, paragraph (34)(g), of the Instruction, an "Environmental Analysis Check List" and a "Categorical Exclusion Determination" are not required for this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. From May 10, 2004 through June 30, 2004, temporarily add § 165.T17–018 to read as follows:

§ 165.T17–018 Safety Zone; Peril Strait, Cozian Reef, Motor Vessel LeConte, Southeast Alaska.

(a) *Location.* The following area is a safety zone: all waters within one-half mile of the Motor Vessel LeConte. Specifically, an area one-half mile around the location where the Motor Vessel LeConte has run aground at position 57°34′ N, 135°26′ W, in Peril Strait, Southeast Alaska.

(b) *Regulations.*

(1) All persons and vessels are required to comply with the general regulations governing safety zones found in section 165.23 of this part.

(2) All vessels are prohibited from entering the safety zone without the permission of the Captain of the Port, Southeast Alaska. Permission to enter the zone may be gained by contacting the Captain of the Port's designated On Scene Commander as specified below. In addition, all persons must comply with the instructions of Coast Guard Captain of the Port representatives or designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a vessel displaying a U.S. Coast Guard ensign by siren, radio, flashing light or other means, the operator of the vessel must proceed as directed. Coast Guard Auxiliary and local or state agencies may be present to inform vessel operators of the requirements of this section and other applicable laws.

(3) Permission to enter the safety zone can be gained by contacting the On Scene Commander, the Captain of the Port's representative enforcing the safety zone. The On Scene Commander can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at (907) 463–2450.

(c) *Enforcement period.* This section will be enforced from May 10, 2004, until June 30, 2004. If enforcement ends before June 30, 2004, the Coast Guard will do a broadcast notice to mariners informing mariners that the zone is no longer being enforced.

Dated: May 10, 2004.

John P. Sifling,

Commander, United States Coast Guard, Captain of the Port, Southeast Alaska.

[FR Doc. 04–11390 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–04–016]

RIN 2115–AA00

Security Zone; Duluth Harbor, Duluth, MN

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in Duluth's inner harbor for the Decommissioning ceremony of the Coast Guard Cutter Sundew. The security zone is necessary to ensure the security of dignitaries attending this ceremony on May 27, 2004. The security zone is intended to restrict vessels from a portion of Duluth Harbor in Duluth, Minnesota.

DATES: This rule is effective from 10 a.m. (local) until 3 p.m., May 27, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09–04–016] and are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Duluth, 600 South Lake Ave, Canal Park, Duluth, Minnesota 55802, between the hours of 7:30 a.m. and 3:30 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: LT Greg Schultz, U.S. Coast Guard Marine Safety Office Duluth, at (218) 720–5285.

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. Additionally, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The exact date of the event was not known with sufficient time to allow for the publication of an NPRM followed by an effective date

before the event. In addition, the Coast Guard did not have advance notice of the specific dignitaries that will be attending this event. Any delay in the effective date of the event could pose unnecessary risks to those dignitaries attending the event.

Background and Purpose

The security zone will encompass the waters of Duluth Harbor, within a 250 yard radius from a fixed point located at 46°46′52″ N, 92°05′47″ W. These coordinates are based upon North American Datum (NAD 1983).

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

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, 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 security zone will only be in effect for a few hours on the day of the event and vessels may easily still transit inside the Duluth Harbor.

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: the owners or operators of vessels intending to transit or anchor in this portion of Duluth Harbor from 10 a.m. to 3 p.m. May 27, 2004. This regulation will not have a significant economic impact for the following reasons: The regulation is only in effect for one day of the event. The designated area is being established to allow for maximum use of the waterway for commercial and recreational vessels. The Coast Guard will inform the public that the regulation is in effect via Marine Information Broadcasts.

Assistance for Small Entities

Under Section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pubic 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 U.S. 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

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

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

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

Energy Effects

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

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.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

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

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

PART 165—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. On May 27, 2004, from 10a.m. (local) until 3 p.m. (local) add temporary § 165.T09–016 to read as follows:

§ 165.T09–009 Security Zone; Duluth Harbor, Duluth, Minnesota.

(a) *Location.* The following area is designated as a security zone: The waters of Duluth Harbor, within a 250 yard radius from a fixed point located at 46°46′52″ N, 92°05′47″ W. These coordinates are based upon North American Datum (NAD 1983).

(b) *Effective time and date.* This regulation is effective from 10 a.m. until 3 p.m. (local), on May 27, 2004.

(c) *Regulations.* Entry into, transit through, or anchoring within the security zone is prohibited unless authorized by the Captain of the Port Duluth or the Coast Guard Patrol Commander.

Dated: May 12, 2004.

H.M. Nguyen,

Commander, U.S. Coast Guard, Captain of the Port Duluth.

[FR Doc. 04–11389 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 140–4a; FRL–7658–9]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency, through this action, is approving rules submitted by the State of Indiana as revisions to its State Implementation Plan (SIP) for Prevention of Significant Deterioration (PSD) air quality construction permit program. All public comments received will be addressed in a subsequent final rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: This "direct final" rule is effective July 19, 2004, unless EPA receives written adverse comment by June 21, 2004. If adverse written comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. IN–140, by one of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- E-mail: *blakley.pamela@epa.gov*.
- Fax: (312) 886–5824.
- Mail: Pamela Blakley, Acting Chief, Air Programs Branch, United States Environmental Protection Agency, Mail Code AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604.
- Hand Delivery: Deliveries are only accepted during the Docket's normal hours of operation (8:15 a.m. to 4:45 p.m. CDT), and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. IN–140. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov, or e-mail. The federal regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Unit I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in an index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the Air Permit Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604 (Docket ID IN–140), Monday through Friday, excluding holidays. The Docket telephone number is (312) 353–5697.

FOR FURTHER INFORMATION CONTACT: Ethan Chatfield, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604; telephone number: (312) 886–5112; fax number: (312) 886–5824; e-mail address: *chatfield.ethan@epa.gov*.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. General Information
A. Does This Action Apply to Me?
B. What Should I Consider as I Prepare My Comments for EPA?
1. Submitting CBI
2. Tips for Preparing Your Comments
II. EPA Action and Review
A. What Is the Purpose of This Document?
B. What Is the History of IDEM's PSD Program?
C. Approvability Analysis
III. Final Rulemaking Action
IV. Statutory and Executive Order Reviews

I. General Information

A. Does This Action Apply to Me?

The PSD rules apply to the construction or modification of major sources of air pollution. Indiana has already adopted these rules; therefore, air pollution sources will not be subject to any additional requirements. This rulemaking action merely approves the State rules into the SIP, making them federally enforceable under the Clean Air Act (CAA). Because Indiana has a federally-approved State program, anyone wishing to appeal a PSD permit will continue to do so under the State's environmental appeals process.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one

complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iii. Describe any assumptions and provide any technical information and/or data that you used.

iv. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

v. Explain your views as clearly as possible and provide specific examples to illustrate your concerns, and suggest alternatives.

vi. Make sure to submit your comments by the comment period deadline identified.

II. EPA Action and Review

A. What Is the Purpose of This Document?

This document approves the SIP revision request submitted by IDEM for changes in its PSD program responsive to EPA conditional approval rulemaking.

B. What Is the History of IDEM's PSD Program?

On September 30, 1980, EPA delegated to IDEM the authority to implement and enforce the federal PSD program (40 CFR 52.21). On April 11, 2001, IDEM submitted a request to EPA to revise its SIP to incorporate its PSD regulations in place of the federal delegated rules. On February 1, 2002, IDEM submitted to EPA a revised request resolving issues identified by EPA during an informal review. IDEM withdrew its August 11, 2001, request on February 27, 2002. On May 28, 2002, EPA sent a letter to IDEM deeming the February 1, 2002 submittal complete, and initiated processing of the request.

Indiana's February 1, 2002 submission consists of the addition to the SIP of: 326 IAC 2–2, PSD rules; 326 2–1.1–6, public notice; and 326 IAC 2–1.1–8, time periods for determination on permit applications. IDEM previously submitted sections 326 IAC 2–1.1–6 and 326 IAC 2–1.1–8, and, at EPA's request, resubmitted them as part of this SIP submittal request.

On January 15, 2003, EPA published a direct final rule conditionally approving IDEM's February 1, 2002 SIP submittal upon correction of a few minor deficiencies (68 FR 1970). On March 3, 2003 (68 FR 9892), EPA withdrew the direct final rule due to adverse comments, and published a final rule conditionally approving the submittal. On January 16, 2004, IDEM responded to the conditional approval by submitting corrections to the identified deficiencies.

C. Approvability Analysis

In the January 15, 2003 direct final conditional approval and March 3, 2003 final conditional approval, EPA identified minor discrepancies between the Federal rule requirements (40 CFR part 51, subpart I) and the Indiana SIP that IDEM must correct before EPA could fully approve Indiana's PSD program. The following are changes incorporated by IDEM in its January 16, 2004 submittal and approved by EPA through this rulemaking.

In 326 IAC 2–2–1(y)(5), the words "and this subdivision" were superfluous and were, therefore, removed. In 326 IAC 2–2–1(gg), "U.S. EPA" was replaced with "IDEM." In 326 2–2–1(x)(E), the phrase "minor new source review regulations approved pursuant to 40 CFR 51.160 through 40 CFR 51.166" was added to a list of regulations exempting the use of an alternative fuel or raw material from the definition of a "major modification." In 326 IAC 2–2–6(b)(5), the words "whichever is later" were not necessary and, therefore, were removed. The date in 326 IAC 2–2–12, which provides an allowance for sources to request that IDEM rescind requirements in permits, was changed from January 1, 2002 to January 19, 2002. The date was intended to be the effective date of the Indiana PSD rule amendments, but since IDEM did not know at the time of final adoption what the actual effective date of the rule would be, an estimated date of January 1, 2002 was inserted. The actual effective date was January 19, 2002; this date is, therefore, being corrected through this action.

In addition to the changes described above, IDEM has also made a number of smaller revisions to 326 IAC 2–2 in its January 16, 2004 submittal that are more grammatical in nature. EPA believes that these changes do not significantly change the meaning of Indiana's rules and, therefore, approves these smaller changes as submitted.

III. Final Rulemaking Action

EPA believes that Indiana's January 16, 2004 submittal adequately addressed issues raised in EPA's January 15, 2003 direct final conditional approval and the March 3, 2003 final conditional approval. In this rulemaking action, EPA is therefore approving the sections of Indiana's rules addressed in the Approvability Analysis above as a revision to the Indiana SIP for PSD.

EPA's approval of Indiana's PSD program does not divest EPA of the duty to continue appropriate oversight to insure that PSD determinations made by Indiana are consistent with the requirements of the CAA, Federal regulations and the SIP.

Today's approval of Indiana's SIP revision submission is limited to existing rules. EPA is taking no position on whether Indiana will need to make changes to its new source review rules to meet any requirements that EPA has or may promulgate as part of its new source review reform.

EPA views the approval of these revision to the Indiana PSD SIP as noncontroversial, and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing approval of the State Plan. Should adverse or critical written comments be filed, EPA will withdraw this direct final rule and address all public comments in a final rule based on the proposed rule published in the proposed rules section of this **Federal Register**. This approval action will be effective without further notice unless EPA receives relevant adverse written comment by June 21, 2004. Should EPA receive adverse or critical comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 19, 2004.

IV. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211,

"Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry our policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Governmental Interference With Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, EPA must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2))

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 26, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.770 is amended by adding paragraph (c)(165) to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

(165) On January 16, 2004 Indiana submitted revised Prevention of Significant Deterioration rules as a revision to the Indiana State Implementation Plan.

(i) Incorporation by reference.

(A) Amendments to the Indiana Administrative Code, Title 326: Air Pollution Control Board; Article 2: Permit Review Rules; Rule 2: Prevention of Significant Deterioration (PSD) Requirements; Section 2–2–1 Definitions; Section 2–2–6 Increment

consumption; requirements; and Section 2–2–12 Permit rescission. Filed with the Secretary of State on March 9, 2004, effective April 8, 2004. Published at 27 Indiana Register 2216; April 1, 2004.

[FR Doc. 04–11337 Filed 5–19–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 151–0449a; FRL–7660–6]

Revisions to the California and Nevada State Implementation Plans, Ventura County Air Pollution Control District and Clark County Department of Air Quality Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP) and the Clark County Department of Air Quality Management (CCDAQM) portion of the Nevada SIP. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that address Acid Deposition and the National Ambient Air Quality Standards (NAAQS).

DATES: This rule is effective on July 19, 2004, without further notice, unless EPA receives adverse comments by June 21, 2004. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

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

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003–5417

Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 333 W. Nye Lane, Room 138, Carson City, NV 89706

Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, Las Vegas, NV 89155–5210

Copies of the VCAPCD and CCDAQM rules may also be available via the Internet at the following sites respectively, *http://www.arb.ca.gov/drdb/drdbltxt.htm* and *http://www.accessclarkcounty.com/air_quality/index.htm*. Please be advised that these are not EPA Web sites and may not contain the same versions of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947–4126, *rose.julie@epa.gov*.

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

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I. The States' Submittal

A. What Rules Did the States Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB) and the Nevada Department of Conservation and Natural Resources (NDCNR), respectively.

TABLE 1.—SUBMITTED RULES

Local agency	Rule/section #	Rule/section title	Adopted	Submitted
VCAPCD	34	Acid Deposition Control	03/14/95	05/24/95
CCDAQM	11	Ambient Air Quality Standards	10/07/03	10/23/03

On July 24, 1995, VCAPCD Rule 34 was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. CCDAQM Section 11 was found to meet the completeness criteria on November 18, 2003.

B. Are There Other Versions of These Rules?

There are no previous versions of VCAPCD Rule 34 in the California SIP. We approved a version of CCDAQM Section 11 into the Nevada SIP on August 27, 1981. The CCDAQM adopted a revision to the SIP-approved version on October 7, 2003 and the NDCNR submitted the revision to EPA on October 23, 2003.

C. What Is the Purpose of the Submitted Rules?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, sulfur dioxide and other air pollutants which harm human health and the environment. These rules were developed as part of the local agencies' programs to control these pollutants.

VCAPCD Rule 34 adopts the CAA Title IV, Acid Rain Program by reference. The Acid Deposition Control program is designed to reduce the effects of acid rain through the reduction of sulfur dioxide (SO_2) and nitrogen oxide (NO_X) emissions. Rule 34 accepts delegation of the federal program which is currently being implemented as part of the District's Federal Operating Permit Program. There are no Phase I facilities in Ventura County. There are two sources that qualify as Phase II sources in Ventura County: boilers at the Ormond Beach and Mandalay Generating Stations operated by Southern California Edison Company.

CCDAQM Section 11 lists the National Ambient Air Quality Standards and the State Ambient Air Quality Standards. Section 11 has been revised to include the new 8-hour ozone standard and the particulate matter 2.5 microns (PM–2.5) standard. The standard for ozone is 0.08 parts per million averaged during an 8-hour

period. The standard for PM–2.5 is based on an annual arithmetic mean of 15 micrograms per cubic meter and a 24-hour standard of 65 micrograms per cubic meter.

The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

VCAPCD Rule 34 adopts the Federal Acid Deposition Control program by reference and CCDAQM Section 11 adopts the National Ambient Air Quality Standards into their regulations. These new rules support emission controls found in other sections of the local agencies' requirements. In combination with the other requirements, these rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). EPA policy that we used to help evaluate enforceability requirements consistently includes the Bluebook ("Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988) and the Little Bluebook ("Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001).

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by June 21, 2004, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 19, 2004. This will incorporate these rules into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 19, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: April 27, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(220)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(220) * * *

(i) * * *

(E) Ventura County Air Pollution Control District.

(*1*) Rule 34 adopted on March 14, 1995.

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Subpart DD—Nevada

■ 3. Section 52.1470 is amended by adding paragraph (c)(46) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(46) The following regulations were submitted on October 23, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Department of Air Quality Management.

(*1*) Section 11 adopted on October 7, 2003.

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[FR Doc. 04–11335 Filed 5–19–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7665–1]

Protection of Stratospheric Ozone: Notice of Revocation of Certification for Refrigerant Reclaimers, Under Section 608 of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revocation.

SUMMARY: In accordance with 40 CFR 82.154, no person may sell or offer for sale or use as a refrigerant, any class I or class II ozone-depleting substance consisting wholly or in part of used refrigerant unless the substance has been reclaimed by an EPA-certified refrigerant reclaimer. All persons reclaiming used refrigerant for sale to a new owner are required to certify to the EPA Administrator in accordance with 40 CFR 82.164.

Through this action, EPA is announcing the revocation of refrigerant reclaimer certifications of Refrigerant Management Technologies, Inc. of Pasadena, TX; and Refrigerant Reclaim Inc. of Dumfries, VA. This action means that these companies are no longer authorized to reclaim and sell used refrigerant to a new owner in accordance with the regulations promulgated at 40 CFR part 82, subpart F.

On March 12, 2004, EPA sent information collection requests issued pursuant to Section 114(a) of the Clean Air Act, 42 U.S.C. 7414(a), in which the Agency requested that Refrigerant Management Technologies Inc., and Refrigerant Reclaim Inc. submit information regarding their refrigerant reclamation activity during the calendar year 2003. The information requests indicated that, under section 113(a) of the Clean Air Act, failure to respond could result in the revocation of the respective company's certification as a refrigerant reclaimer. Refrigerant Management Technologies Inc., and Refrigerant Reclaim Inc. failed to respond to these information requests, and as a result EPA is taking the aforementioned action.

This action also acknowledges the voluntary withdrawal of a previously certified reclaimer, Trane Pacific of Honolulu, HI. On February 10, 2004, EPA received a letter from Trane Pacific requesting that the company be removed from the list of EPA-certified reclaimers. As a result of this request, EPA has notified Trane Pacific that the Agency has accepted their voluntary withdrawal.

DATES: Refrigerant Management Technologies Incorporated of Pasadena, TX; and Refrigerant Reclaim Incorporated of Dumfries, VA had their licenses revoked effective April 28, 2004.

FOR FURTHER INFORMATION CONTACT: Julius Banks; Stratospheric Programs Implementation Branch, Global Programs Division, Office of Atmospheric Programs, Office of Air and Radiation; Mail Code: 6205J; 1200 Pennsylvania Ave., NW., Washington, DC 20460; (202) 343–9870; *banks.julius@epa.gov*. EPA publishes information concerning certified refrigerant reclaimers online at *www.epa.gov/ozone/title6/608/reclamation/reclist.html*. The Stratospheric Ozone Information Hotline can also be contacted for further information at (800) 296–1996.

Dated: April 28, 2004.

Brian McLean,

Director, Office of Atmospheric Programs.

[FR Doc. 04–11434 Filed 5–19–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7663–3]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final notice of deletion of the Odessa Chromium 2, North and South Plumes, Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is publishing a direct final notice of deletion of the Odessa Chromium 2, North and South Plumes, Superfund Site (Site) located in Odessa, Texas, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the State of Texas, through the Texas Commission on Environmental Quality (TCEQ), because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final notice of deletion will be effective July 19, 2004, unless EPA receives adverse comments by June 21, 2004. If adverse comments are received, EPA will publish a timely withdrawal of the direct final notice of deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Donn Walters, Community Relations Coordinator (6SF–P), U.S. EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6483 or 1–800–533–3508 (Toll Free). Comments can also be sent by e-mail to: *walters.donn@epa.gov*.

Information Repositories: Comprehensive information about the Odessa Chromium 2, North and South

Plumes, Superfund Site is available for viewing and copying at the information repositories located at: U.S. Environmental Protection Agency Region 6, 12th Floor Library, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6427, Monday through Friday 7:30 a.m. to 4:30 p.m.; Texas Commission on Environmental Quality (TCEQ), Building D, Record Management, Room 190, 12100 North Interstate Highway 35, Austin, Texas 78753, (512) 239–2920, Monday through Friday 8 a.m. to 5 p.m.; Ector County Library, 321 West 5th Street, Odessa, Texas 79761, (915) 332–0633; and, Permian Basin Regional Planning Commission, 2910 La Force Blvd., Midland International Airport, Midland, Texas 79711, (915) 563–1061.

FOR FURTHER INFORMATION CONTACT: Ernest R. Franke, P.E., Remedial Project Manager (RPM) (6SF–AP), EPA Region 6, 1445 Ross Avenue—Suite 1200, Dallas, Texas, 75202–2733, (214) 665–8521 or 1–800–533–3508 (Toll Free) or by e-mail, *franke.ernest@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

The EPA Region 6 is publishing this direct final notice of deletion of the Odessa Chromium 2, North and South Plumes, Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective July 19, 2004, unless EPA receives adverse comments by June 21, 2004, on this notice to delete published in the "Proposed Rules" section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period on this notice to delete, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. The EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Odessa Chromium 2, North and South Plumes, Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of OU No. 1 and No. 2:

(1) The EPA consulted with the State of Texas through the Texas Commission on Environmental Quality (TCEQ), on the deletion of the Odessa Chromium 2, North and South Plumes, Superfund Site from the NPL prior to developing this direct final notice of deletion.

(2) The State of Texas through the TCEQ concurred with deletion of OU–1 and OU–2 of the Odessa Chromium 2, North and South Plumes, Superfund Site from the NPL in a letter dated November 19, 2003 (appendix A).

(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the "Proposed Rules" section of the **Federal Register** is being published in the local newspaper of general circulation at or near the Odessa Chromium 2, North and South Plumes, Superfund Site and is being distributed to appropriate Federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete Odessa Chromium 2, North and South Plumes, Superfund Site from the NPL.

(4) The EPA placed copies of documents supporting the deletion of the Odessa Chromium 2, North and South Plumes, Superfund Site in the information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice or the companion notice of intent to delete also published in today's **Federal Register**, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Odessa Chromium 2, North and South Plumes, Superfund Site from the NPL.

Site Location

The Odessa Chromium #2 Site is located and bounded approximately by 57th Street on the north, 50th Street on the south, Andrews Highway on the east, and a line which extends from Arthur Avenue north to 57th Street. Chromium was the contaminant of concern present in soil and ground water at the Site. Other heavy metal contaminants discovered during field investigations were below levels of concern. Apparently the contaminants entered the soil, and ultimately the ground water, from two source locations. One was on the corner of 57th

Street and Andrews Highway, the other at 5329 Andrews Highway. The two locations resulted in two plumes of ground water contamination at the Site, known as the North Plume and the South Plumes. The North Plume area is north of 54th Street, and the South Plume area is located south of 54th Street.

Site History

The EPA first proposed the Odessa Chromium 2, North and South Plumes, Superfund Site for inclusion on the National Priorities List (NPL) in October 15, 1984, 49 FR 40320, 51 FR 21087. The North and South Plume locations had manufacturing and industrial operations that included the on-site disposal of water containing chromium. The chromium had contaminated drinking water supply wells serving residential, commercial, and industrial properties. The contamination was discovered after residents complained of discolored water. On September 8, 1986, the first Record of Decision (ROD) was signed for Operable Unit I (OU–1), the Alternate Water Supply (AWS). The remedy selected was an extension of the Odessa city water system to include potable water service to these areas.

The design of the AWS system was completed during December 1987, and the alternate water supply contract notice to proceed was issued on May 23, 1988. On November 3, 1988, the construction of 1190 linear feet of eight-inch water mains, 10 fire hydrants, necessary valves and fittings, 125 service taps and 106 meter boxes and meters and service connections was finalized by the City, and inspected and determined to be substantially complete by the EPA and the TCEQ, formerly the Texas Water Commission (TWC) and then the Texas Natural Resource Conservation Commission (TNRCC).

Remedial Investigation and Feasibility Study (RI/FS)

The State of Texas, through the Texas Natural Resource Conservation Commission (TNRCC) entered into a Cooperative Agreement with the EPA on September 26, 1984, to perform a Remedial Investigation (RI) and Feasibility Study (FS). The RI fieldwork (soils, ground water, sediment, and air sampling) began in August 1985 and a draft report was submitted in April 1986.

Further fieldwork (soils sampling) was conducted in November 1986, and a final RI report was accepted by TNRCC and EPA on May 1, 1987. A final draft report addressing comparison of the potential remedial alternatives was submitted in December 1987.

Based on these results, the soil was not the subject of a response action at the Odessa Chromium #2, North and South Plumes, Site: therefore, Operable Unit 2 (OU–2) addressed remediation of the ground water contamination and required additional investigation. The Remedial Investigation and Feasibility Study (RI/FS) for OU–2 characterized the affected ground water for both the North and South Plumes and was also conducted by the TNRCC. The final combined RI and FS were completed on March 18, 1988, and testing conducted during the RI/FS confirmed that total Site chromium concentrations in ground water exceeded 0.05 milligrams per liter (mg/l), the EPA's Maximum Contaminant Level (MCL) for total chromium at the time of the RI/FS investigation.

The land usage in the vicinity of the site was quite different in 1986 than at present. In 1986, there was considerable business activity in the area, with small repair yards and oil industry vehicle and machine support activities. There were also numerous residential mobile homes in the area. All of these activities were supported with water drawn from the Trinity Aquifer by private wells.

During the Remedial Investigation for OU–2, more than 400 wells were identified within a one-half mile radius of the Site, of which more than 300 were sampled and analyzed for total and hexavalent chromium. By 1994, many of the businesses and residents in the vicinity of the Site had left. In addition, the use of many of the private wells has been discontinued. Of the wells sampled, 13 were found to exceed the federally regulated drinking water standard for chromium of 0.05 mg/l. In addition, 12 new wells were installed within the Trinity aquifer and eight wells were installed in the perch zone during the remedial investigation. Of the new monitoring wells, seven contained chromium levels which significantly exceeded the drinking water standard. Contamination levels are highest in the perched zone (9.9 mg/l), and the Trinity aquifer has levels up to 3.3 mg/l. The north and south plumes are separated by 54th Street which is an east-west street in bearing, and the south plume being southward from 54th Street.

Characterization of Risk

A site-specific risk assessment was conducted as part of the RI/FS activities. Chromium concentrations present in Site soil are comprised of trivalent and hexavalent chromium. Trivalent chromium is not carcinogenic; however, hexavalent chromium is considered a carcinogen via the inhalation mode of exposure. Analytical data from the Site indicated the chromium concentrations found in the soil at the Site posed no significant risk to human health or the environment. In addition, extraction procedures leach toxicity test data conducted at the Site validated the contaminated soil resulted in no leachable chromium in excess of the EPA acceptable limit (5mg/l). Therefore, soil remediation was not considered necessary for the protection of human health and the environment.

Results of the risk assessment indicate that remedial action was required to reduce the potential for exposure through the consumption of contaminated ground water. The Agency for Toxic Substances and Disease Registry (ATSDR) supports this interpretation of the risk assessment for OU–2 which is Attachment B to the final ROD.

Record of Decision Findings for the OU–2

The ROD for OU–2, Ground Water, was signed on March 18, 1988, and the selected remedy required the following: Extraction of chromium-contaminated ground water from the perched water-bearing zone and the Trinity Aquifer; electrochemical treatment of ground water which exceeds the Primary Drinking Water Standard for chromium; reinjection of the treated ground water into the Trinity Aquifer; and, monitoring the site for a minimum of 30 years.

Remedial Design and Cleanup Activities performed on the plumes were activated by a Remedial Action Plan (RAP) for electrochemical treatment, which was approved by EPA in December of 1991 for both the North and South plumes. However, a potentially responsible party, Sequa Corporation, agreed to perform the remedy for the North Plume. The Consent Decree, which was effective on July 16, 1991, required Sequa Corporation to implement the remedy described in the ROD at the North Plume. On March 25, 1992, Sequa Corporation petitioned EPA to change the ground water treatment from electrochemical to ion exchange, citing lower projected remedial costs and the limited ability of electrochemical treatment to remove chromium present in the ground water in low concentrations.

The EPA issued an Explanation of Significant Differences (ESD) on June 28, 1994, to change the remedy from electrochemical treatment to treatment by ion exchange, subject to successful performance of the new technology.

The EPA issued a second ESD dated October 25, 1999, to permit use of ferrous sulfate treatment on the north and south plume, and a third ESD dated September 10, 2003, to eliminate the extended 30-year monitoring of the Site after completion of the remedial action on both the North and South Plumes.

The State of Texas (TCEQ) concurred with the Record of Decisions for OU–1 on September 8, 1986 and for OU–2 on March 18, 1988. The stated ESDs dated June 28, 1995; October 24, 1999; and September 10, 2003, respectively, had formal written concurrences from both TCEQ and Sequa.

Cleanup Standards

On January 1, 1991, the Primary Drinking Water Standard for chromium changed from 0.05 mg/l to 0.10 mg/l total chromium. The ground water cleanup standard for chromium on the Site was revised accordingly. Despite the change in the drinking water standard, concentrations of chromium in the North and South plumes, still exceeded the MCL of 0.10 mg/l.

Operation and Maintenance and Five-Year Review

As of June 2002, all wells at the Odessa Chromium #2 Site had met the project cleanup goal of remaining below the 0.1 mg/l MCL for total chromium for a period of three consecutive months. The EPA issued an ESD on September 10, 2003, which contained sampling results from more than eight years of quarterly monitoring for both the North Plume and the South Plume. After evaluation of these data, it was determined that the 30-year monitoring period requirement could be discontinued. Because this remedy will not result in hazardous substances, pollutants, or contaminants remaining on-site above levels that allow for unlimited use and unrestricted exposure, Operation and Maintenance activities and five-year reviews are not required for this Site.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the Deletion Docket for the Odessa Chromium 2 Site which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories which can be found at the Ector County Library, Odessa, Texas; Permian Basin Regional Planning Commission, Midland International Airport, Midland, Texas; the EPA Region 6 Library in Dallas, Texas; and the TCEQ Library in Austin, Texas.

V. Deletion Action

The EPA, with concurrence of the State of Texas, through the TCEQ, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA are necessary. Therefore, EPA is deleting the Odessa Chromium 2, North and South Plumes, Superfund Site from the NPL. This deletion includes the deletion of both OU–1 and OU–2 from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective July 19, 2004, unless EPA receives adverse comments by June 21, 2004, on a parallel notice of intent to delete published in the "Proposed Rule" section of today's **Federal Register.** If adverse comments are received within the 30-day public comment period on the proposal, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect, and EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 28, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by removing the entry for the Odessa Chromium 2 (Andrews Highway), Odessa, Texas.

[FR Doc. 04–11218 Filed 5–19–04; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

[Docket No. MARAD 2004–17759]

RIN 2133–AB58

Deferment of Service Obligations of Midshipmen Recipients of Scholarships or Fellowships

AGENCY: Maritime Administration, DOT.

ACTION: Interim final rule with request for comments.

SUMMARY: The Maritime Administration (MARAD, we, us, or our) is amending its regulations so that the Maritime Administrator's authority to defer service obligations of United States Merchant Marine Academy (USMMA) midshipmen recipients of scholarships or fellowships of national significance is not conditioned on enrollment in postgraduate marine or maritime-related courses of study.

DATES: This interim final rule is effective on May 20, 2004. However, MARAD will consider comments received not later than June 21, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number MARAD 2004–17759] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 7th St., SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Rita Jackson, Academies Program Officer, Office of Policy and Plans, Maritime Administration, Department of Transportation, 400 7th St., SW., Room 7302, Washington, DC 20590; telephone: (202) 366–0284.

SUPPLEMENTARY INFORMATION: 46 App. U.S.C. 1295b(e)(5) states that the Maritime Administrator, relying on a delegation of authority from the Secretary may defer the service obligation of any student graduating from the USMMA for up to two years provided that student is enrolled in an approved course of study.

46 CFR 310.58(g) states that the Maritime Administrator may grant a deferment of a service obligation contract, for up to two years only for graduate students enrolled in a marine or maritime-related graduate course of study approved by the Administrator.

The differences in the terms of 46 App. U.S.C. 1295b(e)(5) and 46 CFR 310.58 may hinder midshipmen with superior credentials from pursuing postgraduate scholarships and fellowships. Specifically, since service obligations may be deferred only if postgraduate course work involves a marine or maritime-related course of study, graduate studies are limited.

The Administrator's discretion to defer the service obligations of USMMA midshipmen recipients of scholarships is not limited by the U.S. Code. Therefore, we are amending 46 CFR 310.58(g) to reflect the terms of 46 App. U.S.C. 1295b(e)(5) so that the amended regulation will not condition the Administrator's ability to defer the service obligations of recipients of scholarships and fellowships of national significance on enrollment in a marine or maritime-related course of study.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review), and Department of Transportation (DOT) Regulatory Policies and Procedures

This interim final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866, and therefore, was not reviewed by the Office of Management and Budget. This interim final rule is not likely to result in an annual effect on the economy of $100 million or more. This interim final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and overall economic impact of this rulemaking are so minimal that no further analysis is necessary.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) provides an exception to notice and comment procedures when they are unnecessary or contrary to the public interest. MARAD finds that under 5 U.S.C. 553(b)(3)(B) good cause exists for not providing notice and comment since this interim final rule only expands the subject area of courses of study that may be approved by the Maritime Administrator. Accordingly, opportunity for public comment is unnecessary. However, we are requesting public comment on this interim final rule. Under 5 U.S.C. 553(d)(3), MARAD finds that, for the same reason listed above, good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Federalism

We analyzed this interim final rule in accordance with the principles and criteria contained in E.O. 13132 ("Federalism") and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The regulations have no substantial effects on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials was not necessary.

Regulatory Flexibility

The Maritime Administrator certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. This interim final rule merely broadens the area of consideration for courses of study that may allow deferred service obligations.

Executive Order 13175

MARAD does not believe that this interim final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Environmental Assessment

We have analyzed this interim final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions provision in section 4.05 of Maritime Administrative Order (MAO) 600–1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this rulemaking is required. This rulemaking has no environmental impact.

Paperwork Reduction Act

This rulemaking contains no new or amended information collection or recordkeeping requirements that have been approved or require approval by the Office of Management and Budget.

Unfunded Mandates Reform Act of 1995

This interim final rule will not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It will not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This interim final rule is the least burdensome alternative that achieves the objective of U.S. policy.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70, pages 19477–78), or you may visit *http://dms.dot.gov*.

List of Subjects in 46 CFR Part 310

Grant-programs-education, Reporting and recordkeeping requirements, Schools, Seamen.

■ Accordingly, 46 CFR part 310 is amended as follows:

PART 310—MERCHANT MARINE TRAINING

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 46 App. U.S.C. 1295; 49 CFR 1.66.

■ 2. In § 310.58, revise paragraph (g) to read as follows:

§ 310.58 Service obligation for students enrolled after April 1, 1982.

* * * * *

(g) *Deferments.* In exceptional cases, the Administration may grant a deferment of all or part of the agreement under paragraph (a)(5) of this section and the service obligation contract, for a period not to exceed 2 years, only for graduates considered to have superior academic and conduct records while at the Academy and only for the purpose of entering a marine or maritime-related graduate course of study approved by the Administrator or for the purpose of pursuing studies as recipients of scholarships or fellowships of national significance; *Provided,* that any deferment of service as a commissioned officer under paragraph (a)(5)(iii) of this section and the service obligation contract shall be subject to the sole approval of the Secretary of the department which has jurisdiction over such service (including the Secretary of the department in which the U.S. Coast Guard is operating and the Secretary of Commerce with respect to NOAA). A graduate shall make application for such deferment through the Superintendent of the Academy, who shall forward each application, together with the Superintendent's recommendation for approval or disapproval and an evaluation of the applicant's academic and conduct records, to the Academies Program Officer, Maritime Administration, Office of Policy and Plans, NASSIF Building, 400 7th St., SW., Washington, DC 20590 for appropriate action.

Dated: May 13, 2004.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–11319 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI21

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for *Astragalus pycnostachyus* var. *lanosissimus* (Ventura Marsh milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat pursuant to the Endangered Species Act of 1973, as amended (Act), for *Astragalus pycnostachyus* var. *lanosissimus* (Ventura marsh milk-vetch). Approximately 420 acres (170 hectares) of land fall within the boundaries of the critical habitat designation. The designated critical habitat is located in Santa Barbara and Ventura Counties, California.

This critical habitat designation requires the Service to consult under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4 of the Act requires us to consider economic and other relevant impacts when specifying any particular area as critical habitat. We solicited data and comments from the public on all aspects of this designation, including data on economic and other impacts of the designation.

DATES: This rule becomes effective June 21, 2004.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura CA 93003.

FOR FURTHER INFORMATION CONTACT: Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003 (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Designation of critical habitat provides little additional protection to species. In 30 years of implementing the Endangered Species Act of 1973, as amended (Act), we have found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. We have determined that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. [Sidle (1987) stated, "Because the ESA can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7." Currently, only 445 species or 36 percent of the 1,244 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. We conclude that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves us with little ability to prioritize our activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, our own proposals to list critically imperiled species, and final listing determinations on existing proposals are significantly delayed. Litigation over critical habitat issues for species already listed and receiving the Act's full protection has precluded or

delayed many listing actions nationwide.

The accelerated schedules of court ordered designations have left us with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This, in turn, fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with National Environmental Policy Act, all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

Astragalus pycnostachyus var. *lanosissimus* (Ventura marsh milk-vetch) is an herbaceous perennial in the Pea family (Fabaceae). Little is known of the habitat requirements of this subspecies. The only known population of *Astragalus pycnostachyus* var. *lanosissimus* occurs in a sparsely vegetated low area, at an elevation of about 30 feet (ft) (10 meters (m)), on the North Shore at Mandalay site, which was previously used for disposal of petroleum waste products (Impact Sciences, Inc. 1997). Based on existing information from historical collections, the best description we have of its habitat is from Wilken and Wardlaw (2001), who concluded that the subspecies occurs in low-elevation coastal dune-swale areas, where freshwater levels (in the form of saturated soils or groundwater) are high enough to reach the roots of the plants. Sometimes, high groundwater is shown by the presence of water in sloughs or coastal creeks, but more typically evidence for freshwater availability is seen in the presence of native freshwater-dependent plants such as *Salix* spp. (willows), *Typha* spp. (cattails), *Baccharis salicifolia*, and others. The soils associated with *Astragalus pycnostachyus* var. *lanosissimus* are well-drained, yet contain a mix of sand and clay. Because of the freshwater influence, the soils do not exhibit a white crust that would indicate saline or alkaline conditions. For additional information on the biology, habitat requirements, and historical collection information of *Astragalus pycnostachyus* var. *lanosissimus*, please refer to the proposed critical habitat rule (October 9; 2002; 67 FR 62926).

Due to the combination of poor seedling and young plant survivorship and low seed production, the single naturally occurring population of *Astragalus pycnostachyus* var. *lanosissimus* has continued to decline since its rediscovery in 1997 and through the 2001 season (Impacts Sciences 1997, 1998; Wilken and Wardlaw 2001; Dieter Wilken, Santa Barbara Botanic Garden, pers. comm. 2002). The population is able to persist due to having established a seedbank (not all seeds produced in one year will germinate the following year). The hard seed coat may require scarification (scraping or small cuts) that cannot happen within one season, so the seed may survive for one year or more in the soil until the coat can break down or is broken by some mechanical means (Michael Wall, Rancho Santa Ana Botanic Garden, pers. comm. 2000). Also, Wilken and Wardlaw (2001) found that the plants may not become reproductive until more than 18 to 30 months following germination. The implication for *Astragalus pycnostachyus* var. *lanosissimus* is that low seed production and, thus, a seedbank deficit, combined with low seedling survival and the mortality of some adult plants, may contribute to the population's decline unless other threats to the plants (*e.g.*, reduced survivorship of seedlings and adult plants due to snail herbivory) can be addressed.

The single natural population of *Astragalus pycnostachyus* var. *lanosissimus* near the city of Oxnard is in a degraded backdune community. From 1955 to 1981, the land on which it occurs (hereafter, North Shore at Mandalay) was used as a disposal site for oilfield wastes (Impact Sciences, Inc. 1998). A development proposal for the site includes remediation of soils contaminated with hydrocarbons, followed by construction of 300 homes and a 6-acre (ac) (2-hectare (ha)) lake on 91 ac (37 ha) of land. The proposed soil remediation would involve excavation and stockpiling of the soils, followed by soil treatment and redistribution of the soils over the site (Impact Sciences, Inc. 1998). In 1998, the City of Oxnard published a Final Environmental Impact Report (FEIR), pursuant to the California Environmental Quality Act, for development of this site (Impact Sciences, Inc. 1998). In a final step, the project was approved by the California Coastal Commission (2002).

Astragalus pycnostachyus var. *lanosissimus* is State-listed as endangered under the California Endangered Species Act (CESA). CESA prohibits the take of any species listed under CESA, including plants. Section 2081 of CESA allows private landowners to obtain a permit for the incidental take of listed species, including plants, which must include mitigation measures commensurate with the level of take proposed, adequate funding for any mitigation, and assurance that the proposed take would not jeopardize the continued existence of the species. The California Department of Fish and Game (CDFG) concluded that the North Shore at Mandalay project would not have direct effects on the subspecies and that therefore a permit was not required; however, the project would have indirect effects on the plant. The landowner entered into a memorandum of understanding with CDFG in order to provide some conservation benefit to the subspecies. The proposed conservation measures for *Astragalus pycnostachyus* var. *lanosissimus* on the site would be to establish a 1.65-ac (0.67-ha) "milk-vetch preservation area" encompassing the entire natural population (California Coastal Commission 2002). The milk-vetch preservation area would be buffered from soil remediation activities by a 100-foot (ft) (30 meters (m)) limit line within which no excavation would occur. The milk-vetch preservation area would ultimately be inside a 23.8-ac (9.6-ha) resource protection area (RPA).

According to a comprehensive review of rare plant preserve design compiled by the Conservation Biology Institute (2000), areas to protect a rare plant species should be at a minimum 300 ft (91 m) wide but a larger area is preferred, because effects (*e.g.*, fuel management, loss of pollinators, introduction of competing exotic plants) are not absorbed by smaller areas, and the effects are likely to extend well into adjacent preserved areas.

The efforts to conserve *Astragalus pycnostachyus* var. *lanosissimus* on the North Shore site are much improved over earlier concepts, and we appreciate the efforts of the landowner. However, the Service believes, based on the published literature, that the

configuration of the preserve is not suitable for buffering the plants from adjacent land uses. Although the RPA is 23.8 acres and one contiguous area, the *Astragalus pycnostachyus* var. *lanosissimus* population is near the edge of the RPA, where it would be adjacent to residential development, and the majority of the natural vegetation in the vicinity to the *Astragalus pycnostachyus* var. *lanosissimus* population would be removed. Although no measurements of buffer size were available, and maps we received were not to scale and not overly clear, it appears that the majority of the RPA is to the south of the *Astragalus pycnostachyus* var. *lanosissimus* preserve and thus does not provide sufficient buffering (*i.e.*, at least 300 feet) from adjacent residential development and roads. Furthermore, at least 50 feet of the RPA, including the buffer area surrounding the milk-vetch preserve, will be landscaped, and not natural vegetation, thus further affecting hydrology, pollinators, and potentially introducing non-native species to the preserve. Also, the RPA was not intended to provide protection solely for the *Astragalus pycnostachyus* var. *lanosissimus* population, and as such, much of the 23.8 acre area (approximately 30 percent by our estimate) encompasses habitat which would not support *Astragalus pycnostachyus* var. *lanosissimus* (*e.g.*, willow riparian habitat along the Edison Canal). Lastly, the soil remediation the developer has agreed to provide, which will take place to within 100 feet of the *Astragalus pycnostachyus* var. *lanosissimus* preserve, will alter the local hydrology upon which the plant relies. We are uncertain if the local hydrology can or will be restored following soil remediation. The RPA is likely to become dominated by non-native plants, and the replacement soil may contain seeds of plant species which will invade the *Astragalus pycnostachyus* var. *lanosissimus* preserve. We have not seen a restoration plan that establishes that the area would be replanted with native plants.

We were not involved in the agreements between the developer and local and State officials because our regulatory authority does not extend to listed plants on private land unless there is a Federal nexus, such as a Federal permit or funding. No nexus was involved at this site, and our role was strictly advisory. However, if a landowner takes a State-listed species in violation of CESA, and the species is also federally listed, the take would also violate section 9 of the Act.

A sooty fungus was found on the leaves of *Astragalus pycnostachyus* var. *lanosissimus* in late summer 1997, as leaves began to wither or senesce (die) and the plants entered a period of dormancy (Impact Sciences, Inc. 1997). The effects of the fungus on the population are not known, but it is possible that the fungus attacks senescing leaves in great number only at the end of the growing season. The plants appeared robust when in flower in June 1997 and matured seed by October 1997, at which point the fungus was noted. The plants were regrowing in March 1998, after a period of dormancy, without obvious signs of the fungus (Diane Steeck, Service, in litt. 1998). Wilken and Wardlaw's 2001 study did not detect any signs of pathogens on mature plants that appeared to be in poor health; however, two mature plants had infestations of aphids (Family: Aphididae) that were being tended by nonnative Argentine ants (*Linepithema humile*). Wilken (2002) reported finding cucumber mosaic virus, which is transmitted by aphids, in the *Astragalus pycnostachyus* var. *lanosissimus* population.

In 1997, the seeds of *Astragalus pycnostachyus* var. *lanosissimus* were heavily infested with seed beetles (Family Bruchidae: Coleoptera). In a seed collection done for conservation purposes in 1997, we found that most fruits partially developed at least four seeds; however, seed predation reduced the average number of undamaged seeds to only 1.8 per fruit (D. Steeck, in litt. 1998). Wilken and Wardlaw (2001) reported similar findings in 2000. Apparently heavy seed predation by seed beetles and weevils has been reported among other members of the genus *Astragalus* (Platt *et al.* 1974; Lesica 1995). Wilken and Wardlaw (2001) estimate that seed predation by these insects may reduce seed viability by 30 percent in a given year.

Because of its small population size, the only known natural population is also threatened by competition with nonnative plant species. *Cortaderia selloana* (pampas grass), *Carpobrotus* sp., and *Bromus madritensis* ssp. *rubens* are invasive nonnative plant species that occur at the site (Impact Sciences, Inc. 1997). *Carpobrotus* sp., in particular, is a competitive, succulent species with the potential to cover vast areas in dense clonal mats and may harbor nonnative snails. *Bromus madritensis* ssp. *rubens* grew in high densities around some mature individuals of *Astragalus pycnostachyus* var. *lanosissimus* in 1998, and seedlings were germinating among patches of *Carpobrotus* sp. and Bromus spp. in 1998 (D. Steeck, in litt. 1998). Seedling survival rates for *Astragalus pycnostachyus* var. *lanosissimus* in these areas have not been determined.

Efforts to conserve *Astragalus pycnostachyus* var. *lanosissimus* have been initiated by the landowner (North Shore at Mandalay LLC), a task force of scientists from the University of California, the Santa Barbara Botanic Garden, California Department of Fish and Game (CDFG), the Service, and the Rancho Santa Ana Botanic Garden (RSABG). Consulting biologists for the landowner and proponents of the development have successfully grown plants in a remote greenhouse facility. Several plants were excavated from the natural population and potted prior to State and Federal listing, and other plants were started from seed gathered from the natural population. In addition, *Astragalus pycnostachyus* var. *lanosissimus* seed from the site was placed in a seed storage collection and a seed bulking project at RSABG. RSABG has been successful in germinating *Astragalus pycnostachyus* var. *lanosissimus* seed and growing the plants in containers (Wilken and Wardlaw 2001).

Research populations have been introduced in two locations within the historical range of *Astragalus pycnostachyus* var. *lanosissimus*: One at Mandalay State Beach, across the street from the extant population, and the other at McGrath State Beach. A further research population is present outside of the known range of the subspecies, at Carpinteria Marsh in Santa Barbara County. In addition, approximately 250 individuals were planted and are being irrigated at the Coal Oil Point Reserve, also in Santa Barbara County. Seed has been introduced at 10 separate dune locations at the Reserve (Cristina Sandoval, Coal Oil Point Reserve Director, pers. comm. 2002). The data gathered from these efforts will be used in establishing self-sustaining populations of *Astragalus pycnostachyus* var. *lanosissimus*. The plants at Coal Oil Point have been established primarily for the purpose of generating seeds ("bulking up seed") to increase the seedbank in storage, and not necessarily for generating data on establishing new populations.

In 1997, the population of *Astragalus pycnostachyus* var. *lanosissimus* at the North Shore at Mandalay consisted of about 374 plants, of which 260 were small plants thought to have germinated in the last year, and 114 were "adult" plants. Fewer than 65 of the adult plants produced fruit in 1997 (Impact Sciences, Inc. 1997). In 1998, 192 plants

were counted during surveys of the population. Service biologists placed cages around a sample of plants in 1999 to protect them from severe herbivory by small mammals, most likely brush rabbits. Despite this protection, only 30 to 40 plants produced flowers in 1999, which was believed to be less than half of those blooming in 1998 (D. Steeck, in litt. 1998). It is not known why flowering was so low in 1999.

The total number of adult plants in the natural population declined between 1997 and 2000 (Wilken and Wardlaw 2001). Although 46 of 80 seedlings that germinated in the 2000 growing season were still present in October 2000, the total number of surviving adult plants in 2000 was estimated at 39. Many are believed to have succumbed to herbivory from snails and brush rabbits (Wilken and Wardlaw 2001). Following efforts to control snails in 2000 (*i.e.*, poisoning, hand removal, clearing of iceplant, fencing), and perhaps more favorable growing conditions in the winter of 2000–01, more than 1,000 seedlings were observed (D. Wilken, pers. comm. 2002). Of these, more than 300 survived until October 2001, when they became dormant, indicating an increase in the number of plants in the natural population.

A census of the natural population on September 15, 2002, revealed that 37 reproductive plants had survived from the seedlings present in 2001, and 38 reproductive plants remained from seedlings established in 2000 or earlier, for a total of 75 reproductive plants in 2002. Approximately 350 plants had germinated in 2002. The total number of surviving plants was not determined. Some mortality is expected among all age classes in the following years depending upon rainfall and other factors.

As of June 2003, the status of the research populations at McGrath State Beach, Carpinteria Marsh Reserve, and Mandalay State Beach (CDFG, in litt. 2003a), was as follows (the Coal Oil Point population is excluded because it is not part of the research, as described earlier):

(1) McGrath State Beach. In April 2002, 167 plants were planted at McGrath State Beach. As of February 2003, 88 percent (147) of the plants had survived, and most were still alive in June 2003. Three sites at McGrath had produced a total of 236 seedlings.

(2) Carpinteria Marsh Reserve. In April 2002, 155 plants were planted. As of February 2003, 44 percent (68) of the plants survived. Only 20 seedlings had been produced by plants at one of the planting sites as of June 2003.

(3) Mandalay State Beach. On February 23, 2003, 57 *Astragalus pycnostachyus* var. lanosissimus plants in one-gallon containers were planted. All plants had survived as of June 2003.

The most recent census data we have includes information from the experimental populations at McGrath State Beach and Carpinteria Marsh Reserve gathered over the summer of 2003 (CDFG, in litt. 2003b). Of the five experimental plots at McGrath State Beach, the plants at two plots had died out, and plants at the remaining three plots were vigorous, with a total of 79 plants surviving out of 167 that were alive during the previous census. Of the five plots started at Carpinteria Marsh, only two still supported plants, with a total of 30 plants surviving out of 155 planted (19 percent). At McGrath State Beach, the losses and successes were attributed to moisture availability (*i.e.*, plants died where the roots were not able to reach freshwater, but did well where freshwater was available). At Carpinteria, the losses were attributed to high salinity and gopher foraging (CDFG, in litt. 2003b).

Previous Federal Action

On October 9, 2002, we published the proposed critical habitat designation for *Astragalus pycnostachyus* var. *lanosissimus* (67 FR 62926) in compliance with the August 2, 2001, stipulated settlement agreement and order. In that proposed rule, we included a detailed summary of the previous Federal actions completed prior to publication of the proposal. We re-opened the public comment period to seek comments on the draft economic analysis on March 20, 2003 (68 FR 13663). Due to funding shortfalls for critical habitat work in FY 2003, we were unable to complete the final rule by the stipulated date of October 1, 2003. On September 29, 2003, the court granted the Service's motion to modify the August 2, 2001 Stipulated Settlement Agreement and Order and extended the date for publication of the final rule to May 15, 2004 (*Center for Biological Diversity* v. *United States Fish and Wildlife Service*, C 01–0352 SI (N.D. Cal.)).

Summary of Comments and Recommendations

We solicited comments from appropriate Federal, State, and local agencies, the scientific community, and other interested parties. We invited public comment through notification sent to local newspapers in Ventura and Santa Barbara Counties. Additionally, we invited public comment on the proposed critical habitat designation on October 9, 2002 (67 FR 62926), and again on March 20, 2003, when we published the draft economic analysis and re-opened the comment period on the critical habitat proposal (68 FR 13663).

We received three comment letters on the proposed critical habitat designation. All three were reviewed for substantive issues and new information regarding critical habitat. One of the commentors was against the designation on the single piece of privately-owned land included in the proposal. The other two commentors were neutral but provided some new information and clarification on the subspecies' natural history and status.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of six independent specialists regarding this rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses. We sent these peer reviewers copies of the proposed rule immediately following publication in the **Federal Register**. Two of the peer reviewers responded, providing comments that we have incorporated into the final rule.

Responses to Comments

(1) *Comment:* One comment stated that a critical habitat designation could add nothing to the multiple protections already in place for *Astragalus pycnostachyus* var. *lanosissimus* at the North Shore site, which supports the only natural population of the subspecies and warrants exclusion under section 4(b)(2) of the Act. The comment further states that similar exemptions have been granted to military installations.

Our Response: The comment's rationale for exclusion of the North Shore at Mandalay site from the critical habitat designation, citing that it is similar to exclusions we have granted under section 4(b)(2) for military installations, is not accurate. Where we have excluded a military installation from a critical habitat designation pursuant to section 4(b)(2), we determined that the benefits of excluding lands under the jurisdiction of the U.S. military outweigh the benefits of including them as critical habitat, and would not result in the extinction of the species.

As stated previously, this site supports the only naturally-occurring population. While there are other locations where the subspecies has been planted, these remain under study and

it is not clear at this time how or whether they will contribute to the survival of the species. This site is the only seed source, has provided all of the initial propagules for establishing research populations of the species at other sites, and continues to be the source of genetic variability for future propagation. The research populations at McGrath State Beach, Carpinteria Marsh, and Mandalay State Beach are not intended to become new populations for the recovery of the species, but were established to generate data on the species' needs when such introductions for recovery begin. Their persistence is uncertain, and we have observed some failures (see **Background** section). Consequently, the population of *Astragalus pycnostachyus var. lanosissimus* on the North Shore at Mandalay site is currently the only one of which we can be relatively certain that the plants will persist. If this population is extirpated, and the research populations ultimately fail, all of the remaining individuals of *Astragalus pycnostachyus* var. *lanosissimus* will exist as seeds in collections or propagated in greenhouses. The designation of the North Shore at Mandalay site as critical habitat recognizes that this population is essential to the species' conservation. This southernmost unit is geographically separated from other critical habitat within its historical range. This will reduce the likelihood of all populations being destroyed by one naturally occurring catastrophic event.

(2) *Comment:* One comment stated that the proposed rule was based upon the wrong legal standard for determining critical habitat. Critical habitat is to be narrowly drawn.

Our Response: The critical habitat units as proposed meet the definition of critical habitat in the Act. The occupied areas designated are essential to the conservation of the species and may require special management. In addition, we have made the finding that the unoccupied areas are essential to the conservation of the species. The North Shore at Mandalay site, for which the comment seeks exclusion, supports the only naturally-occurring population of *Astragalus pycnostachyus* var. *lanosissimus* in existence. The plants on this site are the source of all genetic variation available to the subspecies, and its survival is dependent upon a diverse genetic base that can respond to environmental fluctuations and disease.

The designation includes the site of the one existing population and sufficient area to establish new populations necessary for survival and recovery of *Astragalus pycnostachyus* var. *lanosissimus*.

(3) *Comment:* One comment stated that the proposed rule was not specific enough to identify properties or whether they contained primary constituent elements, and, therefore, did not allow for comments on specific parcels.

Our Response: We disagree that the proposed rule did not adequately identify locations of critical habitat. The proposed rule provided maps and Universal Transverse Mercator (UTM) coordinates of the proposed critical habitat units. The UTM coordinates are typically used in Global Positioning System (GPS) data and are at a scale of 3.3 ft (1 m), which is of sufficient detail for locating the extent and configuration of the units, and should allow most property owners to determine if their property is within the boundaries of critical habitat. Detailed maps of the designation are available on our web site, and property owners may call our office for further assistance if necessary.

(4) *Comment:* One comment asserted that the proposed rule failed to include an economic analysis as required under the Act.

Our Response: We conducted an economic analysis as required by the Act. The draft economic analysis was made available for public review on March 20, 2003 (68 FR 13663), and we accepted public comments on it from March 20, 2003, until April 21, 2003. We did not receive any comments on the draft economic analysis. The final economic analysis is part of the administrative record for this rulemaking.

(5) *Comment:* One comment stated that the Service cannot designate critical habitat for the milk-vetch until it first complies with the requirements of the National Environmental Policy Act. The comment cites *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service* (1996) to support its contention.

Our Response: As we indicated in our proposed rule, we have determined that an Environmental Assessment or an Environmental Impact Statement, 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. A notice outlining our reason for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244). This position has been upheld by the Ninth Circuit Court of Appeals in *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995).

Also, the public involvement and notification requirements under both the Endangered Species Act and the Administrative Procedure Act provide ample opportunity for public involvement in the process, similar to the opportunities for public involvement and economic analysis of effects that would be provided in the NEPA process.

(6) *Comment:* One comment recommended that we avoid making conclusions about the success of efforts to establish *Astragalus pycnostachyus* var. *lanosissimus* at Carpinteria Marsh until the population proves to be self-sustaining, which could take 3 to 4 years.

Our Response: We recognize that the efforts to establish *Astragalus pycnostachyus* var. *lanosissimus* at Carpinteria Marsh were preliminary at the time the proposed rule was published. More recent data has been incorporated into this final rule that shows limited success with the experimental population due to physical (*e.g.*, salinity) and biological factors (*e.g.*, competition from nonnative plants).

(7) *Comment:* Two comments stated that a research population had not been initiated at Mandalay State Beach, despite our contention to that effect in the proposal.

Our Response: At the time the critical habitat proposal was published, the comments are correct that the research population had not yet been initiated; however, the CDFG has now implemented an experimental population at Mandalay State Beach in addition to those at McGrath State Beach, Carpinteria Marsh, and Coal Oil Point. The CDFG planted 57 1-gallon specimens of *Astragalus pycnostachyus* var. *lanosissimus* at Mandalay State Beach in February 2003. The status of this outplanting is described in the background section of this final rule.

(8) *Comment:* One comment stated that the plants at Coal Oil Point are an in-ground nursery and not intended to become a self-sustaining population.

Our Response: The intent of the Coal Oil Point experiment was not clear to us at the time the critical habitat proposal was published. From discussions with the science task force, we now recognize that the population is meant to provide propagules (cuttings or seed) for other populations.

(9) *Comment:* One comment expressed concern that critical habitat designations on land within the University of California's Natural Reserve System could cause regulatory delays for federally funded research projects on these lands.

Our Response: We did not receive any comments from representatives of the University of California's Natural

Reserve System (Reserve) objecting to the proposed designation. We understand that one of the purposes of the Reserve system is conservation of plants and animals, such as *Astragalus pycnostachyus* var. *lanosissimus,* so the critical habitat designation is consistent with that goal. Federal funding of research projects at Carpinteria Marsh could trigger consultation under section 7 of the Act if the research project would adversely affect designated critical habitat for *Astragalus pycnostachyus* var. *lanosissimus.* However, we have concluded that these consultations would not cause undue delays in initiating research projects. Compliance with section 7 could range from simple concurrence, which is usually completed within 30 days, to formal consultation, which could take 135 days or less. Formal consultation on critical habitat would only be necessary if the action would have an adverse effect on the critical habitat. We anticipate that most research within the Reserve would be designed not to adversely affect the primary constituent elements of the critical habitat of *Astragalus pycnostachyus* var. *lanosissimus.*

(10) *Comment:* Two comments noted that the Wilken and Wardlaw (2001) report was not intended to represent a comprehensive analysis of all potential sites for introduction of *Astragalus pycnostachyus* var. *lanosissimus,* and that areas to the south of Ventura County within the historical range of *Astragalus pycnostachyus* var. *lanosissimus* should have been included.

Our Response: While Wilken and Wardlaw (2001) was not intended to be an exhaustive analysis of all potential sites for introduction of *Astragalus pycnostachyus* var. *lanosissimus* at the time critical habitat was proposed, it was, and remains, the best scientific information available to support the designations. Our designation is to be based on the best available scientific data. We do not have similar data for all other potential introduction sites, so we did not attempt to include areas for which we did not have data indicating that the location was essential to the conservation of *Astragalus pycnostachyus* var. *lanosissimus.* Based on museum records, we know that *Astragalus pycnostachyus* var. *lanosissimus* was once known from Los Angeles and Orange Counties. In preparation of the proposed rule, we interviewed biologists familiar with the coastal wetlands in Los Angeles and Orange Counties, and specifically, historical locations at the Ballona Wetlands and Bolsa Chica. The information they provided led us to conclude that opportunities for introductions of *Astragalus pycnostachyus* var. *lanosissimus* were incompatible with current conditions and future restoration efforts. We agree that the areas to the south within the historical range of *Astragalus pycnostachyus* var. *lanosissimus* are worth exploring for recovery efforts; however, the information we had at the time critical habitat units were identified did not support inclusion of sites in Los Angeles and Orange Counties.

(11) *Comment:* One comment asked why land at the Navy Base Ventura County was excluded from the designation when Wilken and Wardlaw (2001) included it, and why the Ormond Beach area was not included.

Our Response: Based upon Wilken and Wardlaw's (2001) research, we considered a site at the Navy Base Ventura County, Point Mugu for inclusion as critical habitat. Point Mugu Naval Air Weapons Station, in southern Ventura County, may have suitable habitat (Wilken and Wardlaw 2001). *A. pycnostachyus* var. *lanosissimus* was not found during cursory surveys of the base, nor has this taxon ever been collected there despite habitat evaluations and vegetation sampling by the Navy for the past 15 years (Navy Base Ventura County 2002). Further, our criteria for including sites required more than just suitable habitat. We designated areas with primary constituent elements, where the existing population occurs and those where research populations have been established. Nevertheless, we intend to continue to work with the Navy to develop an introduction and conservation plan for *Astragalus pycnostachyus* var. *lanosissimus* at the Navy Base Ventura.

For the Ormond Beach area, we did not have sufficient information at the time critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* was proposed to warrant its inclusion. As stated above, we did not attempt to include areas for which we did not have data indicating that the location was essential to the conservation of *Astragalus pycnostachyus* var. *lanosissimus.*

(12) *Comment:* One comment stated that gophers (*Thomomys bottae*) are a continuing threat to the plants at some of the sites where *Astragalus pycnostachyus* var. *lanosissimus* has been introduced, but not at the native population site where buried oil sludge may deter gophers. Further, the comment notes that the nonnative *Melilotus indicus* is a competitor for the likely pollinator of *Astragalus pycnostachyus* var. *lanosissimus* where the two plants occur together.

Our Response: We recognize that current and new threats to *Astragalus pycnostachyus* var. *lanosissimus* exist; however, this new information does not affect the critical habitat designation at this time. We will consider this information and incorporate this data into the recovery efforts currently under way for *Astragalus pycnostachyus* var. *lanosissimus.*

Summary of Changes From Proposed Rule

Based upon our review of the public comments, peer review responses, and the economic analysis, we reevaluated our critical habitat and made changes as necessary. Although some pertinent information on the background of the subspecies was provided by reviewers, we did not receive new information that would warrant changes to the boundaries of critical habitat as proposed. We did incorporate changes to the information on *Astragalus pycnostachyus* var. *lanosissimus* which include the following:

(1) We updated the status of the natural and research populations. These changes are generally the result of more recent counts of the numbers of individual plants. Where available, we included new data on factors affecting the plants' growth and development.

(2) Information on participants in the science task force overseeing current experiments with *Astragalus pycnostachyus* var. *lanosissimus* has been revised.

(3) We updated information on experiments being conducted at Mandalay State Beach, which we erroneously described in the proposed rule.

(4) We updated the description of a proposed development on the North Shore at Mandalay site that supports the only natural population of *Astragalus pycnostachyus* var. *lanosissimus.*

(5) We provided a summary of the Economic Analysis that has been adopted as final for this rule.

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are

essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary.

The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. It does not allow government or public access to private lands. Under section 7 of the Act, Federal agencies must consult with us on activities they undertake, fund, or permit that may affect critical habitat and lead to its destruction or adverse modification. However, the Act prohibits unauthorized take of listed species and requires consultation for activities that may affect them, including habitat alterations, regardless of whether critical habitat has been designated.

To be included in a critical habitat designation, habitat must be either a specific area within the geographic area occupied by the species on which are found those physical or biological features essential to the conservation of the species (primary constituent elements, as defined at 50 CFR 424.12(b)) and which may require special management considerations or protections, or be specific areas outside of the geographic area occupied by the species which are determined to be essential to the conservation of the species. Section 3(5)(C) of the Act states that critical habitat shall not include the entire geographical area which can be occupied by a species unless the Secretary determines that circumstances require such designation. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species require designation of critical habitat outside of occupied areas, we will not designate critical habitat in areas outside the geographic area occupied by the species. Within the geographic area occupied by *Astragalus pycnostachyus* var. *lanosissimus*, we will designate only areas currently known to be essential. Essential areas should already have the features and habitat characteristics that are necessary to sustain *Astragalus pycnostachyus* var. *lanosissimus*. We will not speculate about what areas might be found to be essential if better information became available, or what areas may become essential over time. We have also excluded from this proposal, areas of suitable habitat where they might potentially occur, and some localities where they historically occurred.

To be included in a critical habitat designation, the Service must also find that habitat may require special management considerations or protections. As discussed in more detail below, with respect to the individual units, the Service finds that the three units designated as critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* may require special management considerations or protections due to threats to the species and/or its habitat. Such special management considerations or protections may include management of invasive, non-native plants; reducing or eliminating herbivory by snails and rabbits; and reducing or eliminating the indirect effects of development, as well as protecting the composition of native plant and animal communities within critical habitat units.

Section 4(b)(2) of the Act requires that we take into consideration the economics, and any other relevant impact, of specifying any particular area as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that our decisions represent the best scientific and commercial data available. It requires our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitats, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by states and counties, scientific status surveys and studies, biological assessments, or other unpublished materials.

Section 4 of the Act requires that we designate critical habitat based on what we know at the time of designation. Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the conservation of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9(a)(2) prohibitions, as determined on the basis of the best available information at the time of the action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, HCPs, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act and regulations at 50 CFR 424.12, we used the best scientific information available to determine areas that contain the physical and biological features that are essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus*. This information included data from the final rule listing the species as endangered (66 FR 27901), the California Natural Diversity Data Base (CNDDB) (CDFG 2002), recent biological surveys, reports and aerial photos, additional information provided by interested parties, and discussions with botanical experts. We also conducted site visits to locations managed by Federal and State agencies, including NBVC, McGrath State Beach, and Carpinteria Marsh.

Much of our understanding of the habitat requirements of *Astragalus pycnostachyus* var. *lanosissimus* is derived from Wilken and Wardlaw (2001), which represents the most complete information to date regarding the biology and habitat of the species. Of particular relevance to this critical habitat determination, Wilken and Wardlaw (2001) provide descriptions of the habitat of *Astragalus pycnostachyus* var. *lanosissimus*' closest relative, *Astragalus pycnostachyus* var.

pycnostachyus (northern marsh milk-vetch). Wilken and Wardlaw (2001) collected data on habitat characteristics at sites occupied by *Astragalus pycnostachyus* var. *pycnostachyus* and compared these with the characteristics at the extant population of *Astragalus pycnostachyus* var. *lanosissimus*. Once common habitat characteristics had been established, Wilken and Wardlaw used these to evaluate areas for their suitability for establishing new populations of *Astragalus pycnostachyus* var. *lanosissimus*. The factors evaluated included: degree of disturbance; vegetative cover (percent and type); associated species; proximity to subterranean water table; and potential threats. Wilken and Wardlaw (2001) also analyzed soil from the site where *Astragalus pycnostachyus* var. *lanosissimus* currently exists for physical and chemical properties important for general plant growth, such as texture, pH, salinity, nutrients, and micronutrients.

Determining what constitutes habitat for *Astragalus pycnostachyus* var. *lanosissimus* is difficult because there is only one extant population, and the site has been altered by soil dumping and oil waste disposal. Also, the historical collections did not fully document the habitat where the plants were found. Therefore, both Wilken and Wardlaw (2001) and the Service's data (D. Steeck, in litt. 1998) were used to characterize the habitat of *Astragalus pycnostachyus* var. *lanosissimus* and to determine the primary constituent elements. Some differences between the two subspecies of *Astragalus pycnostachyus* are apparent, especially in regard to associated plant species and general habitat type. For example, some individuals of *Astragalus pycnostachyus* var. *pycnostachyus* are found in habitats similar to *Astragalus pycnostachyus* var. *lanosissimus*, but individuals are also found some distance from wet habitats in relatively dry or gravelly soils. Such differences may be a function of a small data set for *Astragalus pycnostachyus* var. *lanosissimus* due to its single population, uncertainty surrounding its presence on the extant site (*i.e.*, whether it is a natural occurrence or was introduced through soil dumping), and differences in habitat needs of the two subspecies. We have paid particular attention to information from Wilken and Wardlaw (2001) because they analyzed conditions at the only known site where *Astragalus pycnostachyus* var. *lanosissimus* currently occurs.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to designate as critical habitat, we consider those physical and biological features (primary constituent elements) that are essential to the conservation of the species and that may require special management considerations or protection. These include, but are not limited to: space for individual and population growth, and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for reproduction, germination, or seed dispersal; and habitats that are protected from disturbance or are representative of the known historical, geographical, and ecological distributions of a species.

Much of what is known about the specific physical and biological requirements of *Astragalus pycnostachyus* var. *lanosissimus* is described in the Background section of this final rule. The designated critical habitat is designed to provide sufficient habitat to maintain self-sustaining populations of *Astragalus pycnostachyus* var. *lanosissimus* throughout its range, and to provide those components essential for the conservation of the subspecies. These habitat components provide for: (1) Individual and population growth, including sites for germination, pollination, reproduction, pollen and seed dispersal, and seed dormancy; and (2) areas that provide basic requirements for growth, such as water, light, and minerals.

We have concluded that the long-term success of the conservation of *Astragalus pycnostachyus* var. *lanosissimus* is dependent upon the protection of the existing population site and sites where introductions can be conducted, as well as the maintenance of ecological functions within these sites, including connectivity between colonies (*i.e.*, groups of plants within sites) within close geographic proximity to facilitate pollinator activity and seed dispersal. The areas we are designating as critical habitat provide some or all of the habitat components essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus*. Based on the best available information from the only extant site of the species, the primary constituent elements of critical habitat for *Astragalus pycnostachyus* var. *lanosissimus*. consist of, but are not limited to:

(1) Vegetation cover of at least 50 percent but not exceeding 75 percent, consisting primarily of known associated native species, including but not limited to, *Baccharis salicifolia, Baccharis pilularis, Salix lasiolepis, Lotus scoparius* (deerweed), and *Ericameria ericoides* (coast goldenbush);

(2) Low densities of nonnative annual plants and shrubs;

(3) The presence of a high water table, either fresh or brackish, as evidenced by the presence of channels, sloughs, or depressions that may support stands of *Salix lasiolepis, Typha* spp., and *Scirpus* spp. (cattail);

(4) Soils that are fine-grained, composed primarily of sand with some clay and silt, yet are well-drained; and

(5) Soils that do not exhibit a white crystalline crust that would indicate saline or alkaline conditions.

Criteria Used To Identify Critical Habitat

Critical habitat designated for *Astragalus pycnostachyus* var. *lanosissimus* includes the only known location where the subspecies currently occurs and two other sites with high potential to support the subspecies based upon habitat and/or historical occurrences. We have concluded that establishment of new, self-sustaining populations of *Astragalus pycnostachyus* var. *lanosissimus* at other sites is essential for the subspecies' survival because it is currently known from a single location where its future is uncertain due to its small population size, and the high degree of threat from chance catastrophic events. Catastrophic events are a concern when the number of populations or geographic distribution of a species is severely limited (Shaffer 1981, 1987; Meffe and Carroll 1997; Primack 1998), as is the case with *Astragalus pycnostachyus* var. *lanosissimus*. Because a critical habitat designation limited to this subspecies' present range, which is one known location, would be inadequate to ensure its conservation, the establishment of additional locations for *Astragalus pycnostachyus* var. *lanosissimus* is critical to reducing the risk of extinction.

For sites not currently occupied by *Astragalus pycnostachyus* var. *lanosissimus*, we first considered the historical range of the subspecies based upon collection data and records from the CNDDB (CDFG 2001). From this potential distribution, we located areas where the plants were observed or collected in the past.

By examining aerial photographs and reviewing pertinent literature, and

through discussions with botanical experts, we identified areas where the primary constituent elements exist. These broader areas were refined with information on the extant population and the other locations as derived from Wilken and Wardlaw (2001). We also engaged in discussions, by phone and electronic mail, with the Carlsbad Fish and Wildlife Office, which has responsibility for and experience with, the historical locations in southern Los Angeles and Orange Counties (K. Clark, Service, pers. comm. 2002; J. Fancher, Service, pers. comm. 2002).

We identified the boundaries of the units on aerial photographs and U.S. Geological Survey topographical maps and refined them based upon adjacent land uses. For example, one unit is bordered on three sides by urban areas and on the other side by the Pacific Ocean. The critical habitat units were designed to encompass a large enough area to support existing ecological processes that may be essential to the conservation of *Astragalus pycnostachyus* var. *lanosissimus* (*i.e.*, that provide areas for population expansion, provide connectivity or linkage between colonies within a unit, and support populations of pollinators and seed dispersal organisms).

Within the historical range of *Astragalus pycnostachyus* var. *lanosissimus*, we considered two of the collection localities: Bolsa Chica, Orange County, and the Ballona Wetlands, Los Angeles County. During discussions with biologists most familiar with these areas (K. Clark, pers. comm. 2002; J. Fancher, pers. comm. 2002), we concluded that, although the areas remain undeveloped for the most part, conditions have changed dramatically since the plants were collected. For example, the Bolsa Chica area has been altered by oil development, which created raised pads and lower excavated areas, and channelized the natural freshwater inflow that once existed. The influence of tidal flow is now more pronounced, to the point that the soils have become saline. The area, also, does not contain plant species that indicate freshwater influence. Plant species indicating freshwater influence are found at the currently occupied site and at locations where the close relative, *Astragalus pycnostachyus* var. *pycnostachyus*, occurs. Also, long-range plans for Bolsa Chica would increase the tidal influence by establishing a direct connection to the ocean across Bolsa Chica State Beach. The Ballona Wetlands are similarly isolated from a freshwater source and are subject to considerable disturbance from human activities. Consequently, we rejected both Bolsa Chica and the Ballona Wetlands as potential reintroduction sites for *Astragalus pycnostachyus* var. *lanosissimus* and as critical habitat units.

For critical habitat outside of the historical range, we considered areas from Gaviota State Beach, Santa Barbara County, south to San Diego County. We have included only one critical habitat unit (Carpinteria Marsh) that could be considered outside of the known range of the subspecies in this critical habitat designation. That location is included because of its proximity to the historical distribution and the presence of primary constituent elements. Data to support designation of critical habitat elsewhere outside the historic range of *Astragalus pycnostachyus* var. *lanosissimus* are limited. In addition, introducing *Astragalus pycnostachyus* var. *lanosissimus* in the vicinity of *Astragalus pycnostachyus* var. *pycnostachyus* is not prudent because of the potential for hybridization and dilution of genetic identity between the two varieties. Therefore, we did not consider other locations outside the historical range of *Astragalus pycnostachyus* var. *lanosissimus*.

In designating critical habitat, we made an effort to avoid developed areas, such as housing developments, that are unlikely to contain the primary constituent elements for *Astragalus pycnostachyus* var. *lanosissimus*. However, we did not map critical habitat at a small enough scale to all for the exclusion of all lands unlikely to contain the primary constituent elements essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus*. Areas within the boundaries of the mapped units such as buildings, roads, parking lots, railroads, airport runways and other paved areas, lawns, and other urban landscaped areas will not contain any of the primary constituent elements. Federal actions limited to these areas, therefore, would not trigger a section 7 consultation, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

In summary, we selected critical habitat areas that provide for the conservation of *Astragalus pycnostachyus* var. *lanosissimus* where it is known to occur, as well as areas essential for establishment of new populations in order for the species to be conserved. As noted above, establishment of new populations is important to reduce the risk of extirpation from chance catastrophic events.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas determined to be essential for the conservation of the species may require special management or protections. The Mandalay Unit may require special management considerations or protections due to the threats to the species and its habitat posed by development (*e.g.*, loss of native vegetation, disruption of pollinator community, herbivory by snails, increase in non-native plants, soil remediation), herbivory by rabbits, and trampling as a result of human activity. Currently, competition by non-native plants, herbivory by snails and rabbits, and human activity are ongoing in the Mandalay Unit. The McGrath Unit may require special management considerations or protections due to the threats to the species and its habitat posed by invasive, non-native plants and trampling as a result of human activity. Currently, competition from non-native plants and human activity are ongoing in the McGrath Unit. The Carpinteria Salt Marsh Unit may require special management considerations or protections due to the threats to the species and its habitat posed by non-native plants and high salinity. Currently, competition from non-native plants and fluctuations in salinity levels are ongoing in the Carpinteria Salt Marsh Unit.

Critical Habitat Designation

The critical habitat areas described below constitute our best assessment at this time of the areas essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus*. The areas designated as critical habitat are: (1) Mandalay, including the site of the extant population at Fifth Street and Harbor Boulevard in the city of Oxnard, Ventura County; (2) McGrath Lake area, McGrath State Beach, California Department of Parks and Recreation (CDPR), Ventura County, and (3) Carpinteria Salt Marsh Reserve run by the University of California, Santa Barbara, (UC Santa Barbara) Santa Barbara County.

The only site occupied by a natural population of *Astragalus pycnostachyus* var. *lanosissimus* is in the Mandalay Unit in the city of Oxnard. A research population has been initiated at the Mandalay State Beach portion of the unit. Research introductions have also occurred at the Carpinteria Salt Marsh Reserve and McGrath State Beach units. Research populations may be present in some of the units; however, these are

not considered self-sustaining populations as they require continued monitoring and control. Therefore, we consider all of the units unoccupied except for the Mandalay Unit where the natural population occurs. We find that unoccupied areas are essential to the conservation of the species because the single extant natural population is likely to be affected by direct and indirect impacts of the approved development of the North Shore at Mandalay project (*i.e.,* due to inadequate preserve design). Furthermore, a catastrophic event could eliminate the population regardless of the development. In the absence of suitable off-site locations where the subspecies could be established, it is possible that it could go extinct. The two unoccupied sites we have included have been identified through research as the most likely candidates for new populations because the primary constituent elements are present and they can be adequately protected from the threats identified earlier. One site is within the historical range of the subspecies and one is not.

Our evaluation of *Astragalus pycnostachyus* var. *lanosissimus* has shown that suitable habitat areas are scarce within the historical range of the subspecies. The combination of associated plant species, high groundwater, low salinity, and other primary constituent elements has either been removed or disrupted by urbanization, agriculture, oilfield development, or flood control projects. Other areas within the historical range were considered and rejected, and areas outside of the historical range were limited in scope and only one was included. The scarcity of suitable habitat has also contributed to the need to designate areas currently unoccupied by *Astragalus pycnostachyus* var. *lanosissimus* as critical habitat. We have therefore concluded that the designation of currently unoccupied locations as critical habitat is essential to the conservation of *Astragalus pycnostachyus* var. *lanosissimus*.

In summary, we have designated approximately 420 ac (170 ha) of land in three units as critical habitat for *Astragalus pycnostachyus* var. *lanosissimus*. The approximate areas of designated critical habitat by land ownership are shown in Table 1. Private lands comprise approximately 33 percent of the designated critical habitat; and State lands comprise 67 percent. No Federal lands are included in the designation.

TABLE 1.—APPROXIMATE AREAS IN ACRES (AC) AND HECTARES (HA) OF DESIGNATED CRITICAL HABITAT FOR ASTRAGALUS PYCNOSTACHYUS VAR. LANOSISSIMUS BY LAND OWNERSHIP[1]

Unit name	Private	State	Federal	Total
Mandalay Unit	104 ac (42 ha)	49 ac (20 ha)	0 ac (0 ha)	153 ac (62 ha).
McGrath Unit	35 ac (14 ha)	27 ac (11 ha)	0 ac (0 ha)	62 ac (25 ha).
Carpinteria Salt Marsh Unit	0 ac (0 ha)	205 ac (83 ha)	0 ac (0 ha)	205 ac (83 ha).
Total	139 ac (56 ha)	281 ac (114 ha)	0 ac (0 ha)	420 ac (170 ha).

[1] Approximate acres have been converted to hectares (1 ha = 2.47 ac).

The three critical habitat units include the only known location where the subspecies currently occurs and two unoccupied sites that contain the primary constituent elements. A brief description of each critical habitat unit is given below.

Mandalay Unit

The Mandalay Unit is approximately 153 ac (62 ha) in size and is essential to the conservation of *Astragalus pycnostachyus* var. *lanosissimus* because it contains the only known location where *Astragalus pycnostachyus* var. *lanosissimus* naturally exists and the remainder of the unit also supports the primary constituent elements. The State-owned Mandalay State Beach is managed by the Ventura County Parks and Recreation Department and comprises about 49 ac (20 ha) of this unit. The remaining area of the unit is privately owned and is currently undeveloped, but has been chosen as the site for a 300-housing-unit subdivision (Economic and Planning Systems, Inc. 2003).

The pending development is called North Shore at Mandalay and would occur in the eastern portion of this critical habitat unit. The project includes a 1.65-ac (0.67-ha) "milk-vetch preservation area" encompassing the entire natural population (California Coastal Commission 2002), which in turn, would be inside a 23.8-ac (9.6-ha) resource protection area (RPA). The RPA would be buffered from adjacent residential development by a 50-ft (15 m) wide landscaped area. The population will be mostly isolated from surrounding vegetation, and the ecological processes sustaining the population may be interrupted. Also, the project may allow increased human intrusion, provide habitat for nonnative plants and snails, alter the hydrologic regime, and introduce pesticides and fertilizers that adversely affect the plants. Therefore, the risk of extinction of the subspecies is high without the development of additional populations.

The portion of this unit on Mandalay State Beach is identified by Wilken and Wardlaw (2001) as a possible site for establishing a new population of *Astragalus pycnostachyus* var. *lanosissimus*. In 2003, the first efforts at researching how new populations could be established in this unit were begun. The proximity of Mandalay State Beach to the extant population indicates that some natural exchange of seeds or pollen could take place if a second population were established at Mandalay State Beach. The site contains one or more of the primary constituent elements defined for *Astragalus pycnostachyus* var. *lanosissimus* critical habitat, although Wilken and Wardlaw (2001) note some dense cover of nonnative annuals. Also, using their five parameters, Wilken and Wardlaw (2001) ranked the Mandalay State Beach portion of this unit as one of the most similar to the natural occurrences of *Astragalus pycnostachyus* var. *lanosissimus* and the closely related *Astragalus pycnostachyus* var. *pycnostachyus*, and hence one of the top candidates for establishing a new population.

California Department of Parks and Recreation (CDPR) has approved experimental introductions of *Astragalus pycnostachyus* var. *lanosissimus* conducted by the CDFG. Because the area is public land owned by the CDPR and the species is State-listed, we will work with the State to develop conservation strategies to reintroduce the subspecies and develop and manage reserves.

As discussed above, this unit is essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus* because it contains the

primary constituent elements for *Astragalus pycnostachyus* var. *lanosissimus*. The population of *Astragalus pycnostachyus* var. *lanosissimus* at the North Shore at Mandalay site is the only naturally-occurring, self-perpetuating population of the species in existence. It has provided all of the initial propagules for establishing research populations of the species at other sites, and continues to be the source of genetic variability for future propagation. The research populations at McGrath State Beach and Carpinteria Marsh are not intended to become new populations for the recovery of the species, but were established to generate data on the species' needs when such introductions for recovery begin. Their persistence is uncertain, and we have observed some failures (see Background section). Consequently, the population of *Astragalus pycnostachyus* var. *lanosissimus* on the North Shore at Mandalay site is currently the only one of which we can be relatively certain that the plants will persist. If this population is extirpated, and the research populations ultimately fail, all of the remaining individuals of *Astragalus pycnostachyus* var. *lanosissimus* will exist as seeds in collections or propagated in greenhouses. The designation of the North Shore at Mandalay site as critical habitat recognizes that this population is essential to the species' conservation. This southernmost unit is geographically separated from other critical habitat within its historical range. This will reduce the likelihood of all populations being destroyed by one naturally occurring catastrophic event.

McGrath Unit

The site within McGrath Beach State Park is adjacent to McGrath Lake on the leeward side of the southern end of the lake, between the lake and Harbor Boulevard. The unit covers 62 ac (25 ha). It includes 35 ac (14 ha) of private land and 27 ac (11 ha) of State-owned land managed by CDPR.

Of the sites they examined, Wilken and Wardlaw (2001) identify the McGrath Lake area as having the best combination of habitat characteristics similar to that of the extant population of *Astragalus pycnostachyus* var. *lanosissimus* and its closest relative, *Astragalus pycnostachyus* var. *pycnostachyus* based upon five parameters (*i.e.*, dominant vegetation composed of a shrub canopy less than 75 percent; absence of competitive annual or perennial exotic plants; water table in close proximity; soil types consistent with that at the site of the extant population; and native habitat supporting pollinators).

CDPR agreed to allow CDFG and RSABG establish a research population on this site. This effort is still in its early stages, and no conclusive data have yet been retrieved. Because the area is currently operated by CDPR and is public land, there is opportunity to work with the State to develop reintroduction strategies for *Astragalus pycnostachyus* var. *lanosissimus* and to form manageable reserves. This unit is also one of the last known places where the subspecies was observed growing naturally, and it is close to the extant population and shares many of the broader climatic and habitat features of that site.

As discussed above, this unit is essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus* because it once supported a population *Astragalus pycnostachyus* var. *lanosissimus* until it was extirpated in 1967. It contains the primary constituent elements for *Astragalus pycnostachyus* var. *lanosissimus*. It includes habitat that is necessary for the expansion of the only known population, which may become nonviable in the future. It contains habitat features that are essential for this species including, but not limited to, high diversity of native plants, open canopy, sandy dune hollows, seep margin areas, subterranean water table. This central unit is geographically separated from other critical habitat within *Astragalus pycnostachyus* var. *lanosissimus* historical range. This will reduce the likelihood of all populations being destroyed by one naturally occurring catastrophic event.

Carpinteria Salt Marsh Unit

The Carpinteria Salt Marsh Unit extends from the Southern Pacific Railroad tracks south and west to Sand Point Drive and Santa Monica Creek and is approximately 205 ac (83 ha) in size. The entire unit is managed by the UC, Santa Barbara.

This unit includes saltmarsh habitat, which is essential to support the pollinators and other ecological processes that *Astragalus pycnostachyus* var. *lanosissimus* requires for its survival. The research population of *Astragalus pycnostachyus* var. *lanosissimus* was introduced in April 2002 into a portion of the unit. As of February 2003, 44 percent (68) of the 155 original plants survived. By June 2003, only 20 seedlings had been produced by plants at one of the planting sites. We have determined that this area contains the primary constituent elements necessary for the introduction of *Astragalus pycnostachyus* var. *lanosissimus* based on Wilken and Wardlaw's (2001) description of five parameters of habitat suitability. These parameters closely parallel the primary constituent elements, so one or more of the elements are represented at this site. The diverse native vegetation provides for a robust pollinator community. The unit is bordered by a residential community where nonnative snails were observed; protection is required for herbivory by snails on *Astragalus pycnostachyus* var. *lanosissimus* plants.

This site in Santa Barbara County is near the range of the subspecies as predicted by the historical collections and described by Skinner and Pavlik (1994), who list the known counties as Ventura, Los Angeles, and Orange. We have included this unit because, although it is outside the historical range for *Astragalus pycnostachyus* var. *lanosissimus:* (1) Insufficient suitable habitat for the subspecies remains within its historical range; and (2) the area has habitat features essential to the conservation of the subspecies, which suggests a high potential for successful establishment of a new population (Wilken and Wardlaw 2001). This unit is essential for the conservation of *Astragalus pycnostachyus* var. *lanosissimus* because it supports the pollinators and other ecological processes for *Astragalus pycnostachyus* var. *lanosissimus*. It contains habitat features that are essential for this species including, but not limited to, dominant vegetation composed of a shrub canopy less than 75 percent; absence of competitive annual or perennial exotic plants; water table in close proximity; soil type; and native habitat supporting pollinators. Seedling recruitment has been observed at this site in the research population. This northernmost unit is geographically separated from other critical habitat. This will reduce the likelihood of all populations being destroyed by one naturally occurring catastrophic event.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a) of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, permit, or carry out do not destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not

limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical." However, in a March 15, 2001, decision of the United States Court of Appeals for the Fifth Circuit (*Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434), the court found our definition of destruction or adverse modification to be invalid. In response to this decision, we are reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports include an opinion that is prepared according to 50 CFR 402.14, as if the species was listed or critical habitat designated. We may adopt the formal conference report as the biological opinion when the species is listed or critical habitat designated, if no substantial new information or changes in the action alter the content of the opinion (50 CFR 402.10(d)).

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, we would ensure that the permitted actions do not destroy or adversely modify critical habitat.

If we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide "reasonable and prudent alternatives" to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat, or adversely modify or destroy proposed critical habitat.

Activities on Federal lands that may affect *Astragalus pycnostachyus* var. *lanosissimus* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration, Environmental Protection Agency (EPA), or Federal Emergency Management Authority funding), would also be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to evaluate briefly and describe, in any proposed or final regulation that designates critical habitat, those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat would be those that alter the primary constituent elements to the extent that the value of critical habitat for the conservation of the subspecies is appreciably reduced. We note that such activities may also jeopardize the continued existence of the subspecies.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and require that a section 7 consultation be conducted include, but are not limited to, the following:

(1) Alteration of existing hydrology by lowering the groundwater table through surface changes or pumping of groundwater, or redirection of freshwater sources through diverting surface waters (*e.g.*, channelization);

(2) Compaction of soil through the establishment of trails or roads;

(3) Placement of structures or hardscape (*e.g.*, pavement, concrete, nonnative rock or gravel);

(4) Removal of native vegetation that reduces native plant cover to below 50 percent;

(5) Introduction of nonnative vegetation or creation of conditions that encourage the growth of nonnatives, such as irrigation, landscaping, soil disturbance, addition of nutrients, etc.;

(6) Use of pesticides or other chemicals that can directly affect *Astragalus pycnostachyus* var. *lanosissimus*, its associated native vegetation, or pollinators;

(7) Introduction of nonnative snails or Argentine ants or creation of conditions favorable to these species. Such conditions arise as a result of landscaping with nonnative groundcover plants, irrigation, or other activities that increase moisture and food availability for these nonnative species that have been detrimental to the existing population;

(8) Activities that isolate the plants or their populations from neighboring vegetation or reduce the size of natural open spaces, and thus interfere with ecological processes that rely upon connectivity with adjacent habitat, such as maintaining pollinator populations and seed dispersal; and

(9) Soil disturbance that damages or interferes with the seedbank of the subspecies, such as discing, tilling, grading, removal, or stockpiling.

We recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. Critical habitat designations do not signal that habitat outside the designation is unimportant or not required for recovery. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be

implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the applicable prohibitions of section 9 of the Act, as determined on the basis of the best available information at the time of the action.

Several other species that are listed under the Act have been documented to occur in the same general areas as the current distribution of *Astragalus pycnostachyus* var. *lanosissimus*. These include: brown pelican (*Pelecanus occidentalis*); western snowy plover (*Charadrius alexandrinus nivosus*); California least tern (*Sterna antillarum browni*); light-footed clapper rail (*Rallus longirostris levipes*); and salt marsh bird's beak (*Cordylanthus maritimus* ssp. *maritimus*).

If you have questions regarding whether specific activities will likely constitute adverse modification of critical habitat, contact the Field Supervisor, Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT** section). Requests for copies of the regulations on listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181 (503/231–6131; facsimile 503/231–6243).

Relationship to Habitat Conservation Plans

Currently, no HCPs exist that include *Astragalus pycnostachyus* var. *lanosissimus* as a covered species.

Economic Analysis

Following the publication of the proposed critical habitat designation on October 9, 2002, a draft economic analysis was prepared to estimate the potential direct and indirect economic impacts associated with the designation, in accordance with the recent decision in *N.M. Cattlegrowers Ass'n* v. *U.S. Fish and Wildlife Serv.*, 248 F.3d 1277 (10th Cir. 2001) (Economic and Planning Systems 2003). The draft analysis was made available for public review and comment on March 20, 2003 (68 FR 13663), and we accepted comments on the draft analysis until April 21, 2003.

Our draft economic analysis evaluated the potential direct and indirect economic impacts associated with the proposed critical habitat designation for *Astragalus pycnostachyus* var. *lanosissimus* over the next 10 years. Direct impacts are those related to consultations under section 7 of the Act. They include the cost of completing the section 7 consultation process and potential project modifications resulting from the consultation. Indirect impacts are secondary costs and benefits not directly related to operation of the Act. Examples of indirect impacts include potential effects to property values, redistricting of land from agricultural or urban to conservation, and social welfare benefits of ecological improvements.

The categories of potential direct and indirect costs and benefits considered in the analysis included the costs associated with: (1) Conducting section 7 consultations, including incremental consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; (3) uncertainty and public perceptions resulting from the designation of critical habitat including potential effects on property values and the interaction of State and local laws; and (4) potential offsetting beneficial costs associated with critical habitat, including educational benefits. The most likely economic effects of critical habitat designation are on activities funded, authorized, or carried out by a Federal agency (*i.e.*, direct costs).

Following the close of the comment period on the draft economic analysis, an addendum was completed. We received no comments on the draft economic analysis. The draft economic analysis and addendum addressed the impact of the proposed critical habitat designation that may be attributable coextensively to the listing of the subspecies. Because of the uncertainty about the benefits and economic costs resulting solely from critical habitat designations, we believe that it is reasonable to estimate the economic impacts of a designation utilizing this single baseline. It is important to note that the inclusion of impacts attributable coextensively to the listing does not convert the economic analysis into a tool to be used in deciding whether or not a species should be added to the Federal list of threatened and endangered species.

The critical habitat designations for *Astragalus pycnostachyus* var. *lanosissimus* include State and private lands only. No Federal lands are involved. The estimates for section 7 consultation in the economic analysis were based upon activities that are "reasonably foreseeable," which is defined as the time period from the present and for the next 10 years. Beyond 10 years, the numbers of projects and the potential for section 7 consultations become increasingly speculative.

Together, the draft economic analysis and the addendum constitute our final economic analysis. The final economic analysis estimates that over the next 10 years, the designation (co-extensive with the listing) will likely not result in section 7 consultations in any of the designated three units. Therefore, costs associated with section 7 implementation are anticipated to be $0. Similarly, the benefits of designation, which may include educational benefits that are difficult to quantify, are also limited. The cleanup of the Mandalay unit will be conducted by the developer and overseen by the Los Angeles Water Quality Control Board. There might have been a Federal nexus had the EPA overseen or funded the cleanup. However, the EPA has determined that the State's provision over the site cleanup was sufficient, and therefore, there will not be a Federal nexus (Economic and Planning Systems, Inc. 2003).

A copy of the final economic analysis and supporting documents are included in our administrative record and may be obtained by contacting our Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, the Office of Management and Budget (OMB) has determined that this critical habitat designation is not a significant regulatory action. This rule will not have an annual economic effect of $100 million or more or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. This designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. It will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Finally, this designation will not raise novel legal or policy issues. Accordingly, OMB has not formally reviewed this final critical habitat designation.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the 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. SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement.

According to the Small Business Administration, small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121 and *http://www.sba.gov/size/*). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result.

SBREFA does not explicitly define either "substantial number" or "significant economic impact." Consequently, to assess whether a "substantial number" of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in the area. Similarly, this analysis considers the relative cost of compliance on the revenues/profit margins of small entities in determining whether or not entities incur a "significant economic impact." Only small entities that are expected to be directly affected by the designation are considered in this portion of the analysis. This approach is consistent with several judicial opinions related to the scope of the RFA (*Mid-Tex Electric Co-Op, Inc.* v. *F.E.R.C.* and *American Trucking Associations, Inc.* v. *EPA*).

To determine if the rule would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We applied the "substantial number" test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. The final economic analysis found that the designation of critical habitat will not affect a single entity, and therefore, the designation will not result in a significant economic impact on a substantial number of small entities.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation if they lack a Federal nexus. In areas where the subspecies is present, Federal agencies funding, permitting, or implementing activities are already required to avoid jeopardizing the continued existence of *Astragalus pycnostachyus* var. *lanosissimus* through consultation with us under section 7 of the Act. Following finalization of this critical habitat designation, Federal agencies must also ensure that their activities do not destroy or adversely modify designated critical habitat through consultation with us. However, this will not result in any additional regulatory burden on Federal agencies or their applicants where the subspecies is present because conservation already would be required due to the presence of a listed species.

In unoccupied areas, or areas of uncertain occupancy, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, and may result in additional requirements on Federal activities to avoid destroying or adversely modifying critical habitat. *Astragalus pycnostachyus* var. *lanosissimus* has only been listed since June 2001, and no formal consultations involving the subspecies have taken place. Therefore, for the purposes of this review and certification under the RFA, we are assuming that any future consultations in the areas proposed for critical habitat that are considered unoccupied will be due to the critical habitat designation. Should a federally funded, permitted, or implemented project be proposed that may affect designated critical habitat, we will work with the Federal action agency and any applicant, through section 7 consultation, to identify ways to implement the proposed project while minimizing or avoiding any adverse effect to the subspecies or critical habitat. In our experience, the vast majority of such projects can be successfully implemented with at most minor changes that avoid significant economic impacts to project proponents.

Based on our experience with section 7 consultations for all listed species, virtually all projects—including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations—can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. As we have no consultation history for *Astragalus pycnostachyus* var. *lanosissimus*, we can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the subspecies and the threats it faces, especially as described in the final listing rule and in this final critical habitat designation, as well as our experience with similar listed plants in California. In addition, the State of California listed *Astragalus pycnostachyus* var. *lanosissimus* as an endangered species under the California Endangered Species Act of 1978, and we have also considered the kinds of actions required through State regulations for this subspecies. The kinds of actions that may be included in future reasonable and prudent alternatives include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, construction of protective fencing, and regular monitoring. These measures are not likely to result in a significant economic impact to project proponents.

As required under section 4(b)(2) of the Act, we have conducted an analysis of the potential economic impacts and benefits of this critical habitat designation, and made that analysis available for public review and comment before finalizing this designation. Based upon the economic analysis, we conclude that the economic effects of the final rule for *Astragalus pycnostachyus* var. *lanosissimus* will be less than those identified for other California plant critical habitat designations because the amount of private land involved is limited, and the plant occurs naturally in only one of the units. Further, no Federal nexus exists for a proposed development on the private land within the designated

critical habitat. The designation of critical habitat in areas not occupied by *A. pycnostachyus* var. *lanosissimus* could result in extra costs involved with consultations that may not have occurred were it not for the designations. However, one unit is entirely State-owned and the burden of consultation should not cause economic hardship on private entities.

Efforts to establish *Astragalus pycnostachyus* var. *lanosissimus* on unoccupied sites would be mostly funded by Federal, State, and non-governmental organizations, and would likely not require private funding. Consequently, we conclude that the economic effects of the designation of critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* are likely to be minimal.

In summary, we have concluded that this final rule would not result in a significant economic effect on a substantial number of small entities. The designation includes only one privately-owned parcel for which a project has been proposed and for which there is no Federal involvement or section 7 consultation required. This rule would result in project modifications only when proposed Federal activities would destroy or adversely modify critical habitat. While this may occur, it is not expected to affect any small entities. Even if a small entity is affected, we do not expect it to result in a significant economic impact, as the measures included in reasonable and prudent alternatives must be economically feasible and consistent with the proposed action. The kinds of measures we anticipate we would recommend can usually be implemented at low cost. Therefore, we are certifying that the designation of critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* will not have a significant economic impact on a substantial number of small entities, and a final regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

Under SBREFA, this rule is not a major rule (see Regulatory Flexibility Act section). Our assessment of the economic effects of this designation is described in the economic analysis. Based upon the effects identified in the economic analysis, this rule will 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 will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Please refer to the final economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order (E.O.) 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under E.O. 13211, and it is not expected to significantly affect energy supplies, distribution, or use because none of those activities currently occur within the critical habitat units or would be affected by the designation. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*)

(a) This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will be affected only to the extent that they must ensure that any programs involving Federal funds, permits, or other authorized activities, will not adversely modify the critical habitat.

(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. The designation of critical habitat imposes no obligations on Tribal, State or local governments or private entities.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating approximately 420 ac (170 ha) of lands in Santa Barbara and Ventura Counties, California, as critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* in a takings implications assessment. The takings assessment concludes that this final rule does not pose significant takings implications.

Federalism

In accordance with Executive Order 13132, this rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior policy, we requested information from, and coordinated development of this critical habitat designation with, appropriate State Resource Agencies in California. The designation of critical habitat in areas currently occupied by *Astragalus pycnostachyus* var. *lanosissimus* imposes no additional restrictions beyond those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation of critical habitat in unoccupied areas may require consultation under section 7 of the Act on non-Federal lands (where a Federal nexus occurs) that might otherwise not have occurred. The designation may have some benefit to California Department of Parks and Recreation in that the areas essential to the conservation of this subspecies are more clearly defined, and the primary constituent elements of the habitat necessary to the conservation of this subspecies are specifically identified. While this definition and identification do not alter where and what federally sponsored activities may occur, they may assist local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Department of the Interior's Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Astragalus pycnostachyus* var. *lanosissimus.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new or revised information collections for which OMB approval is required under the Paperwork Reduction Act. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental

Policy Act of 1969 need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This final determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with federally recognized Tribes on a Government-to-Government basis. The designation of critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* does not contain any Tribal lands or lands that we have identified as impacting Tribal trust resources.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this final rule is Rick Farris, Ventura 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. 4201–4205; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

■ 2. In § 17.12(h), in the table, revise the entry for *Astragalus pycnostachyus* var. *lanosissimus* under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*	*	
Astragalus pycnostachyus var. *lanosissimus.*	Ventura Marsh milk-vetch.	U.S.A. (CA)	Fabaceae—Pea Family.	E	708	17.96(a)	NA
*	*	*	*	*	*	*	

■ 3. In § 17.96, amend paragraph (a) by adding critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* in alphabetical order under Family Fabaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Fabaceae: *Astragalus pycnostachyus* var. *lanosissimus* (Ventura Marsh milk-vetch)

(1) Critical habitat units are depicted for Santa Barbara and Ventura Counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Astragalus pycnostachyus* var. *lanosissimus* are as follows:

(i) Vegetation cover of at least 50 percent but not exceeding 75 percent, consisting primarily of known associated native species, including but not limited to, *Baccharis salicifolia*, *Baccharis pilularis*, *Salix lasiolepis*, *Lotus scoparius*, and *Ericameria ericoides*;

(ii) Low densities of nonnative annual plants and shrubs;

(iii) The presence of a high water table, either fresh or brackish, as evidenced by the presence of channels, sloughs, or depressions that may support stands of *Salix lasiolepis*, *Typha* spp., and *Scirpus* spp.;

(iv) Soils that are fine-grained, composed primarily of sand with some clay and silt, yet are well-drained; and

(v) Soils that do not exhibit a white crystalline crust that would indicate saline or alkaline conditions.

(3) Critical habitat does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Critical Habitat Map Units. Data layers defining map units were created on a base of USGS 7.5′ quadrangles, and critical habitat units were then mapped using Universal Transverse Mercator (UTM) coordinates.

(5) McGrath and Mandalay Units. Ventura County, California.

(i) Mandalay Unit A. From USGS 1:24,000 quadrangle map Oxnard, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 293381, 3786370; 293036, 3787170; 292994, 3787290; 292974, 3787330; 292995, 3787330; 293017, 3787330; 293122, 3787270; 293269, 3787190; 293331, 3787150; 293362, 3787140; 293399, 3787130; 293570, 3787080; 293640, 3787050; 293665, 3787040; 293686, 3787020; 293699, 3786990; 293707, 3786960; 293701, 3786620; 293713, 3786580; 293732, 3786540; 293760, 3786520; 293851, 3786460; 293903, 3786420; 293928, 3786380; 293936, 3786360; 293381, 3786370.

(ii) Mandalay Unit B. From USGS 1:24,000 quadrangle map Oxnard, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 293352, 3786380; 293044, 3786380; 292798, 3786960; 292761, 3787040; 293070, 3787030; 293352, 3786380.

(iii) McGrath Unit. From USGS 1:24,000 quadrangle map Oxnard, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 292406, 3788600; 292474, 3788440; 292752, 3787790; 292716, 3787780; 292704, 3787770; 292702, 3787770; 292717, 3787730; 292718, 3787720; 292715, 3787710; 292692, 3787680; 292725, 3787600; 292530, 3787600; 292415, 3787630; 292394, 3787670; 292400, 3787690; 292403, 3787710; 292407, 3787720; 292412, 3787770; 292412,

3787800; 292412, 3787820; 292409, 3787840; 292401, 3787900; 292375, 3787940; 292348, 3787960; 292338, 3787980; 292338, 3788000; 292343, 3788010; 292353, 3788030; 292358, 3788040; 292360, 3788050; 292360, 3788060; 292354, 3788070; 292338, 3788070; 292326, 3788090; 292322, 3788120; 292313, 3788150; 292310, 3788170; 292312, 3788230; 292309, 3788250; 292301, 3788260; 292302, 3788280; 292304, 3788290; 292308, 3788300; 292311, 3788320; 292307, 3788330; 292308, 3788350; 292310, 3788380; 292310, 3788390; 292310, 3788400; 292311, 3788420; 292306, 3788450; 292305, 3788480; 292301, 3788490; 292295, 3788500; 292297, 3788520; 292304, 3788550; 292306, 3788560; 292406, 3788600.

(iv) Map 1—McGrath and Mandalay Units—follows:

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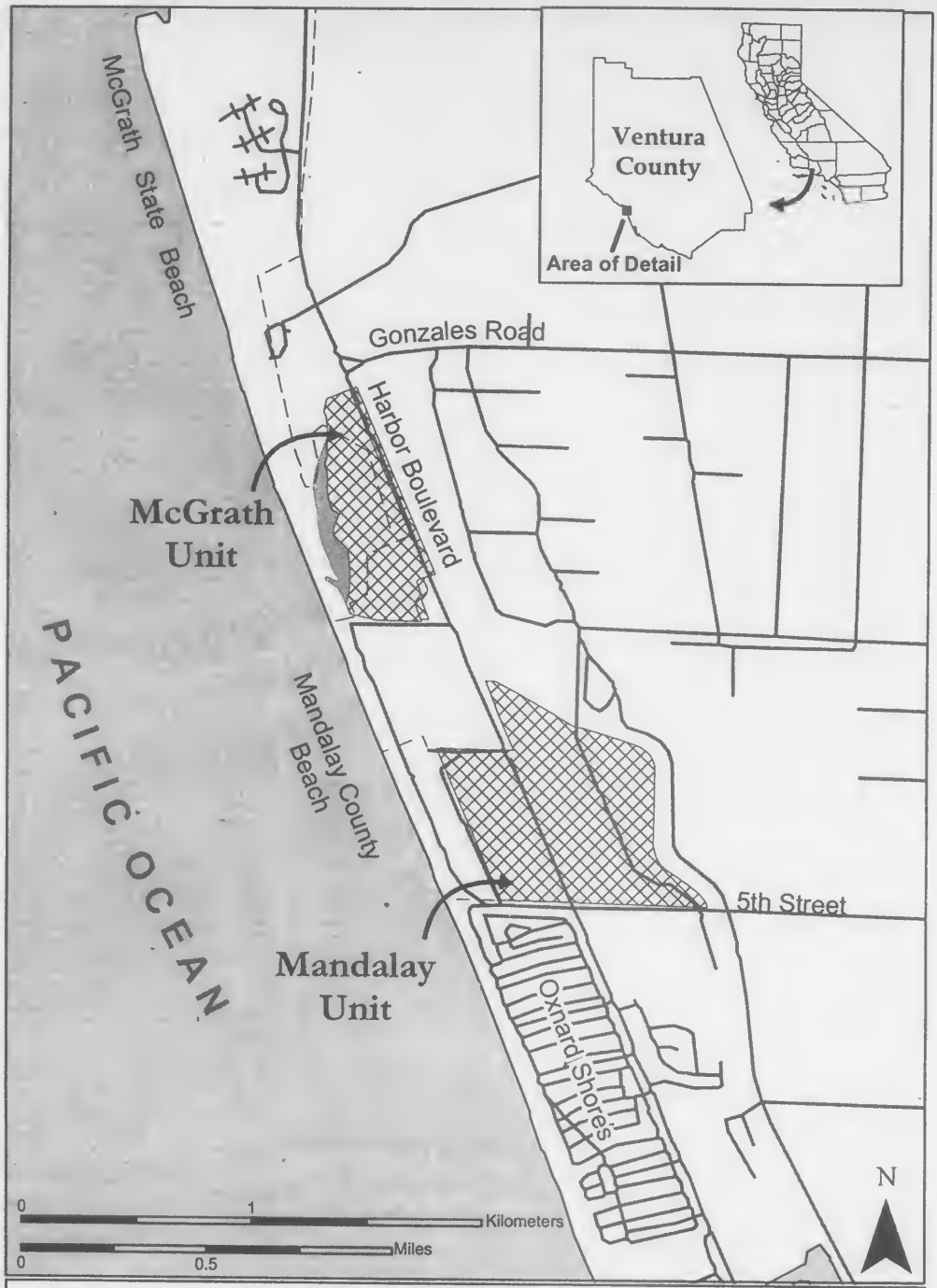

Critical Habitat for the Ventura Marsh Milk-Vetch: McGrath and Mandalay Units

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(6) Carpinteria Salt Marsh. Santa Barbara and Ventura Counties, California.

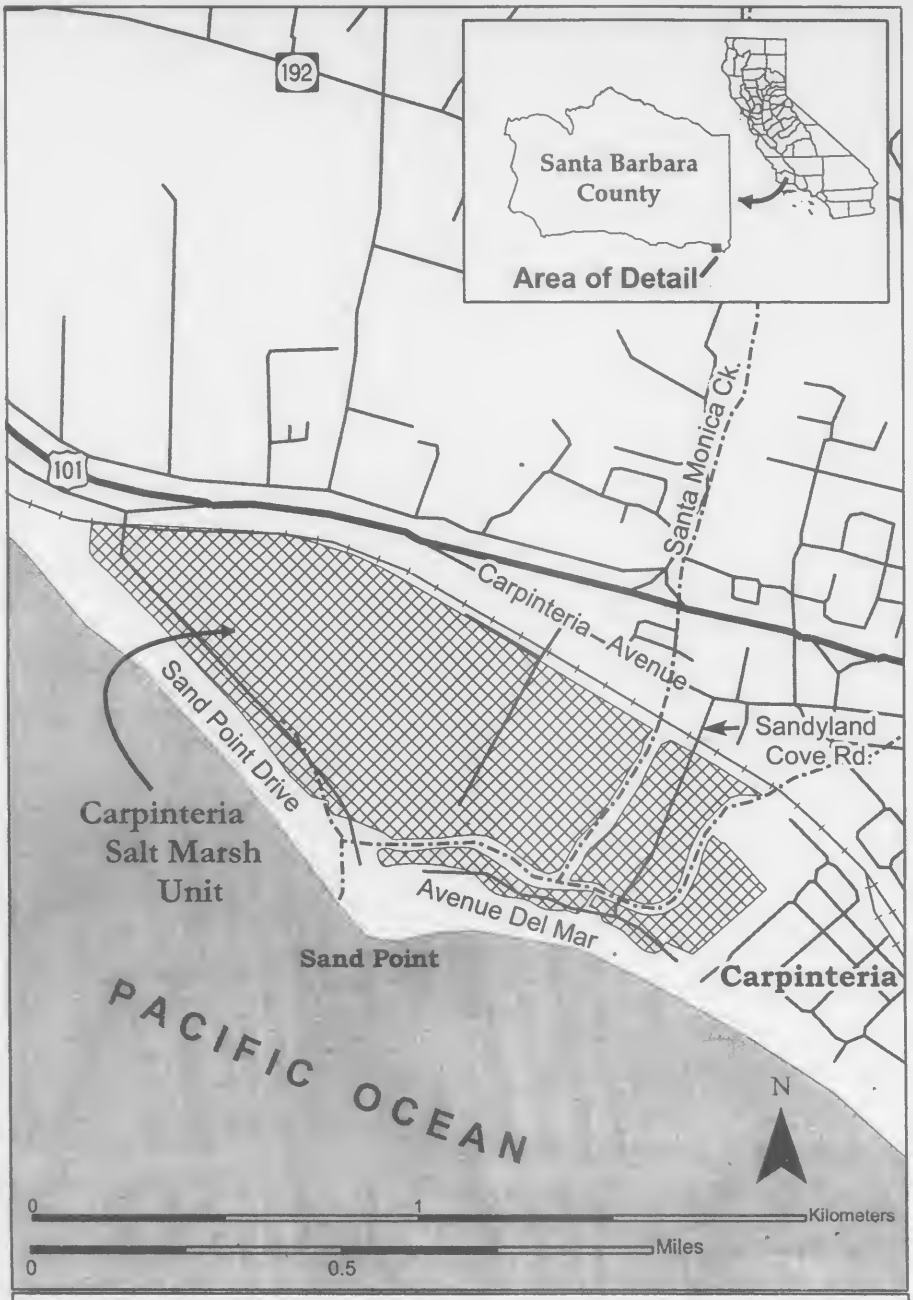
(i) Carpinteria Salt Marsh Unit A. Santa Barbara County, California. From USGS 1:24,000 quadrangle map Carpinteria, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 266039, 3810060; 266166, 3810060; 266335, 3810050; 266449, 3810040; 266521, 3810040; 266572, 3810030; 266621, 3810010; 266711, 3809980; 266784, 3809950; 266912, 3809880; 267485, 3809530; 267463, 3809500; 267453, 3809470; 267428, 3809440; 267403, 3809390; 267381, 3809360; 267343, 3809300; 267290, 3809250; 267255, 3809190; 267243, 3809170; 267214, 3809160; 267185, 3809170; 267148, 3809200; 267094, 3809240; 267058, 3809260; 267023, 3809260; 266973, 3809260; 266932, 3809250; 266889, 3809250; 266813, 3809250; 266793, 3809260; 266772, 3809270; 266720, 3809290; 266690, 3809300; 266655, 3809310; 266644, 3809330; 266645, 3809350; 266602, 3809360; 266580, 3809380; 266544, 3809420; 266498, 3809480; 266456, 3809530; 266408, 3809590; 266356, 3809650; 266320, 3809690; 266264, 3809750; 266206, 3809810; 266162, 3809860; 266122, 3809900; 266081, 3809940; 266053, 3809960; 266042, 3809980; 266033, 3809990; 266032, 3810010; 266037, 3810060; 266039, 3810060.

(ii) Carpinteria Salt Marsh Unit B. Santa Barbara County, California. From USGS 1:24,000 quadrangle map Carpinteria, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 267531, 3809510; 267588, 3809470; 267654, 3809440; 267708, 3809400; 267767, 3809360; 267755, 3809360; 267733, 3809360; 267710, 3809360; 267684, 3809360; 267662, 3809340; 267638, 3809310; 267621, 3809290; 267602, 3809270; 267587, 3809240; 267577, 3809220; 267563, 3809180; 267555, 3809150; 267544, 3809120; 267526, 3809100; 267504, 3809090; 267480, 3809080; 267458, 3809080; 267434, 3809090; 267413, 3809100; 267387, 3809110; 267357, 3809120; 267342, 3809130; 267318, 3809140; 267270, 3809140; 267275, 3809160; 267291, 3809170; 267303, 3809190; 267309, 3809210; 267319, 3809220; 267342, 3809240; 267365, 3809260; 267384, 3809280; 267411, 3809330; 267435, 3809360; 267454, 3809390; 267469, 3809420; 267490, 3809470; 267508, 3809490; 267531, 3809510.

(iii) Carpinteria Salt Marsh Unit C. Santa Barbara County, California. From USGS 1:24,000 quadrangle map Carpinteria, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 267638, 3809260; 267658, 3809240; 267668, 3809240; 267775, 3809120; 267611, 3808980; 267584, 3808950; 267538, 3808970; 267516, 3808980; 267504, 3808960; 267488, 3808950; 267462, 3808960; 267437, 3808980; 267408, 3809010; 267386, 3809020; 267354, 3809040; 267344, 3809070; 267320, 3809080; 267337, 3809110; 267410, 3809070; 267443, 3809060; 267461, 3809050; 267487, 3809050; 267513, 3809060; 267532, 3809070; 267548, 3809080; 267564, 3809100; 267576, 3809120; 267600, 3809170; 267613, 3809210; 267627, 3809250; 267638, 3809260.

(iv) Carpinteria Salt Marsh Unit D. Ventura County, California. From USGS 1:24,000 quadrangle map Carpinteria, lands bounded by the following UTM zone 11 NAD83 coordinates (E,N): 266801, 3809220; 266818, 3809220; 266839, 3809220; 266859, 3809220; 266883, 3809220; 266912, 3809220; 266939, 3809230; 266960, 3809230; 266988, 3809230; 267008, 3809230; 267025, 3809220; 267044, 3809210; 267062, 3809200; 267085, 3809180; 267105, 3809170; 267127, 3809150; 267149, 3809140; 267171, 3809130; 267190, 3809120; 267211, 3809120; 267239, 3809120; 267262, 3809120; 267290, 3809120; 267312, 3809120; 267331, 3809110; 267323, 3809100; 267314, 3809090; 267305, 3809080; 267294, 3809060; 267290, 3809060; 267279, 3809060; 267271, 3809060; 267258, 3809070; 267240, 3809070; 267223, 3809070; 267208, 3809070; 267190, 3809080; 267169, 3809090; 267147, 3809100; 267125, 3809100; 267099, 3809100; 267079, 3809110; 267061, 3809120; 267047, 3809140; 267029, 3809150; 267022, 3809160; 267012, 3809170; 266993, 3809170; 266970, 3809180; 266940, 3809180; 266912, 3809180; 266883, 3809190; 266862, 3809190; 266843, 3809180; 266823, 3809180; 266810, 3809180; 266795, 3809180; 266787, 3809180; 266781, 3809190; 266775, 3809200; 266773, 3809210; 266776, 3809220; 266783, 3809220; 266791, 3809230; 266801, 3809220.

(v) Map 2—Carpinteria Salt Marsh Unit—follows:



Critical Habitat for the Ventura Marsh Milk-Vetch: Carpinteria Salt Marsh Unit

* * * * *

Dated: May 14, 2004.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–11382 Filed 5–19–04; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AJ26

Endangered and Threatened Wildlife and Plants; Extension of Amended Special Regulations for the Preble's Meadow Jumping Mouse

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: On May 22, 2001, the Fish and Wildlife Service (Service) adopted special regulations governing take of the threatened Preble's meadow jumping mouse (*Zapus hudsonius preblei*). The special regulations provide exemption from take provisions under section 9 of the Endangered Species Act for certain activities related to rodent control, ongoing agricultural activities, landscape maintenance, and existing uses of water. On October 1, 2002, the Service amended those regulations to provide exemptions for certain activities related to noxious weed control and ongoing ditch maintenance activities. On February 24, 2004, the Service proposed permanent extension of the amended special regulations. This action extends the special regulations permanently.

DATES: This rule is effective May 20, 2004.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ecological Services, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: In Colorado, contact the Field Supervisor, at the above address, or telephone (303) 275–2370. In Wyoming, contact the Field Supervisor, Cheyenne, Wyoming, at telephone (307) 772–2374.

SUPPLEMENTARY INFORMATION:

Background

The final rule listing the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) (Preble's) as a threatened species under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), was published in the **Federal Register** on May 13, 1998 (63 FR 26517). Section 9 of the Act prohibits take of endangered wildlife. The Act defines take to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or to attempt to engage in any such conduct. However, the Act also provides for the authorization of take and exceptions to the take prohibitions. Take of listed species by non-Federal property owners can be permitted through the process set forth in section 10 of the Act. For federally funded or permitted activities, take of listed species may be allowed through the consultation process of section 7 of the Act. While section 9 of the Act establishes prohibitions applicable to endangered species, the Service has issued regulations (50 CFR 17.31) applying those same prohibitions to threatened wildlife. These regulations may be tailored for a particular threatened species through promulgation of a special rule under section 4(d) of the Act. When a special rule has been established for a threatened species, the general regulations for some section 9 prohibitions do not apply to that species, and the special rule contains the prohibitions, and exemptions, necessary and advisable to conserve that species.

On May 22, 2001 (66 FR 28125), we adopted a final section 4(d) special rule for the Preble's that provided exemptions from section 9 take prohibitions for certain rodent control activities, ongoing agricultural activities, maintenance and replacement of existing landscaping, and existing uses of water. On October 1, 2002 (67 FR 61531), we amended this rule to provide exemptions for certain noxious weed control and ongoing ditch maintenance activities. The final special rule, as amended, is effective until May 22, 2004. We are now extending the amended special rule permanently.

We believe that the special rule, as amended, is necessary and advisable to provide for the conservation of the Preble's. The special rule has been shown to provide for the conservation of the Preble's by allowing activities that help to maintain the habitat characteristics needed by the species. Although such activities, including ditch maintenance and noxious weed control, may result in limited levels of take, they support the continued presence of occupied habitat that might otherwise be lost to succession or invasive species. Also, by offering flexibility to private landowners for ongoing activities that will not impede the conservation of the species, the special rule provides an incentive for landowners to pursue voluntary conservation efforts and advance our understanding of the species. The rule has garnered support of State and local governments, private landowners, and other interested parties, and we believe that the permanent extension of the special rule will contribute to a lasting, cooperative approach for the recovery of the species.

The special rule is best understood in the context of other regulations and actions, already in place or in development, to provide for conservation of the Preble's. First, section 10(a)(1)(B) of the Act allows the public to obtain from us, in appropriate circumstances, permits allowing take of Preble's, providing that the take is incidental to, and not the purpose of, each action or project. One of the purposes of the special rule is to make, in advance, general decisions that certain types of activities are consistent with the conservation of the Preble's without requiring people to seek additional section 10 permits authorizing those activities. This purpose will be continued by the permanent extension. Additional activities that result in take of Preble's that are not exempted by the special rule may still be permitted by the Service under section 10 of the Act.

Currently, the State of Colorado, the Service, and various local governments in Colorado and Wyoming are working together to develop plans to conserve the Preble's and its habitat. This collaborative approach is expected to result in the development of Habitat Conservation Plans (HCPs) and applications to the Service for incidental take permits under section 10 of the Act. These HCPs will provide an important component of a lasting, effective, and efficient recovery program for the Preble's.

Second, section 7 of the Act requires Federal agencies, in consultation with and with the assistance of the Service, to use their authorities to conserve listed species and ensure that actions authorized, funded, or carried out by the agency are not likely to jeopardize the Preble's. On private land, Federal actions in Preble's habitat that may require consultation include the issuance of section 404 permits by the Army Corps of Engineers for dredge and fill activities regulated under the Clean Water Act. A section 7 consultation was conducted on the current special rule, and the ensuing biological opinion addressed a wide array of potential effects from private actions, some of which have unknown timeframes, some of which occur sporadically, and some of which occur on a regular schedule. The biological opinion found that the special rule would not jeopardize the continued existence of the species, and that the level of take from the rule was not biologically significant. The analysis for this consultation considered effects

that could occur within the 36-month period of the existing special rule but also recognized the adverse effects being considered could occur at any time in the future. Therefore, making this special rule permanent does not affect the Preble's or its critical habitat in a way not previously considered in the biological opinion. We have accordingly determined that reinitiation of consultation on the permanent extension of the special rule is not necessary.

Third, a variety of Federal, State, and local programs are available to help preserve the Preble's through the acquisition, preservation, and management of its habitat. These include the Service's Partners for Fish and Wildlife Program, the Natural Resource Conservation Service's wetland/riparian habitat protection programs, grant programs administered by Great Outdoors Colorado, city and county open space programs, and activities of local land trusts. In particular, our Partners for Fish and Wildlife Program has proven to be an especially effective approach for wildlife conservation on agricultural lands by providing funding for restoration of wetlands and riparian habitats.

Fourth, we are committed to development of a recovery program for the Preble's that achieves recovery of the species and provides solutions to conflicts between the species' recovery and economic activities, including agriculture. We believe that a recovery program that integrates both biological and social factors will have the highest chance of success. The Service has established a Recovery Team for the Preble's, and a draft recovery plan will be available for public review in the near future.

The May 22, 2001, special rule and the October 1, 2002, amendment recognized that the take exemptions provided by the rule would support the development of meaningful conservation efforts for the Preble's by State and local governments, agricultural interests, and the general public. The rule and the amendments identified the following conservation benefits to the Preble's—(1) Exemptions regarding rodent control and landscaping would elicit support from landowners for Preble's conservation and recovery; (2) exemptions for ongoing agricultural practices and the exercise of existing water rights would provide a positive incentive for agricultural interests to participate in voluntary conservation activities and advance our understanding of species biology and ecology; (3) exemptions for noxious weed control would facilitate maintaining desirable natural vegetation on which the Preble's depends for survival; and (4) exemptions for ditch maintenance would help assure that currently existing Preble's habitat along ditches remains functionally viable.

Provisions of the Rule

The special rule for the Preble's found at 50 CFR 17.40(l) will expire on May 22, 2004. With this rule we are permanently extending the amended special rule to continue the benefits it provides. We recognize that additional information on the Preble's will become available in forthcoming years. We will evaluate this information regarding possible impacts from exempted activities to determine whether any changes, up to and including discontinuance, should be made to the special rule.

Additionally, we are making a correction to the entry for the Preble's on the List of Endangered and Threatened Wildlife in 50 CFR 17.11(h). When the special rule for the Preble's was added to 50 CFR 17.40(l) on May 22, 2001 (66 FR 28125), we failed to amend the table in 50 CFR 17.11(h) to reflect the existence of the new special rule. Therefore, we are making the correction to the table in 50 CFR 17.11(h) in this rulemaking action.

Public Comments Received

A proposed rule permanently extending the existing special rule was published in the **Federal Register** on February 24, 2004 (69 FR 8359), and public comments were solicited. A public hearing was held on April 1, 2004, in Wheatland, Wyoming. Twenty-two public comments were received, primarily supporting the extension. A few asked for expansion of take exemptions to cover additional activities. Only one opposed the extension on general disagreement over the killing of threatened and endangered species. Comments were received from the State of Wyoming supporting the extension of the special rule and also requesting that additional kinds of activities be exempted under the special rule. In order to add exemptions to a rule, we must first propose them through a proposed rule published in the **Federal Register** that provides an opportunity for public comment. However, because we did not include exemptions for additional new activities in our February 24, 2004, proposal, it is not possible for us to include them in this final rule. In the future, it may be appropriate for us to consider proposing additional exemptions. At that time, we will need to evaluate the conservation benefit to the species and prepare a proposed rule for public comment.

Effective Date

In accordance with 5 U.S.C. 553(d)(1), we are making this rule effective upon publication because it grants or recognizes an exemption or relieves a restriction. This rule provides exemptions from the take provisions under section 9 of the Act for persons engaging in rodent control, ongoing agricultural activities, landscaping, ongoing use of existing water rights, noxious weed control, and ditch maintenance activities.

Required Determinations

We prepared a Record of Compliance for the May 22, 2001, final rule that exempted the four activities of rodent control, ongoing agricultural activities, landscaping, and ongoing use of existing water rights from the take prohibitions listed in section 9 of the Act. A Record of Compliance certifies that a rulemaking action complies with the various statutory, Executive Order, and Department Manual requirements applicable to rulemaking. Amendment of the May 22, 2001, rule to include the two additional exemptions (noxious weed control and ditch maintenance activities) did not add any significant elements to this Record of Compliance. Permanent extension of the amended special rule also does not add any significant elements to this Record of Compliance.

Without this extension, activities included in the special rule, as amended, would no longer be exempted from the take prohibitions. This rule continues the exemptions and allows landowners to engage in certain activities, as identified in the rule, that may result in take of Preble's. Without this extension, anyone engaging in those activities might need to seek an authorization from us through an incidental take permit under section 10(a)(1)(B) or an incidental take statement under section 7(a)(2) of the Act. This process takes time and can involve an economic cost. This rule allows these landowners to avoid the costs associated with abstaining from conducting any such activities that may result in take, modifying these activities to prevent take from occurring, or seeking an incidental take permit from us.

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, the Office of Management and Budget (OMB) has determined that this rule is a significant regulatory action as this rule may raise

novel legal or policy issues. This rule will not have an annual economic impact of more than $100 million, or significantly affect any economic sector, productivity, jobs, the environment, or other units of government. This rule reduces the regulatory burden of the listing of the Preble's under the Act as a threatened species by continuing certain exemptions to the section 9 take prohibitions that would otherwise apply throughout the Preble's range.

Preble's habitat, which overlaps farming and ranching businesses, primarily affects four southeast Wyoming counties—(1) Converse; (2) Laramie; (3) Platte; and (4) Albany. This four-county area contains 1,739 farms and ranches covering 3.6 million hectares (8.9 million acres). The average size of an agricultural operation is about 2,064 hectares (5,100 acres), although individual operations vary greatly in size. The total marketing value of livestock and crops, measured as cash receipts, is about $182.5 million.

As previously discussed, the Service has adopted special regulations pursuant to section 4(d) of the Act for Preble's, and these regulations are currently set to expire on May 22, 2004. Specifically, these regulations provide exemption from take provisions under section 9 for certain activities related to rodent control, ongoing agricultural activities, landscape maintenance, perfected water rights, certain noxious weed control, and ditch maintenance activities. Should this regulation expire, such activities could result in the incidental take of Preble's, which is prohibited under section 9 of the Act. However, section 10 of the Act does allow landowners to obtain a permit to conduct otherwise lawful activities that may result in incidental take of a listed species. The incidental take permit requires the applicant to prepare, and the Service approve, a habitat conservation plan (HCP). The HCP may include certain restrictions to agricultural activities to minimize incidental take of Preble's.

The types of restrictions the Service might impose on agricultural activities to minimize take are expected to vary significantly from one application to another, depending on the specific situation. However, Service guidelines call for mitigating the take of Preble's to the maximum extent practicable. Examples of mitigation conditions include fencing, planting willows, or other measures intended to create a buffer zone along waterways in riparian areas. The Service also may impose restrictions on the methods or timing of activities associated with irrigation ditch maintenance.

The primary economic impacts to landowners associated with enforcement of the Act, should this section 4(d) rule expire, are the costs of preparing HCPs for the Preble's and the costs associated with any activity restrictions imposed by the Service to minimize take of the Preble's. These impacts would potentially affect agricultural operations in southeast Wyoming. The primary land use activities likely to be impacted by sections 9 and 10 of the Act are haying and grazing, and irrigation ditch maintenance. A short discussion follows of the impacts farmers and ranchers could incur should this regulation lapse.

Irrigation Canal and Ditch Maintenance Activities

The three commonly used methods of ditch maintenance are burning, flushing (flowing water through a ditch to clear blockages), and dipping (mechanically clearing blockages). Of these three options, the most cost effective is burning, which also may be the most likely to result in incidental take of Preble's. Because of this, some landowners are concerned that the burning could be prohibited after the expiration of the special rule, which would impact their irrigation activities.

An example of the potential impacts to irrigation canal and ditch maintenance is illustrated using estimates developed by the Wheatland Irrigation District. The Wheatland Irrigation District estimates that its annual irrigation ditch maintenance costs would increase by approximately 250 percent if burning is reduced by 50 percent. If all burning were prohibited, irrigation ditch maintenance costs could increase by approximately 400 percent annually.

Haying and Grazing Activities

Haying and grazing activities also would be subject to sections 9 and 10 of the Act to minimize take of the Preble's. To avoid violating this provision, landowners would have to either cease activities that might result in incidental take, or they may need to submit an application to the Service for an incidental take permit, including an HCP. As with irrigation canal and ditch maintenance activities, landowners could expect some restrictions or conditions on haying and grazing activities as mitigation for the incidental take of Preble's.

The types of restrictions or conditions would vary depending upon the situation. In situations where riparian areas have been degraded by intensive grazing activity, mitigation measures for an incidental take permit may include restrictions on the number of Animal Unit Months or AUMs (an AUM is the amount of forage needed to sustain one cow and her calf, one horse, or five sheep or goats for a month) within riparian areas, the construction of fencing with water gaps to keep herds out of riparian areas, and planting willows along stream banks. In situations where riparian areas are not degraded, mitigation measures may be minimal. The economic impacts of sections 9 and 10 of the Act on haying and grazing activities should this regulation expire can thus be expected to vary widely from landowner to landowner.

By permanently extending this section 4(d) rule, farm and ranch operators will avoid future costs associated with ensuring that their otherwise legal activities avoid incidentally taking Preble's. Consequently, the economic effect of the rule benefits landowners and the economy. This effect does not rise to the level of "significant" under Executive Order 12866.

This rule should not create inconsistencies with other Federal agencies' actions. Other Federal agencies are mostly unaffected by this rule.

This rule should not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Because this rule would allow landowners to continue otherwise prohibited activities without first obtaining individual authorization, the rule's impacts on affected landowners is positive.

We have previously promulgated section 4(d) special rules for this and other species, including the amended special rule for the Preble's pertaining to rodent control, ongoing agricultural activities, landscaping, existing uses of water, noxious weed control, and ongoing ditch maintenance activities. This rule permanently extends the effective period of the amended special rule for the Preble's. However, OMB has determined that this proposed rule may raise novel legal or policy issues. Therefore, in accordance with Executive Order 12866, OMB has reviewed this rule.

Regulatory Flexibility Act

We have determined that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final regulatory flexibility analysis is not required, and a Small Entity Compliance Guide is not required. This rule reduces the regulatory burden of

the listing of the Preble's as a threatened species. Without an extension of the amended special rule, all of the take prohibitions listed in section 9 of the Act would apply throughout the range of the Preble's. This rule allows certain affected landowners to continue to engage in certain activities that may result in take of Preble's, and to avoid the costs associated with abstaining from conducting these activities to avoid take of Preble's or seeking incidental take permits from us.

As previously discussed, this rulemaking will primarily affect farm and ranch operations within four counties in southeastern Wyoming. Although the precise numbers of affected operations are not known, the total number of farms and ranches in the area is estimated to be 1,739. The 2002 total cash receipts for these operations were approximately $182.5 million, which represents about 25 percent of the State total. Based on the State ratio of net farm income to animal and crop cash receipts (12 percent), the estimated average net farm income in this area would be $21,900.

The Office of Advocacy for the Small Business Administration defines small entities in the farm and ranch sector as those each having less than $750,000 in annual receipts. This qualifies most of the farms and ranches in the area as small businesses, according to data published in 1998 by the U.S. Department of Agriculture.

The permanent extension of the section 4(d) rule will allow these small entities to avoid incurring costs associated with the development of an HCP and the administrative costs that would reflect the effort to obtain an incidental take permit. Administrative costs alone could cost between $3,000 and $4,000, according to a recent economic analysis conducted by the Service as part of the critical habitat designation for the Preble's. Depending on how such costs are expensed, the cost to obtain a permit could be relatively significant.

This rulemaking avoids such impacts by providing an exemption from the take provisions under section 9 for certain activities related to rodent control, ongoing agricultural activities, landscape maintenance, use of perfected water rights, certain noxious weed control, and ditch maintenance activities. Consequently, pursuant to 5 U.S.C. 605(b), we are certifying that this rulemaking will not have a significant economic effect on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule will not have an annual effect on the economy of $100 million or more; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. As described above, this rule will continue to reduce regulatory burdens on affected entities, who are mostly agricultural producers.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not impose an unfunded mandate on State, local, or tribal governments, or the private sector, of more than $100 million per year. This rule will not have a significant or unique effect on State, local, or tribal governments, or the private sector. A Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630, this rule does not have significant takings implications. By continuing reductions in the regulatory burden placed on affected landowners resulting from the listing of the Preble's as a threatened species, this rule reduces the likelihood of potential takings. Affected landowners will continue to have more freedom to pursue certain activities that may result in take of Preble's without first obtaining individual authorization.

Federalism

In accordance with Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Currently, the State of Colorado, the Service, and various local governmental entities in Colorado and Wyoming are working together to develop plans to conserve the Preble's and its habitat. This collaborative approach is expected to result in the development of HCPs that should support a lasting, effective, and efficient conservation program for the Preble's. To support such efforts, we wish to permanently extend the special rule. The current amended special rule would otherwise expire on May 22, 2004.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

Paperwork Reduction Act

We have examined this rule under the Paperwork Reduction Act of 1995 and found it to contain no requests for information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The National Environmental Policy Act (NEPA) analysis has been conducted. An Environmental Assessment was prepared for the May 22, 2001, final special rule, and for the additional exemptions covered in the amended rule. The extension of the October 1, 2002, amended special rule does not alter the analyses made in the Environmental Assessment. The Environmental Assessment discussed impacts to the mouse that are not specific to any time period, that is, they apply equally to both the short term and the long term. This is due to the fact that any possible take from year to year is not cumulative, because the species has a short life-span, and the types of activities allowed under the special rule are not related to any particular timeframe. This rule was not found to be significant under NEPA as these exemptions reduce regulatory burdens for activities that result in minimal levels of take allowing conservation efforts to be focused on those actions that will provide the greatest conservation benefit for the species. Therefore, no modification of the Environmental Assessment is needed.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations With Native American Tribal Governments" (59 FR 22951) and Executive Order 13175, we have evaluated possible effects on federally recognized Indian Tribes. We have determined that, because no Indian trust resources occur within the range of the Preble's, this rule has no effects on federally recognized Indian Tribes.

Executive Order 13211

We have evaluated this rule in accordance with Executive Order 13211 and have determined that this rule has

no effects on energy supply, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

■ Accordingly, the Service amends 50 CFR part 17, 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. Section 17.11(h) is amended by revising the entry for Preble's meadow jumping mouse, under "Mammals," on the List of Endangered and Threatened Wildlife 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							
*	*	*	*	*	*		*
Mouse, Preble's meadow jumping.	Zapus hudsonius preblei.	U.S.A. (CO, WY)	.....do	T	636	17.95(a)	17.40(l)
*	*	*	*	*	*		*

§ 17.40 [Amended]

■ 3. Amend paragraph (l) of § 17.40 by removing paragraph (l)(4) and redesignating paragraph (l)(5) as paragraph (l)(4).

Dated: May 13, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–11441 Filed 5–19–04; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 69, No. 98
Thursday, May 20, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2004–CE–06–AD]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH, Model DG–500MB Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain DG Flugzeugbau GmbH, Model DG–500MB sailplanes. This proposed AD would require you to replace the engine pylon extension/retraction Warner LA10 spindle drive with an improved designed Stross BSA 10 spindle drive and to modify the electrical system following applicable service information. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this proposed AD to prevent failure of the Warner LA10 spindle drive, which could result in the engine pylon not rising or lowering. This condition could cause an unstable engine pylon assembly during flight with loss of control of the sailplane.

DATES: We must receive any comments on this proposed AD by July 9, 2004.

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

- *By mail:* FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–06–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.
- *By fax:* (816) 329–3771.
- *By e-mail: 9–ACE–7–Docket@faa.gov.* Comments sent electronically must contain "Docket No. 2004–CE–06–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII.

You may get the service information identified in this proposed AD from DG Flugzeugbau, Postbox 41 20, 76625 Bruchsal, Germany; telephone, 49 7257 890; fax, 49 7257 8922.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–CE–06–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Gregory Davison, Aerospace Engineer, FAA, Small Airplane Directorate, ACE–112, Room 301, 901 Locust, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–06–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.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Discussion

What Events Have Caused This Proposed AD?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on DG Flugzeugbau GmbH, Model DG–500MB sailplanes, all serial numbers up to and including 5E220B15. The LBA reports two separate fatigue failures of the Warner LA10 spindle drive.

What Are the Consequences if the Condition Is Not Corrected?

Failure of the Warner LA10 spindle drive could result in the engine pylon not rising or lowering, which could cause an unstable engine pylon assembly during flight. Failure of the engine pylon assembly during flight could result in loss of control of the sailplane.

Is There Service Information That Applies to This Subject?

DG Flugzeugbau GmbH has issued Technical Note No. 843/18, issue 2, dated June 25, 2003.

What Are the Provisions of This Service Information?

The technical note includes procedures for installing the Stross BSA 10 spindle drive and modifying the electrical system.

What Action Did the LBA Take?

The LBA classified this service bulletin as mandatory and issued Germany AD Number 2003–409, dated December 9, 2003, to ensure the continued airworthiness of these sailplanes in Germany.

Did the LBA Inform the United States Under the Bilateral Airworthiness Agreement?

The DG Flugzeubau Model DG–500MB is manufactured in Germany 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 LBA has kept us informed of the situation described above.

FAA's Determination and Requirements of this Proposed AD

What Has FAA Decided?

We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this

type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other DG Flugzeubau Model DG–500MB sailplanes of the same type design that are registered in the United States, we are proposing AD action to prevent failure of the spindle drive, which could result in the engine pylon not rising or lowering and cause an unstable engine pylon assembly during flight.

What Would This Proposed AD Require?

This proposed AD would require you to replace the Warner LA10 spindle drive with the Stross BSA 10 spindle drive and to modify the electrical system following Technical Note No. 843/18, issue 2, dated June 25, 2003.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

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

Costs of Compliance

How Many Sailplanes Would This Proposed AD Impact?

We estimate that this proposed AD affects 4 sailplanes in the U.S. registry.

What Would be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Sailplanes?

We estimate the following costs to accomplish the proposed replacement and modification that would be required.

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
12 work hours est. $65 per hour = $780	$2,662	$3.442	$13,768

Regulatory Findings

Would This Proposed AD Impact Various Entities?

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

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2004–CE–06–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

DG Flugzeugbau GmbH: Docket No. 2004–CE–06–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by July 9, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects the following sailplane models and serial numbers that are certificated in any category: DG Flugzeugbau Model DG–500MB, all serial numbers up to and including 5E220B15.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of Warner LA10 spindle drive failure. The actions specified in this AD are intended to prevent failure of the Warner LA10 spindle drive, which could result in the engine pylon not rising or lowering. This condition could cause an unstable engine pylon assembly during flight with consequent loss of control of the sailplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
Replace the Warner LA10 spindle drive with the Stross BSA 10 spindle drive and make any necessary electrical modifications including installation of the voltage converter for the brake of the spindle drive.	Replace and modify within 25 hours time in service (TIS) after the effective date of this AD.	Follow the instructions in Technical Note No. 843/18 issue 2, dated June 25, 2003.

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 Gregory Davison, Aerospace Engineer, FAA, Small Airplane Directorate, ACE–112, Room 301, 901 Locust,

Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from DG Flugzeugbau, Postbox 41 20, 76625 Bruchsal, Germany. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(h) LBA airworthiness directive 2003–409, dated December 9, 2003, and Technical Note No. 843/18, issue 2, dated June 25, 2003, also address the subject of this AD.

Issued in Kansas City, Missouri, on May 12, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–11371 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–68–AD]

RIN 2120–AA64

Airworthiness Directives; Becker Flugfunkwerk GmbH AR 4201 VHF AM Transceivers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Becker Flugfunkwerk GmbH AR 4201 VHF AM transceivers. This proposed AD would require adding an aircraft flight manual (AFM) limitation to the Limitations Section of the AFM, and cockpit placard due to the intermittent malfunctioning of the transceiver, or removing the affected transceiver from service. This proposed AD results from reports of crewmembers having difficulty communicating with Air Traffic Control and other aircraft due to the AR 4201 VHF AM transceiver's inability to block interference from transmitters operating on frequencies other than those set in the transceiver. We are proposing this AD to prevent difficulty in communicating with Air Traffic Control and other aircraft due to intermittent malfunctioning of the transceiver.

DATES: We must receive any comments on this proposed AD by July 19, 2004.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–68–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: David Setser, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7173; fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–68–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 proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

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.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified the FAA that an unsafe condition may exist on Becker Flugfunkwerk GmbH AR 4201 VHF AM transceivers with certain serial numbers (SNs). The LBA advises that these transceivers incorrectly respond to strong signals and to interference from transmitters operating on frequencies other than those set in the transceiver. The incorrect response can create a potentially hazardous situation by causing interference with communications with ATC and with other aircraft. The LBA advises that if operators choose not to remove affected transceivers from service, then a limitation stating "Usage of Becker Comm Equipment AR 4201 is restricted to VFR operations", must be inserted into the AFM Limitations Section, and placarded in the cockpit. The LBA also advises that affected transceivers may be modified in accordance with Becker Flugfunkwerk GmbH Service Bulletin No. AR 4201–01/03, dated July 22, 2003, after which the owner or operator may remove the VFR-only placards and flight manual limitation.

Relevant Service Information

We have reviewed and approved the technical contents of Becker Flugfunkwerk GmbH Service Bulletin (SB) No. AR 4201–01/03; dated July 22, 2003. This SB identifies the serial numbers of transceivers affected and describes modifications to be done by the manufacturer to correct the transceiver problem. The LBA issued airworthiness directive 2003–234, dated August 21, 2003, in order to ensure the airworthiness of aircraft using these transceivers in Germany.

FAA's Determination and Requirements of the Proposed AD

These Becker Flugfunkwerk GmbH AR 4201 VHF AM transceivers, manufactured in Germany, are approved for use on airplanes that are type-certificated for operation in the United States under the provisions of section 21.617 of the Federal Aviation Regulations (14 CFR 21.617) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept us informed of the situation described above. We have examined the LBA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States. Therefore, we are proposing this AD,

which would require the following within five days after the effective date of the proposed AD:

- Add a limitation to the AFM Limitations Section, and a cockpit placard that restricts use to only VFR operations, or
- Remove the affected transceiver from service.

Costs of Compliance

There are 9,349 Becker Flugfunkwerk GmbH AR 4201 VHF AM transceivers of the affected design in the worldwide fleet. There are about 1,000 transceivers installed on aircraft of U.S. registry. We estimate that it would take about 2 work hours per transceiver to inspect and or remove a transceiver from service, and that the average labor rate is $65 per work hour. The average retail cost of an AR 4201 transceiver is $1,149. If all transceivers were replaced, the total purchase cost would be about $1,149,000. Based on these figures, the total cost of the proposed AD to U.S. operators to replace transceivers is estimated to be $1,279,000.

Regulatory Findings

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

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

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal 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. 2003–NE–68–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Becker Flugfunkwerk GmbH: Docket No. 2003–NE–68–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by July 19, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Becker Flugfunkwerk GmbH AR 4201 VHF AM transceivers, with serial numbers (SNs) 0150 through 9499.

Unsafe Condition

(d) This AD results from reports of crewmembers having difficulty communicating with Air Traffic Control and other aircraft due to the AR 4201 VHF AM transceiver's inability to block interference from transmitters operating on frequencies other than those set in the transceiver. We are issuing this AD to prevent difficulty in communicating with Air Traffic Control and other aircraft due to intermittent malfunctioning of the transceiver.

Compliance

(e) You are responsible for having the actions required by this AD performed within five days after the effective date of this AD, unless the actions have already been done.

(f) For installed Becker Flugfunkwerk GmbH AR 4201 VHF AM transceivers, inspect the SN. If the transceiver does not have an affected SN, no further action is required.

(g) If the transceiver has an affected SN, and does not have Change Index 02 or higher index number marked on it, do the following:

(1) Add an aircraft flight manual (AFM) limitation to the Limitations Section of the AFM, that restricts transceiver usage to VFR operations, and add a placard to the cockpit within view of the pilot that states, in ¼ inch-high or higher characters, "Use of Becker Comm Equipment AR 4201 is restricted to VFR operations"; or

(2) Remove the transceiver from service.

(h) After the effective date of this AD, do not install any Becker Flugfunkwerk GmbH AR 4201 VHF AM transceiver with an affected SN that does not have Change Index 02 or higher index number marked on it, unless it was removed to determine the SN or to check for Change Index 02 or higher index number.

Terminating Action

(i) If you later install a transceiver that is not listed in this AD or install a transceiver that is marked with Change Index 02 or higher index number, remove the limitation from the Limitations Section of the AFM, and placard if present, that are specified in paragraph (g)(1).

Alternative Methods of Compliance

(j) The Manager, Boston Aircraft 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

(k) None.

Related Information

(l) LBA airworthiness directive No. 2003–234, dated August 21, 2003, and Becker Flugfunkwerk GmbH Service Bulletin No. AR 4201–01/03, dated July 22, 2003, also pertain to the subject of this AD.

Issued in Burlington, Massachusetts, on May 13, 2004.

Peter A. White,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–11410 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–09–AD]

RIN 2120–AA64

Airworthiness Directives; Aviointeriors S.p.A. Series 312 Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Aviointeriors S.p.A. (formerly ALVEN), series 312 seats. That AD currently requires initial and repetitive inspections of the seat central crossmember for cracks, and if necessary, replacing the crossmember with a new crossmember. This proposed AD would require the same actions and would add other crossmember part numbers for inspection. In addition, this proposed AD would replace the original design crossmembers with reinforced design crossmembers as optional terminating actions to the repetitive inspections. This proposed AD results from reports of 88 cracked seat central crossmembers and 60 aisle side crossmembers, to date, and from the introduction of reinforced seat crossmembers by the manufacturer. We are proposing this AD to prevent the

loss of the structural integrity of the seat due to cracks in seat crossmembers.

DATES: We must receive any comments on this proposed AD by July 19, 2004.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2004–NE–16–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

You can get the service information identified in this proposed AD from Aviointeriors S.p.A., Via Appia Km. 66.4—04013 Latina, Italy; telephone: 39–0773–6891; fax: 39–0773–631546.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Jeffrey Lee, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: 781–238–7161; fax: 781–238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2000–NE–09–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 proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will-summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

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.

Discussion

On August 30, 2000, the FAA issued AD 2000–18–04, Amendment 39–11889 (65 FR 58177, September 27, 2000). That AD requires initial and repetitive inspections of the seat central crossmember for cracks, and if necessary, replacing the crossmember with a new crossmember. The Ente Nazionale per l'Aviazione Civile (ENAC), which is the airworthiness authority for Italy, notified the FAA that an unsafe condition may exist on the crossmembers of Aviointeriors S.p.A. (formerly ALVEN) model 312 seats. The ENAC advises that cracks were found in three seat central crossmembers during routine maintenance.

Actions After We Issued AD 2000–18–04

After we issued AD 2000–18–04, the ENAC notified us that a total of 88 seat central crossmembers and 60 seat aisle side crossmembers on series 312 seats have been reported cracked to date. Also, after we issued that AD, Aviointeriors S.p.A. introduced optional replacement seat crossmembers that are a reinforced design.

Relevant Service Information

We have reviewed and approved the technical contents of Aviointeriors service bulletin (SB) No 312/912–01, Revision 2, dated August 1, 2000, and SB No. 312/912–02, Revision 1, dated August 1, 2000. These SBs describe the procedures for inspecting crossmembers for cracks and, if necessary, replacing the crossmember with a new crossmember. We have also reviewed and approved Aviointeriors SB No. 312/912–03, dated August 1, 2000, and SB No. 312/912–04, dated August 1, 2000. These SBs describe the procedures for replacing crossmembers with reinforced design crossmembers. The ENAC classified the inspection service bulletins as mandatory and issued AD 2000–511 and AD 2000–512, both dated November 7, 2000, in order to ensure the airworthiness of these seats in Italy.

Bilateral Agreement Information

These series 312 seats are manufactured in Italy and are approved for use on airplanes that are type certificated for operation in the United States under the provisions of § 21.617 of the Federal Aviation Regulations (14 CFR 21.617) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the ENAC has kept the FAA informed of the situation described above. We have examined the findings of the ENAC, 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 the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would require initial and repetitive inspections of seat central and aisle side crossmembers for cracks, and if necessary, replacing the crossmember with a new crossmember. This proposed AD would also introduce replacing the original design crossmember with a reinforced crossmember as an optional terminating action to the repetitive inspections. The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

There are about 1,020 Aviointeriors S.p.A. (formerly ALVEN) series 312 seats installed on airplanes of U.S. registry that would be affected by this proposed AD. We estimate that it would take about 0.5 work hours per seat to perform the proposed inspections, and about one hour per seat to perform the proposed replacement of a crossmember. The average labor rate is $65 per work hour. Required parts would cost about $650.50 per seat. Based on these figures, we estimate the total cost of one inspection and total parts replacement to U.S. operators to be $729,810.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposal 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. 2000–NE–09–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–11889 (65 FR 58177, September 27, 2000) and by adding a new airworthiness directive, to read as follows:

Aviointeriors S.p.A. (formerly ALVEN): Docket No. 2000–NE–09–AD. Supersedes AD 2000–18–04, Amendment 39–11889.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by July 19, 2004.

Affected ADs

(b) This AD supersedes AD 2000–18–04.

Applicability

(c) This AD applies to Aviointeriors S.p.A. (formerly ALVEN), model 312 seats. These seats are installed in, but not limited to, Fokker Model F27 Mark 050, Mark 500, and Mark 600 airplanes.

Unsafe Condition

(d) This AD results from reports of 88 cracked seat central crossmembers, and 60 aisle side crossmembers, to date, and from the introduction of reinforced seat crossmembers by the manufacturer. The actions specified in this AD are intended to prevent the loss of the structural integrity of the seat due to cracks in the seat crossmembers.

Compliance

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

Initial Visual Inspection

(f) Perform an initial visual inspection of the crossmember for cracks, within 12,000 hours time-in-service (TIS) or within 180 days after the effective date of this AD if the crossmember has more than 12,000 hours TIS, as follows:

(1) Inspect seat central crossmembers, part number (P/N) DM03437–1, using Section 2. Inspection Procedure of Aviointeriors Service Bulletin (SB) No. 312/912–01, Revision 2, dated August 1, 2000.

(2) Replace any cracked central crossmember with a new crossmember of the same P/N. Use Section 3. Crossmember Replacement Procedure, Steps 3.1 though 3.10 of Aviointeriors SB No. 312/912–01, Revision 2, dated August 1, 2000.

(3) Inspect seat aisle side crossmembers, P/Ns DM03435–1 and DM03435–2, and DM03437–1 (Disabled People seat application), using Section 2. Inspection Procedure of Aviointeriors SB No. 312/912–02, Revision 1, dated August 1, 2000.

(4) Replace any cracked aisle side crossmember with a new crossmember of the same P/N. Use Section 3. Crossmember Replacement Procedure, Steps 3.1 though 3.8 of Aviointeriors SB No. 312/912–02, Revision 1, dated August 1, 2000.

Repetitive Visual Inspections

(g) Perform repetitive visual inspections of crossmembers, P/N DM03437–1, DM03435–1, and DM03435–2, for cracks, within 650 hours TIS after the last inspection. Use paragraphs (f)(1) through (f)(4) of this AD to inspect and disposition crossmembers.

Optional Terminating Action

(h) As optional terminating actions to the repetitive inspections required by this AD, do the following:

(1) Replace seat central crossmembers, P/N DM03437–1, with reinforced crossmembers, P/N F11541300000. Use Section 2. Crossmember Replacement Procedure, Steps 2.1 through 2.11 of Aviointeriors SB No. 312/912–03, dated August 1, 2000.

(2) Replace seat aisle side crossmembers, P/N DM03435–1, DM03435–2, and DM03437–1 (Disabled People seat application), with reinforced crossmembers, P/N F11555400000, F11555500000, and F11541300000, respectively. Use Section 2. Crossmember Replacement Procedure, Steps 2.1 through 2.11 of Aviointeriors SB No. 312/912–04, dated August 1, 2000.

Alternative Methods of Compliance

(i) The Manager, Boston Aircraft 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

(j) None.

Related Information

(k) Ente Nazionale per l'Aviazione Civile airworthiness directives 2000–511 and 2000–512, both dated November 7, 2000, also address the subject of this AD.

Issued in Burlington, Massachusetts, on May 14, 2004.

Francis Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–11409 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–53–AD]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller, Inc., McCauley Propeller Systems, and Sensenich Propeller Manufacturing Company, Inc. Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Hartzell Propeller, Inc., McCauley Propeller Systems, and Sensenich Propeller Manufacturing Company, Inc. propellers. This proposed AD would require maintenance actions amounting to an overhaul of the affected propellers. This proposed AD results from the investigation of a failed propeller blade and subsequent inspections of various propeller models returned to service by Southern California Propeller Service, of Inglewood, CA. We are proposing this AD to prevent blade failure that could result in separation of a propeller blade and loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by July 19, 2004.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–53–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018–4696; telephone (847) 294–7031, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–53–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 proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

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

Discussion

We received a report in March of 1998, of a failed Hartzell propeller blade, installed on a Piper PA–34–200 airplane. The propeller blade fractured and separated at about ten inches from the blade tip, causing substantial damage to the airplane. Investigation of the failed blade has revealed evidence suggesting that an improper repair procedure by welding, or hot straightening of the blade was used. The blade only had 200 hours of service accumulated since the propeller was last overhauled. The last overhaul was done by Southern California Propeller Service, of Inglewood, CA. Subsequent inspections of various propeller models returned to service by Southern California Propeller Service have revealed other safety critical problems. The inspections uncovered the following unsafe conditions:

- Blades found below minimum dimensional limits.
- Blade serial number ground with a grinder which left deep gouges and scratches in the blade surface.
- Blade not treated with Alodine after grinding, and paint applied over the bare aluminum.
- Improperly drilled actuating pin holes and unapproved use of helicoil inserts in the actuating pin holes.
- Corrosion pitting of a blade nut.
- Blade retention clamps rusted and pitted in critical areas.
- Bearing races rusted and pitted.
- Hub arms found with corrosion pitting in the blade retention radius, and gouged, scratched, and rusted in other critical areas.

Since late in 1998, the FAA has received 43 reports of safety and airworthiness problems associated with work performed by Southern California Propeller Service, such as:

- Nicks, scratches, and cracks.
- Corrosion and pits.
- Failure of blades to meet minimum dimensions.
- Alodine or paint applied over corrosion.
- Unauthorized use of helicoil inserts.
- Incorrect parts installed.
- Parts installed incorrectly.
- Propellers returned to service after the FAA revoked Southern California Propeller Service's repair station certificate on June 16, 1998.

We are requiring certain actions in this AD to correct unsafe conditions that could result in separation of a propeller blade and loss of control of the airplane.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other propellers that Southern California Propeller Service, of Inglewood, CA, returned to service. Therefore, we are proposing this AD, to prevent blade failure that could result in separation of a propeller blade and loss of control of the airplane. This proposal would require maintenance actions that amount to an overhaul of Hartzell Propeller, Inc., McCauley Propeller Systems, and Sensenich Propeller Manufacturing Company, Inc. propellers returned to service by Southern California Propeller Service.

Costs of Compliance

We estimate that 1,000 propellers installed on aircraft of U.S. registry would be affected by this proposed AD and that it would cost on average about $3,000 to overhaul each propeller. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $3,000,000.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposal 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. 2003–NE–53–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Hartzell Propeller, Inc., McCauley Propeller Systems, and Sensenich Propeller Manufacturing Company, Inc. Propellers: Docket No. 2003–NE–53–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by July 19, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the Hartzell Propeller, Inc., McCauley Propeller Systems, and Sensenich Propeller Manufacturing Company, Inc. propeller models last returned to service by Southern California Propeller Service of Inglewood, CA., listed in the following Table 1:

TABLE 1.—APPLICABLE PROPELLER MODELS

Hartzell Propeller, Inc.
( )HC–( )(2,3,4)Y( )–( )
( )HC–( )(2,3,4)(X,V,MV,W,Z,P,R)(F,G,L,K,R,20,30,31)–( )
( )HA–( )–( )
HC–B(3,4)(M,P,R,T)(A,N,P)–( )
HC–(D,E)(4,5)(A,B,N,P)–( )
McCauley Propeller Systems
( )2( )( )3( )C( )( )( )–( ): All constant speed two-bladed propeller models.
( )3( )( )3( )C( )( )( )–( ): All constant speed three-bladed propeller models.
1( )( )( )( )/( ): All metal propeller models.
Sensenich Propeller Manufacturing Company, Inc.
All metal propeller models.

(d) These actions are against propellers returned to service by Southern California Propeller Service. Southern California Propeller Service is not to be confused with propeller repair stations known as California Propeller or as Propeller Service of California. Southern California Propeller Service was issued Air Agency Certificate number of VXSR617L in 1992, which was revoked in June of 1998.

(e) For Hartzell and McCauley propellers listed in Table 1 of this AD, any letter or number (or lack of a letter or number) could appear where open parentheses are shown in the model number. Model numbers could show any combination of letters or numbers where the model number shows parentheses with a series of numbers or letters.

(f) For propellers listed in Table 1 of this AD, that have been overhauled since being returned to service by Southern California Propeller Service by an authorized repair station other than Southern California Propeller Service, no further action is required.

Unsafe Condition

(g) This AD results from the investigation of a failed propeller blade and subsequent inspections of various propeller models returned to service by Southern California Propeller Service, of Inglewood, CA. We are issuing this AD to prevent blade failure that could result in separation of a propeller blade and loss of control of the airplane.

Compliance

(h) You are responsible for having the actions required by this AD performed within 10 hours time-in-service after the effective date of this AD.

Required Actions

(i) Perform the actions specified in paragraph (j) of this AD on propellers listed in Table 1 of this AD. You can find information on performing the actions in the applicable propeller manufacturer's service documentation.

(j) Perform the following actions:
(1) Disassemble,
(2) Clean,
(3) Inspect for the following:
(i) Cracks,
(ii) Corrosion or pits,
(iii) Nicks,
(iv) Scratches,
(v) Blade minimum dimensions,
(vi) Unapproved localized heating of blade,
(vii) Unapproved use of helicoil inserts in actuating pin holes,
(viii) Improperly drilled actuating pin holes,
(ix) Chemical conversion coat or paint or both applied over corrosion,
(x) Lack of chemical conversion coating,
(xi) Lack of paint on internal surfaces,
(xii) Bolts incorrectly torqued,
(xiii) Incorrect parts,
(xiv) Incorrect installation of parts,
(xv) Reinstallation of parts intended for one-time use, and
(xvi) Lack of proper shot peening.
(4) Repair and replace with serviceable parts, as necessary,
(5) Reassemble and test.

Alternative Methods of Compliance

(k) The Manager, Chicago Aircraft 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.

Special Flight Permits

(l) Under 14 CFR part 39.23, we are limiting the special flight permits for this AD by not allowing any flights with apparent cracks in propellers.

Material Incorporated by Reference

(m) None.

Related Information

(n) Special Airworthiness Information Bulletin No. NE–01–19, dated March 20, 2001, pertains to the subject of this AD.

Issued in Burlington, Massachusetts, on May 14, 2004.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 04–11408 Filed 5–19–04; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–148399–02]

RIN 1545–BB62

Uniform Capitalization of Interest Expense in Safe Harbor Sale and Leaseback Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing final and temporary regulations relating to the capitalization of interest expense in sale and leaseback transactions under the Economic Recovery Tax Act of 1981 (ERTA) safe harbor leasing provisions. The regulations affect taxpayers that provide purchase money obligations in connection with these transactions. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by August 18, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:RU (REG–148399–02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:RU (REG–148399–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically via the IRS Internet site at *http://www.irs.gov/regs* or the Federal

eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–148399–02 or RIN 1545–BB62).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Grant Anderson, (202) 622–4970; concerning submission of comments and/or requests for a public hearing, LaNita VanDyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Final and temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 263A(f) of the Internal Revenue Code (Code). The temporary regulations generally provide that a purchase money obligation given by the lessor to the lessee (or a party related to the lessee) in a safe harbor sale and leaseback transaction under former section 168(f)(8) is not "eligible debt" as defined in § 1.263A–9(a)(4). The text of those regulations also serves as the text of these proposed regulations. The preamble to the final and temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Grant Anderson of the Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.263A–9 is revised by adding a new paragraph (a)(4)(ix) to read as follows:

[The text of proposed § 1.263A–9(a)(4)(ix) is the same as the text of § 1.263A–9T(a)(4)(ix) published elsewhere in this issue of the **Federal Register**.]

Par. 3. Section 1.263A–15 is amended by adding a new paragraph (a)(3) to read as follows:

§ 1.263A–15 Effective dates, transitional rules, and anti-abuse rules.

(a) * * *

(3) [The text of proposed paragraph (a)(3) of § 1.263A–15 is the same as the text of § 1.263A–15T(a)(3) published elsewhere in this issue of the **Federal Register**.]

* * * * *

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–11361 Filed 5–19–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD14–04–116]

RIN 1625–AA00

Security Zones; Oahu, Maui, Hawaii, and Kauai, Hawaii

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to make changes to existing permanent security zones in designated waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, Hawaii. These revised security zones, which would extend from the surface of the water to the ocean floor, are necessary to protect personnel, vessels, and facilities from acts of sabotage or other subversive acts, accidents, or other causes of a similar nature. Some of the proposed revised security zones would be enforced at all times while others would only be subject to enforcement during heightened threat conditions. Entry into a security zone would be prohibited unless authorized by the Captain of the Port.

DATES: Comments and related material must reach the Coast Guard on or before July 19, 2004.

ADDRESSES: You may mail comments and related material to Commanding Officer, U.S. Coast Guard Sector Central Pacific, Sand Island Access Road, Honolulu, Hawaii 96819. Sector Central Pacific maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, would become part of this docket and would be available for inspection or copying at Coast Guard Sector Central Pacific between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG C. Thomas, U. S. Coast Guard Sector Central Pacific at (808) 541–1440.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD14–04–116), 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 your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We would consider all comments and material received during the comment period. We may change this proposed rule in view of them.

To provide additional notice, we would place a notice of our proposed rule in the Local Notice to Mariners. You may access the Local Notice to Mariners at the following Web site: *http://www.navcen.uscg.gov/lnm/d14*.

In our final rule, we would include a concise general statement of comments received and identify any changes from the proposed rule based on the comments. If we would make the final rule effective in less than 30 days after publication in the **Federal Register**, we would explain our good cause for doing so as required by 5 U.S.C. 553(d)(3).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Sector Central Pacific, Honolulu at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we would hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

The terrorist attacks against the United States that occurred on September 11, 2001, have emphasized the need for the United States to establish heightened security measures in order to protect the public, ports and waterways, and the maritime transportation system from future acts of terrorism or other subversive acts. The terrorist organization al Qaeda and other similar groups remain committed to conducting armed attacks against U.S. interests, including civilian targets within the United States. Accordingly, the President has continued the national emergencies he declared following the attacks (67 FR 58317, September 13, 2002) (continuing national emergency with respect to terrorist attacks), (68 FR 55189, September 18, 2003) (continuing national emergency with respect to persons who commit, threaten to commit, or support acts of terrorism.) Pursuant to the Magnuson Act, 50 U.S.C. 191, *et seq.*, the President has also found that the security of the United States is and continues to be endangered by the September 11, 2001 attacks (E.O. 13272, 67 FR 56215, September 2002). National security and intelligence officials warn that future terrorist attacks are likely.

In response to this threat, on April 25, 2003, the Coast Guard established permanent security zones in designated waters surrounding the Hawaiian Islands. (68 FR 20344, April 25, 2003.) These security zones have been in operation for almost 1 year. Based upon public feedback as well as Coast Guard guidance requiring the periodic review of port and harbor security procedures, the Coast Guard proposes to continue the current security zones, but at a reduced size and scope so as to afford acceptable protection to critical assets and maritime infrastructure while minimizing the disruption to maritime commerce and the inconvenience to small entities.

The proposed changes would affect permanent existing security zones in the waters surrounding the islands of Oahu, Maui, Kauai, and Hawaii. Those areas affected include the 12 permanent security zones for the following locations and facilities: (1) Honolulu Harbor, (2) Honolulu Harbor General Anchorages B, C, and D, (3) Kalihi Channel and Keehi Lagoon, Oahu, (4) Honolulu International Airport, (5) Barbers Point Offshore Moorings (consisting of the Tesoro Single Point Moorings and the Chevron Conventional Buoy Moorings), (6) Kahului Harbor, Maui, (7) Nawiliwili Harbor, Lihue, Kauai, (8) Port Allen, Kauai, (9) Hilo Harbor, Hawaii, (10) Lahaina, Maui, (11) Kailua-Kona, Hawaii, and (12) Barbers Point Harbor, Oahu.

In addition, the existing permanent security zone located at General Anchorage A in the vicinity of Honolulu Harbor and entrance channel would be eliminated. When enforced by the Captain of the Port or his designate, persons and vessels must not enter these security zones without the express permission of authorized Coast Guard officials.

Discussion of Proposed Rule

Due to national security interests, the implementation of these security zones is necessary for the protection of the public, port facilities, and waterways in the Hawaiian Islands. The proposed security zones would be located in the waters adjacent to the islands of Oahu, Maui, Hawaii, and Kauai, Hawaii. These zones would vary in size and shape depending on the location and the protective scope of the zone. All zones would, however, extend from the surface of the water to the ocean floor.

The security zones proposed under this notice may be divided into two categories: (1) those security zones that are subject to enforcement at all times, and (2) those security zones that are subject to enforcement only during heightened threat conditions, as provided for in this rule. When the zones are subject to enforcement, persons and vessels are prohibited from entering any of these security zones without the express permission of the Captain of the Port.

The first category includes designated waters where security zones would be continuously in effect and subject to enforcement at all times, including security zones applicable to Honolulu Harbor, Barbers Point Offshore Moorings (consisting of the Tesoro Single Point Mooring and the Chevron Conventional Buoy Mooring), and the Honolulu International Airport.

The second category includes designated waters where the security zones would be subject to enforcement only during heightened threat conditions. This category includes the security zones located at Honolulu Harbor Anchorages B, C, and D, Kahului Harbor, Maui; Nawiliwili Harbor, Lihue, Kauai; Port Allen, Kauai; Hilo Harbor, Hawaii; Lahaina Harbor, Maui; Kailua-Kona Harbor, Hawaii; and Kalihi Channel and Keehi Lagoon, Oahu.

The security zones applicable to Honolulu Harbor Anchorages B, C, and D, would be subject to enforcement only upon the occurrence of a specific event; namely, upon the authorized anchoring of any vessel in excess of 300 gross tons within one of the designated anchorage areas. When anchored, the security zone would extend 100 yards from the vessel in all directions over surrounding waters.

The security zones at Kahului Harbor, Maui; Nawiliwili Harbor, Lihue, Kauai; Port Allen, Kauai; and Hilo Harbor, Hawaii; would be subject to enforcement upon the occurrence of a specific event; namely, the arrival of any large cruise ship (LCS), as defined by this rule, within the designated enforcement area. When the LCS is in transit in the designated enforcement area, the security zone would move with the vessel and extend 100 yards in all directions over surrounding waters. When the LCS is anchored, position keeping, or moored in the designated enforcement area, the security zone would remain fixed and would extend 100 yards from the vessel in all directions over surrounding waters.

The security zones at Lahaina, Maui and Kailua-Kona, Hawaii, would be subject to enforcement once a large cruise ship comes within 3 nautical miles of the port and would extend 100 yards from the LCS in all directions over surrounding waters. The 100 yard

security zone around each LCS would be enforced whether the LCS is underway, moored, position keeping, or anchored, and would continue in effect until such time as the LCS departs the port and the 3 mile enforcement area.

The security zones at Kalihi Channel and Keehi Lagoon, Oahu, and Barbers Point Harbor, Oahu, would be subject to enforcement only upon the occurrence of one of the following events—

1. Whenever the Maritime Security (MARSEC) Level, as defined in 33 CFR part 101, is raised to 2 or higher; or,

2. Whenever the Captain of the Port, after considering all available facts, determines that there is a heightened risk of a transportation security incident or other serious maritime incident, including but not limited to any incident that may cause a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area.

The Captain of the Port would cause notice of the enforcement of security zones at Kahului Harbor, Maui; Nawiliwili Harbor, Lihue, Kauai; Port Allen, Kauai; Hilo Harbor, Hawaii; Lahaina, Maui; Kailua-Kona, Hawaii; Kalihi Channel and Keehi Lagoon, Oahu; and Barbers Point Harbor, Oahu, to be made by all appropriate means to effect the widest publicity among affected segments of the public, including local notice to mariners and broadcast notice to mariners. By the same means, the Captain of the Port will also cause notice of the suspension of enforcement of these security zones in this rule to be made.

Entry into these security zones is prohibited unless authorized by the Coast Guard Captain of the Port Honolulu, Hawaii. Unless and until superceded by a notice of enforcement, a notice of suspension of enforcement grants general permission to enter the specified security zone. Representatives of the Captain of the Port Honolulu would enforce these security zones. The Captain of the Port may be assisted by other federal or state agencies to the extent permitted by law.

These security zones are established pursuant to the authority of the Magnuson Act, 50 U.S.C. 191, *et seq.*, and regulations promulgated by the President under Title 33, Part 6 of the Code of Federal Regulations. Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192, including possible seizure and forfeiture of the vessel, imprisonment for not more than 10 years, and a civil penalty of not more than $25,000 for each violation.

Regulatory Evaluation

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

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the short duration of the most of the zones and the limited geographic area affected by the zones.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While we are aware that many affected areas have small commercial entities, including canoe and boating clubs and small businesses that provide recreational services, we anticipate that there would be little or no impact to these small entities due to the narrowly-tailored scope of these security zones.

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

Assistance for Small Entities

Because we anticipate little or no small business impact, we did not offer assistance to small entities in understanding the rule.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Protection of Children

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

Indian Tribal Governments

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

governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

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

Environment

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

List of Subjects in 33 CFR Part 165

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

For the reasons set out in the preamble, the Coast Guard proposes to amend 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, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Section 165.1407 is revised to read as follows:

§ 165.1407 Security Zones; Oahu, Maui, Hawaii, and Kauai, HI

(a) *Definitions.* As used in this section—

Large cruise ship or *LCS* means a passenger vessel over 300 feet in length that carries passengers for hire.

MARSEC Level 2 or *Maritime Security Level 2* means, as defined in 33 CFR 101.105, the level for which appropriate additional protective security measures shall be maintained for a period of time as a result of heightened risk of a transportation security incident.

(b) *Location.* The following areas, from the surface of the water to the ocean floor, are security zones that will be enforced subject to the provisions in paragraph (c). All coordinates in this section are expressed in degrees, minutes, and tenths of minutes.

(1) *Honolulu Harbor.* All waters of Honolulu Harbor and Honolulu entrance channel commencing at a line between entrance channel buoys no. 1 and no. 2, to a line between the fixed day beacons no. 14 and no. 15 west of Sand Island Bridge.

(2) *Honolulu Harbor Anchorages B, C, and D.* The waters extending 100 yards in all directions from each authorized vessel in excess of 300 gross tons that is anchored in Honolulu Harbor Anchorage B, C, or D, as defined in 33 CFR 110.235(a).

(3) *Kalihi Channel and Keehi Lagoon, Oahu.* All waters of Kalihi Channel and Keehi Lagoon beginning at Kalihi Channel entrance buoy no. 1 and continuing along the general trend of Kalihi Channel to day beacon n. 13 thence continuing on a bearing of 332.5°T to shore. Thence east and south along the general trend of the shoreline to day beacon no. 15 thence southeast to day beacon no. 14, thence southeast along the general trend of the shoreline of Sand Island to, to the southwest tip of Sand Island at 21°18.0′N/ 157°53.05′W. Thence southwest on a bearing of 233°T to Kalihi Channel entrance buoy no. 1.

(4) *Honolulu International Airport.* All waters surrounding Honolulu International Airport from 21°18.25′N/ 157°55.58′W thence south to 21°18.0′N/ 157°55.58′W thence east to the western edge of Kalihi Channel, thence north along the western edge of the channel to day beacon no. 13 thence northwest at a bearing of 332.5°T to shore.

(5) *Barbers Point Offshore Moorings.* The waters around the Tesoro Single Point and the Chevron Conventional Buoy Moorings beginning at 21°16.43′N,158°06.03′W; thence northeast to 21°17.35′N, 158°3.95′W; thence southeast to 21°16.47′N, 158°03.5′W; thence southwest to 21°15.53′N, 158°05.56′W; thence north to the beginning point.

(6) *Kahului Harbor, Maui.* The waters extending 100 yards in all directions from each large cruise ship whenever the LCS is in Kahului Harbor, Maui, HI or within 3 nautical miles seaward of the Kahului Harbor COLREGS DEMARCATION (See 33 CFR 80.1460). This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position keeping, or moored.

(7) *Nawiliwili Harbor, Lihue, Kauai.* The waters extending 100 yards in all directions from each large cruise ship whenever the LCS is in Nawiliwili Harbor, Kauai, HI or within 3 nautical miles seaward of the Nawiliwili Harbor, Kauai COLREGS DEMARCATION (See 33 CFR 80.1450). This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position keeping, or moored.

(8) *Port Allen, Kauai.* The waters extending 100 yards in all directions from each large cruise ship whenever the LCS is in Port Allen, Kauai, HI or within 3 nautical miles seaward of the Port Allen COLREGS DEMARCATION (See 33 CFR 80.1440). This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position keeping, or moored.

(9) *Hilo Harbor, Hawaii.* The waters extending 100 yards in all directions from each large cruise ship whenever the LCS is in Hilo Harbor, Hawaii, HI or within 3 nautical miles seaward of the Hilo Harbor COLREGS DEMARCATION (See 33 CFR 80.1480). This is a moving security zone when the LCS is in transit and becomes a fixed zone when the LCS is anchored, position keeping, or moored.

(10) *Lahaina, Maui.* The waters extending 100 yards in all directions from each large cruise ship in Lahaina, Maui, whenever the LCS is within 3 nautical miles of Lahaina Light (LLNR 28460). The security zone around each LCS will be active and enforced whether the cruise ship is underway, moored, position keeping, or anchored, and will continue in effect until such time as the LCS departs Lahaina and the three mile enforcement area.

(11) *Kailua-Kona, Hawaii.* The waters extending 100 yards in all directions from each large cruise ship in Kailua-Kona, Hawaii, whenever the LCS is within 3 nautical miles of Kukailimoku Point. The 100 yard security zone around each LCS will be active and enforced whether the LCS is underway, moored, position keeping, or anchored, and will continue in effect until such time as the LCS departs Kailua-Kona and the 3 mile enforcement area.

(12) *Barbers Point Harbor, Oahu.* All waters contained within the Barbers Point Harbor, Oahu, enclosed by a line drawn between Harbor Entrance Channel Light 6 and the jetty point day beacon at 21°–19.5′N/158°–07.26′W.

(c) *Notice of enforcement or suspension of enforcement of security zones.*

(1) The security zones in paragraphs (b)(1) (Honolulu Harbor), (b)(4) (Honolulu International Airport), and (b)(5) (Barbers Point Offshore Moorings) are subject to enforcement at all times.

(2) The security zones in paragraphs (b)(3) (Kalihi Channel and Keehi Lagoon, Oahu), and (b)(12) (Barbers Point Harbor, Oahu) will be subject to enforcement only upon the occurrence of one of the following events—

(i) Whenever the Maritime Security (MARSEC) Level, as defined in 33 CFR part 101, is raised by the Commandant of the Coast Guard to 2 or higher; or

(ii) Whenever the Captain of the Port, after considering all available facts, determines that there is a heightened risk of a transportation security incident or other serious maritime incident, including but not limited to any incident that may cause a significant loss of life, environmental damage, transportation system disruption, or economic disruption in a particular area. The Captain of the Port of Honolulu will cause notice of the enforcement of these security zones to be made by all appropriate means to affect the widest publicity, including the use of broadcast notice to mariners and publication in the local notice to mariners.

(iii) A notice will be published in the **Federal Register** reporting when events in paragraph (c)(2)(i) or (c)(2)(ii) have occurred.

(3) The large cruise ship security zones in paragraph (b)(6) (Kahului Harbor, Maui), (b)(7) (Nawiliwili Harbor, Lihue, Kauai), (b)(8) (Port Allen, Kauai), (b)(9) (Hilo Harbor, Hawaii), (b)(10) (Lahaina, Maui), and (b)(11) (Kailua-Kona, Hawaii), will be subject to enforcement upon the arrival of a LCS, as defined by this section, within the areas designated in paragraph (b). The Captain of the Port will cause notice of the enforcement of these security zones to be made by all appropriate means to affect the widest publicity, including the use of broadcast notice to mariners and publication in the local notice to mariners.

(4) The security zones in paragraph (b)(2) (Honolulu Harbor Anchorages B, C, and D) will be subject to enforcement upon the authorized anchoring of any vessel in excess of 300 gross tons within the anchorage area designated in paragraph (b). The Captain of the Port will cause notice of the enforcement of these security zones to be made by all appropriate means to affect the widest publicity, including the use of broadcast notice to mariners and publication in the local notice to mariners.

(5) The Captain of the Port will cause notice of the suspension of enforcement of these security zones in this paragraph to be made by all appropriate means to affect the widest publicity, including the use of broadcast notice to mariners and publication in the local notice to mariners. During periods of suspension the COTP grants general permissions to enter specified security zones.

(d) *Enforcement:* Any Coast Guard commissioned, warrant or petty officer may enforce the security zones in this section.

(e) *Regulations.* (1) Under 33 CFR 165.33, entry into these security zones is prohibited unless authorized by the Coast Guard Captain of the Port, Honolulu or his designated representatives. When authorized passage through a large cruise ship security zone, all vessels must operate at the minimum speed necessary to maintain a safe course and must proceed as directed by the Captain of the Port or large cruise ship master. No person is allowed within 100 yards of a large cruise ship that is underway, moored, position keeping, or anchored, unless authorized by the Captain of the Port or his designated representatives.

(2) When conditions permit, the Captain of the Port, or authorized designate, may permit vessels that are at anchor, restricted in their ability to maneuver, or constrained by draft to remain within a large cruise ship security zone in order to ensure navigational safety.

(3) Persons desiring to transit the areas of the security zones may contact the Captain of the Port at command center telephone number (808) 541–2477 or (800) 552–6458, or on VHF channel 16 (156.8 Mhz) to seek permission to transit the area. Written requests may be submitted to the Captain of the Port, U.S. Coast Guard Sector Central Pacific, Sand Island Access Road, Honolulu, Hawaii 96819, or faxed to (808) 541–1431. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representatives.

(f) *Waiver.* The Captain of the Port of Honolulu may waive any of the requirements of this section for any vessel or class of vessels upon his or her determination that application of this section to that vessel or class of vessels is unnecessary or impractical for the purpose of port and maritime security.

(g) *Penalties.* Any violation of the security zones described herein may result in the imposition of civil penalties (not to exceed $25,000 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment for not more than 10 years and a fine of not more than $10,000), seizure and forfeiture of the offending vessel, and other administrative sanctions authorized by law.

Dated: April 7, 2004.

C.D. Wurster,

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

[FR Doc. 04–11393 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7664–9; OAR–2002–0076]

Regional Haze Regulations and Guidelines for Best Available Control Technology (BART) Determinations; Notice of Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public hearing.

SUMMARY: The EPA is announcing two public hearings for the proposed rule "Regional Haze Regulations and Guidelines for Best Available Control Technology (BART) Determinations" (69 FR 25184, May 5, 2004). The first public hearing will be held on June 4, 2004, in Alexandria, VA, and the second public hearing will be held on June 15, 2004, in Denver, CO. (The EPA will be holding a separate public hearing for a related proposal, "Supplemental Proposal for the Rule to Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule)," at the same facility in Alexandria, VA, on June 3, 2004. The EPA is holding the hearings on consecutive days to facilitate travel plans for persons wishing to attend both hearings.)

On July 1, 1999, EPA promulgated regulations to address regional haze (64 FR 3714). These regulations were challenged, and on May 24, 2002, the U.S. Court of Appeals for the District of Columbia Circuit issued a ruling vacating the regional haze rule in part and sustaining it in part. *American Corn Growers Ass'n* v. *EPA*, 291 F.3d 1 (D.C. Cir. 2002). The May 5, 2004 proposal (hereinafter referred to as the "BART rule") addresses the court's ruling in that case.

In addition, prior to the court's decision, EPA had proposed guidelines for implementation of the BART requirements under the regional haze rule (66 FR 38108; July 20, 2001). The proposed guidelines were intended to

clarify the requirements of the regional haze rule's BART provisions. We proposed to add the guidelines and also proposed to add regulatory text requiring that these guidelines be used for addressing BART determinations under the regional haze rule. In addition, we proposed one revision to guidelines issued in 1980 for facilities contributing to "reasonably attributable" visibility impairment.

In the *American Corn Growers* case, the court vacated and remanded the BART provisions of the regional haze rule. To respond to the court's ruling, we have proposed new BART provisions and are reproposing the BART guidelines. The *American Corn Growers* court also remanded to the Agency its decision to extend the deadline for the submittal of regional haze plans. Subsequently, Congress amended the deadlines for regional haze plans (Consolidated Appropriations Act for Fiscal Year 2004, Public Law 108–199, January 23, 2004). We have proposed to amend the rule to conform to the new statutory deadlines.

DATES: The public hearings for the BART rule will be held on June 4, 2004, and June 15, 2004. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on the public hearings.

ADDRESSES: The June 4, 2004 public hearing will be held at the Holiday Inn Select, Old Town Alexandria, 480 King Street, Alexandria, Virginia 22314, phone 703–549–6080. The June 15, 2004 public hearing will be held at the Adams Mark Hotel, 1550 Court Place, Denver, CO, 80202, phone 303–893–3333.

Written comments on the BART rule may also be submitted to EPA electronically, by mail, by facsimile, or through hand delivery/courier. Please refer to the BART rule for the addresses and detailed instructions.

Documents relevant to this action are available for public inspection at the EPA Docket Center, located at 1301 Constitution Avenue, NW., Room B102, Washington, DC, between 8:30 a.m. and 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Documents are also available through EPA's electronic Docket system at *http://www.epa.gov/edocket*.

The EPA Web site for this rulemaking, which will include information about the public hearings, are at *http://www.epa.gov/air/visibility/actions.html*.

FOR FURTHER INFORMATION CONTACT: If you would like to speak at the public hearing or have questions concerning the public hearing, please contact Nancy Perry at the address given below under **SUPPLEMENTARY INFORMATION**. Questions concerning the proposed BART Rule should be addressed to Kathy Kaufman, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (C504–02), Research Triangle Park, NC 27711, telephone number (919) 541–0102, e-mail *kaufman.kathy@epa.gov*, or Todd Hawes, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (C504–02), Research Triangle Park, NC 27711, telephone number (919) 541–5591, e-mail at *hawes.todd@epa.gov*.

SUPPLEMENTARY INFORMATION:

Public Hearings

The public hearings will provide interested parties the opportunity to present data, views, or arguments concerning the proposed rules. The EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearings. Written comments must be postmarked by the last day of the comment period, as specified in the proposals.

The public hearings will be held on June 4, 2004, and June 15, 2004. The meeting facilities and phone numbers are provided above under **ADDRESSES**.

If you would like to present oral testimony at the hearings on either or both proposals, please notify Nancy Perry, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, C504–02, Research Triangle Park, NC 27711, telephone (919) 541–5628, e-mail *perry.nancy@epa.gov*.

The public hearings will begin each day at 9 a.m. and continue into the evening until 5 p.m.

Oral testimony will be limited to 5 minutes for each commenter. We will not be providing equipment for commenters to show overhead slides or make computerized slide presentations unless we receive special requests in advance. Commenters should notify Nancy Perry if they will need specific equipment. The EPA encourages commenters to provide written versions of their oral testimonies either electronically on computer disk or CD–ROM or in paper copy. Verbatim transcripts of the hearings and written statements will be included in the rulemaking dockets.

How Can I Get Copies of This Document and Other Related Information?

The BART rule is available at the EPA Web site identified above, and was published in the **Federal Register** on May 5, 2004 at 69 FR 25184.

The EPA has established the official public docket for the BART rule under Docket ID No. OAR–2002–0076. The EPA has also developed a Web site for the proposal at the addresses given above. Please refer to the proposals for detailed information on accessing information related to the proposal.

Dated: May 13, 2004.

Gregory A. Green,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 04–11435 Filed 5–19–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN 140–4b; FRL–7658–8]

Approval and Promulgation of Implementation Plans; IN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency is proposing to approve rules submitted by the State of Indiana as revisions to its State Implementation Plan (SIP) for the prevention of significant deterioration (PSD) air quality construction permit program.

In the rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments in response to this proposed rule, EPA will take no further action on this proposed rule. If EPA receives adverse written comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before June 21, 2004.

Comments may be submitted by mail, electronically, or by hand delivery/

courier. Please follow the detailed instructions for submitting comments described in the **ADDRESSES** section and Part(I)(B) of the **SUPPLEMENTARY INFORMATION** section of the related direct final rule which is published in the Rules section of this **Federal Register**.

ADDRESSES: Comments should be sent to: Pamela Blakley, Acting Chief, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, *blakley.pamela@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Ethan Chatfield, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–5112, *chatfield.ethan@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Ethan Chatfield at (312) 886–5112 before visiting the Region 5 Office.)

Dated: April 26, 2004.

Bharat Mathur,

Acting Regional Administrator, Region 5.

[FR Doc. 04–11338 Filed 5–19–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 151–0449b; FRL–7660–5]

Revisions to the California and Nevada State Implementation Plans, Ventura County Air Pollution Control District and Clark County Department of Air Quality Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP) and the Clark County Department of Air Quality Management (CCDAQM) portion of the Nevada SIP. These revisions concern ozone and particulate matter ambient air quality standards and the control of sulfur dioxide through the acid deposition program. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by June 21, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, or e-mail to *steckel.andrew@epa.gov*, or submit comments at *http://www.regulations.gov*.

You can inspect copies of the submitted SIP revisions, EPA's technical support documents (TSDs), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003–5417

Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 333 W. Nye Lane, Room 138, Carson City, NV 89706

Clark County Department of Air Quality Management, 500 S. Grand Central Parkway, Las Vegas, NV 89155–5210

Copies of the VCAPCD and CCDAQM rules may also be available via the Internet at the following sites respectively, *http://www.arb.ca.gov/drdb/drdbltxt.htm* and *http://www.accessclarkcounty.com/air_quality/index.htm*. Please be advised that these are not EPA Web sites and may not contain the same versions of the rules that were submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947–4126, *rose.julie@epa.gov*.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: VCAPCD Rule 35 and CCDAQM Section 11. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 27, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–11336 Filed 5–19–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7663–2]

National Oil and Hazardous Substance; Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Odessa Chromium 2, North and South Plumes, Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 is issuing a notice of intent to delete the Odessa Chromium 2, North and South Plumes, Superfund Site, OU–1 and OU–2, located in Odessa, Ector County, Texas from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Texas, through the Texas Commission on Environmental Quality (TCEQ), have determined that all appropriate response actions under CERCLA have been completed, and that continued operation and maintenance and five-year reviews are not necessary. However, this deletion does not preclude future actions under Superfund, nor does it preclude future actions under the Texas Voluntary Cleanup Program.

In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Odessa Chromium 2, North and South Plumes, Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final notice of deletion. If we receive no adverse comment(s) on the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will

withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final notice of deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register.**

DATES: Comments concerning this Site must be received by June 21, 2004.

ADDRESSES: Written comments should be addressed to: Donn Walters, Community Involvement Coordinator, U.S. EPA (6SF–PO), 1445 Ross Avenue—Suite 1200, Dallas, Texas, 75202–2733, (214) 665–6483 or 1–800–533–3508 (toll free) or by e-mail, *walters.donn@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Ernest R. Franke, P.E., Remedial Project Manager (RPM) (6SF–A), EPA Region 6, 1445 Ross Avenue—Suite 1200, Dallas, Texas, 75202–2733, (214) 665–8521 or 1–800–533–3508 (toll free) or by e-mail, *franke.ernest@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the "Rules and Regulations" Section of this **Federal Register.**

Information Repositories:

Comprehensive information about the Odessa Chromium 2, North and South Plumes, Superfund Site is available for viewing and copying at the information repositories located at: U.S. Environmental Protection Agency Region 6, 12th Floor Library 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6427, Monday through Friday 7:30 am to 4:30 pm; Texas Commission on Environmental Quality, Building D, Record Management, Room 190, 12100 North Interstate Highway 35, Austin, Texas 78753, (512) 239–2920, Monday through Friday 8 am to 5 pm.; Ector County Library, 321 West 5th Street, Odessa, Texas 79761, (915) 332–0633; and, Permian Basin Regional Planning Commission, 2910 La Force Blvd., Midland International Airport, Midland, Texas 79711, (915) 563–1061.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: April 28, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 04–11217 Filed 5–19–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Review of Species That Are Candidates or Proposed for Listing as Endangered or Threatened; Annual Notice of Findings on Resubmitted Petitions; Annual Description of Progress on Listing Actions; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review; correction.

SUMMARY: This document corrects language used to refer to three grizzly bear populations, and corrects three entries in Table 1 to a notice published in the **Federal Register** of May 4, 2004, regarding the review of species that are candidates for listing under the Endangered Species Act, as amended. The corrections are that the three grizzly bear populations are referred to as populations and not distinct population segments (DPS), the species Leavenworthia crassa, an unnamed gladecress, is added to the list of candidate plant species, the priority number for the black-tailed prairie dog (*Cynomys ludovicianus*) is an 8, and the historic range for the sheepnose mussel (Plethobasus cyphyus) is as follows: U.S.A. (AL, IA, IL, IN, KY, MN, MO, MS, OH, PA, TN, VA, WI, WV).

FOR FURTHER INFORMATION CONTACT: Nancy Green, 703–358–2105.

Correction

In proposed rule FR Doc. 04–9893, beginning on page 24876 in the issue of May 4, 2004, make the following corrections to the notice. On page 24894, under the section entitled Petitions to Reclassify Species Already Listed, replace the term "DPS" used to refer to the three grizzly bear petitions with the word "population." On page 24896 in the 2nd column of Table 1, under Priority, for the black-tailed prairie dog (*Cynomys ludovicianus*), replace the number 11 with an 8; on page 24898 in the last column of Table 1, under Historic range, for the sheepnose mussel (*Plethobasus cyphyus*), replace "Entire" with "U.S.A. (AL, IA, IL, IN, KY, MN, MO, MS, OH, PA, TN, VA, WI, WV)'; and, on page 24902, in Table 1, insert the following candidate species and information, after the entry for *Lagenifera helenae:* Category –C, Priority –5, Lead Region –4, Scientific name—*Leavenworthia crassa,* Family—Brassicaceae, Common name—Gladecress, unnamed, Historic range—U.S.A. (AL).

Dated: May 13, 2004.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 04–11440 Filed 5–19–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 69, No. 98
Thursday, May 20, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request, Correction

May 14, 2004.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: U.S. Origin Health Certificate.

OMB Control Number: 0579–0020.

Summary of Collection: As part of its mission to facilitate the export of U.S. animals and products, the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS), maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States. Most countries require a certification that the animals are disease free. The VS form 17–140, U.S. Origin Health Certificate, is used to meet these requirements. The form is authorized by 21 U.S.C. 112.

Need and Use of the Information: The U.S. Origin Health Certificate is used in connection with the exportation of animals to foreign countries and is completed and authorized by APHIS veterinarian. The information collected is used to: (1) Establish that the animals are moved in compliance with USDA regulations, (2) verify that the animals destined for export are listed on the health certificate by means of an official identification, (3) verify to the consignor and consignee that the animals are health, (4) prevent health animals from being exported and (5) satisfy the import requirements of receiving countries. If these certifications were not provided, other countries would not accept animals from the United States.

Description of Respondents: Farms; Business or other for-profit; Federal Government.

Number of Respondents: 3,067.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 22,554.

Animal and Plant Health Inspection Service

Title: Interstate Movement of Certain Tortoises.

OMB Control Number: 0579–0156.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) regulates the importation and interstate movement of certain animals and animal products to prevent the introduction or dissemination of pests and diseases of livestock within the United States. The regulations in 9 CFR part 93 prohibit the importation of the leopard tortoise, the African spurred tortoise, and the Bell's hingeback tortoise to prevent the introduction and spread of exotic ticks known to be vectors of heartwater disease, an acute, infectious disease of cattle and other ruminants. The regulations in 9 CFR part 74 prohibit the interstate movement of those tortoises that are already in the United States unless the tortoises are accompanied by a health certificate or certificate of veterinary inspection.

Need and Use of the Information: APHIS will collect information to ensure that the interstate movement of these tortoises poses no risk of spreading exotic ticks within the United States. The collected information is used for the purposes of identifying each specific tortoise and documenting the State of its health so that the animals can be transported across State and national boundaries. If the information is not collected, APHIS would be forced to continue their complete ban on the interstate movement of leopard, African spurred, and Bell's hingeback tortoises.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 150.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 25.

Animal Plant and Health Inspection Service

Title: Health Certificate/Export Certificate-Animal Products.

OMB Control Number: 0579–NEW.

Summary of Collection: The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. To facilitate the export of U.S. animals and products, the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), Veterinary Services maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States. Many countries that import animal products from the United States require a certification from APHIS that the United States is free of certain diseases. These countries may also require that our certification statement contain additional declarations regarding the U.S. animal products being exported. Form VS–16–

4, Health Certificate-Export Certificate-Animal Products, is used to meet these requirements. Regulations pertaining to export certification of animals and animal products are contained in 9 CFR parts 91 and 156.

Need and Use of the Information: Form VS 16–4 serves as the official certification that the United States is free of rinderpest, foot-and-mouth disease, classical swine fever, swine vesicular disease, African swine fever, bovine fever, bovine spongiform encephalopathy, and contagious bovine pleuropneumia. APHIS will collect the about the exporter, type of product exported, and type of conveyance (ship, train, truck) that will transport the products. Without the information, many countries would not accept animal products from the United States, creating a serious trade imbalance and adversely affecting U.S. exporters.

Description of Respondents: Individuals or households; Business or other-for-profit; Federal Government.

Number of Respondents: 30,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 60,000.

Forest Service

Title: Interpretive Services at Ancient Bristlecone Pine Forest in the Inyo National Forest.

OMB Control Number: 0596–NEW.

Summary of Collection: Pub. L. 95–307 directs the Secretary of Agriculture to research the multiple uses and products, including recreation of forest and rangeland so as to facilitate their most effective use. As part of Forest Service's (FS) continuing research effort to develop and try alternative approaches for evaluating recreational services on public lands, this information collection will focus entirely on visitors to the Ancient Bristlecone Pine Forest in the Inyo National Forest of California, which is an important tourist destination. The information collected will help forest managers better understand how and why visitors use the interpretive opportunities provided and ways to improve service delivery. FS researchers will use three methods to collect information: (1) On-site observation of site use, (2) an interview, or (3) a self-administered written questionnaire.

Need and Use of the Information: FS will collect information about the following: (1) Visitors' use of interpretation and resource information services, (2) basic visitors' demographic characteristics, (3) visitors' motive, needs, and expectations for the visit, (4) visitors' motives, needs, and preferences for interpretive services, (5) the overall effectiveness of interpretive services, (6) how visitors obtain information about the Ancient Bristlecone Pine Forest and what types of information they desire or prefer, (7) ways to develop effective new or different educational programs, and (8) satisfaction levels. Results will be provided to resource managers in the areas studied, as well as to managers across the United States, to enable more effective management of these lands.

Description of Respondents: Individual or households.

Number of Respondents: 1,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 333.

Food Safety and Inspection Service

Title: Advanced Meat Recovery Systems.

OMB Control Number: 0583–0130.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS requires that official establishments that produce meat from Advanced Meat Recovery (AMR) systems assess the age of cattle product used in the system, document their testing protocols and procedures for handling product in a manner that does not cause the product to be misbranded or adulterated, and maintain records of their documentation and test results.

Need and Use of the Information: FSIS will collect information from establishments to ensure that the meat product produced by the use of AMR systems is free from Bovine Spongiform Encephalopathy.

Description of Respondents: Business or other for-profit.

Number of Respondents: 56.

Frequency of Responses: Recordkeeping; Reporting: Other (Daily).

Total Burden Hours: 25,256.

Rural Business Service

Title: 7 CFR 4284–G, Rural Business Opportunity Grants.

OMB Control Number: 0570–0024.

Summary of Collection: The Rural Business Opportunity Grant (RBOG) program was authorized by section 741 of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127. 7 CFR 4284–G provides the detailed program regulations and requirements for reporting and application procedures for grant recipients. The objective of the RBOG program is to promote sustainable economic development in rural areas. This purpose is achieved through grants made by the Rural Business Cooperative Service (RBS) to public and private non-profit organizations and cooperatives to pay costs of economic development planning and technical assistance for rural businesses.

Need and Use of the Information: The information collected is from grant applicants and recipients. Grantees should keep complete and accurate accounting records as evidence that the grant funds were used properly. The information is necessary for RBS to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to ensure that funds obtained from the Government are used appropriately.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 210.

Frequency of Responses: Recordkeeping: Reporting: On occasion; Quarterly; Monthly.

Total Burden Hours: 16,275.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 04–11379 Filed 5–19–04; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics; Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service, Agriculture.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: June 3–4, 2004, 8:30 a.m. to 5 p.m. on the first day and 8 a.m. to 4 p.m. on the second day. Written requests to make oral presentations at the meeting must be received by the contact person identified herein at least three business days before the meeting.

ADDRESSES: Vista C Room at the Wyndham Washington Hotel, 1400 M

Street, NW., Washington, DC 20005. Requests to make oral presentations at the meeting may be sent to the contact person at USDA, Office of the Deputy Secretary, 202 B Jamie L. Whitten Federal Building; 12th and Independence Avenues, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, USDA, 202B Jamie L. Whitten Federal Building, 12th and Independence Avenue, SW., Washington, DC 20250; Telephone (202) 720–3817; Fax (202) 690–4265; E-mail *mschechtman@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The fifth meeting of the AC21 has been scheduled for June 3–4, 2004. The AC21 consists of 18 members representing the biotechnology industry, the seed industry, international plant genetics research, farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, and academic researchers. In addition, representatives from the Departments of Commerce, Health and Human Services, and State, and the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative serve as "ex officio" members. The AC21 at this meeting will continue its work to develop a report examining the impacts of agricultural biotechnology on American agriculture and USDA over the next 5 to 10 years, specifically: to review two draft introductory chapters prepared by USDA staff with input from specific AC21 members; to review the progress of two work groups on developing report chapters on potential issues and concerns and on possible future scenarios and to provide guidance to them in their work; and to consider presentations on research related to trends in consumer acceptance of agricultural biotechnology products. The AC21 will also discuss the progress of a work group drafting a separate report for the committee's consideration on the issue of the proliferation of traceability and mandatory labeling regimes for biotechnology-derived products in other countries, the implications of those regimes, and what industry is doing to attempt to address those requirements for products shipped to those countries.

Background information regarding the work of the AC21 will be available on the USDA Web site at *http://www.usda.gov/agencies/biotech/ac21.html.* On June 3, 2004, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration.

The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Harmon at (202) 720–4074, by fax at (202) 720–3191 or by e-mail at *dharmon@ars.usda.gov* at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, and telephone and fax numbers when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

Dated: May 17, 2004.

Joseph J. Jen,

Under Secretary, Research, Education, and Economics.

[FR Doc. 04–11511 Filed 5–19–04; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 04–007N]

National Advisory Committee on Meat and Poultry Inspection

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The National Advisory Committee on Meat and Poultry Inspection (NACMPI) will hold a public meeting on June 2–3, 2004, to review and discuss the following issues: (1) The appropriateness of the Food Safety and Inspection Service's (FSIS) plans for assessing the effects of the interim final rule on the control of *Listeria monocytogenes* (Lm) in ready-to-eat meat and poultry products; (2) the advisability of requiring establishments to develop food security plans; and (3) the appropriateness of FSIS establishing test and hold procedures for meat and poultry products that are tested for the presence of an adulterant by FSIS. Three subcommittees will also meet on June 2, 2004, to work on the issues discussed during the full committee session.

DATES: The full Committee will hold a public meeting on Wednesday, June 2, from 8:30 a.m. to 2:30 p.m. and on Thursday, June 3, 2004, from 8:30 a.m. to 12:45 p.m. Subcommittees will hold open meetings on Wednesday, June 2, 2004, from 2:45 p.m. to 5:30 p.m.

Note: FSIS was not able to publish notification of this public meeting in the **Federal Register** at least 15 days prior to the meeting, as required by Departmental Regulation 1041–001, due to late changes to the agenda.

ADDRESSES: All Committee meetings will take place at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

A meeting agenda is available on the Internet at *http://www.fsis.usda.gov/about/nacmpi/index.asp*, which is a sub-web page of the FSIS home page, at *http://www.fsis.usda.gov/index.asp.* FSIS invites interested persons to submit comments on the topics to be discussed at the public meeting. Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD–ROM's, and hand-or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.

All submissions received must include the Agency name and docket number 04–007N.

All comments submitted on the topics to be discussed at the public meeting will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations/2004_notices_index/index.asp.*

FOR FURTHER INFORMATION CONTACT: Mr. Robert Tynan for technical information at (202) 720–2982 or e-mail *robert.tynan@fsis.usda.gov* and Ms. Sonya L. West for meeting information at (202) 690–1079, FAX (202) 690–6519, or e-mail *sonya.west@fsis.usda.gov.* Members of the public will be required to register before entering the meeting. Persons requiring a sign language interpreter or other special accommodations should notify Ms. West no later than May 28, 2004, at the above numbers or by e-mail. Information is also available on the Internet at *http://www.fsis.usda.gov/about/nacmpi/index.asp.*

SUPPLEMENTARY INFORMATION:

Background

On April 15, 2003, the Secretary of Agriculture renewed the charter for the National Advisory Committee on Meat and Poultry Inspection (NACMPI). The Committee provides advice and recommendations to the Secretary of Agriculture pertaining to the Federal and State meat and poultry inspection

programs, pursuant to sections 7(c), 24, 205, 301(a)(3), 301(a)(4), and 301(c) of the Federal Meat Inspection Act (21 U.S.C. 607(c), 624, 645, 661(a)(3), 661(a)(4), and 661(c)) and sections 5(a)(3), 5(a)(4), 5(c), 8(b), and 11(e) of the Poultry Products Inspection Act (21 U.S.C. 454(a)(3), 454(a)(4), 454(c), 457(b), and 460(e)).

The Administrator of the Food Safety and Inspection Service (FSIS) is the chairperson of the Committee. Membership of the Committee is drawn from representatives of consumer groups; producers, processors and marketers from the meat and poultry industry; state government officials; and academia. The current members of the NACMPI are: Ms. Deanna Baldwin, Maryland Department of Agriculture; Dr. Gladys Bayse, Spelman College; Dr. David Carpenter, Southern Illinois University; Dr. James Denton, University of Arkansas; Mr. Kevin Elfering, Minnesota Department of Agriculture; Ms. Sandra Eskin, American Association of Retired Persons; Mr. Michael Govro, Oregon Department of Agriculture; Dr. Joseph Harris, Southwest Meat Association; Dr. Jill Hollingsworth, Food Marketing Institute; Dr. Alice Johnson, National Turkey Federation; Mr. Michael Kowalcyk, Safe Tables Our Priority; Dr. Irene Leech, Virginia Citizens Consumer Council; Mr. Charles Link, Cargill Meat Solutions; Dr. Catherine Logue, North Dakota State University; and Mr. Mark Schad, Schad Meats. The Committee has three subcommittees to deliberate on specific issues and make recommendations to the Committee.

One of the issues to be discussed at the meeting will be FSIS's interim final rule on the control of *Listeria monocytogenes* (Lm) in ready-to-eat meat and poultry products (68 FR 34207, June 6, 2003). FSIS is interested in learning the Committee's opinion of the Agency's efforts to assess the effectiveness of the interim final rule. The Committee will also examine whether the Agency should require that establishments develop food security plans. Finally, the Committee will consider whether FSIS should require test and hold procedures for meat and poultry products that are subjected to verification testing for the presence of an adulterant by the Agency.

All interested parties are welcome to attend the meetings and to submit written comments and suggestions concerning issues the Committee will review and discuss. The comments and the official transcript of the meeting, when they become available, will be kept in the FSIS Docket Room at the address provided above. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday, except for Federal holidays.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that the public and in particular that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov* and through the Regulations.gov Web site. The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov*.

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

Barbara J. Masters,

Acting Administrator.

[FR Doc. 04–11567 Filed 5–18–04; 2:07 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Madison-Beaverhead Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Beaverhead-Deerlodge National Forest's Madison—Beaverhead Resource Advisory Committee will meet on Tuesday, June 15, 2004 from 10 a.m. until 4 p.m. in Dillon, Montana, for its first business meeting. The meeting is open to the public.

DATES: Tuesday, June 15, 2004.

ADDRESSES: The meeting will be held in the Lewis & Clark Room in Mathews Hall at the University of Montana—Western, 710 South Atlantic Street, Dillon, MT 59725.

FOR FURTHER INFORMATION CONTACT: Thomas K. Reilly, Designated Forest Official (DFO), Forest Supervisor, Beaverhead-Deerlodge National Forest, at (406) 683–3973.

SUPPLEMENTARY INFORMATION: Agenda topics for this meeting include an orientation on committee responsibilities for new members, electing a chair for the committee, administrative information for members, public comment, and discussion about project proposals, as authorized under Title II of Public Law 106–393. If the meeting location is changed, notice will be posted in local newspapers, including the Dillon Tribune and The Montana Standard.

Dated: May 13, 2004.

Thomas K. Reilly,

Forest Supervisor.

[FR Doc. 04–11369 Filed 5–19–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Implementation of the National Forest Organizational Camp Fee Improvement Act of 2003; Correction

AGENCY: USDA, Forest Service.

ACTION: Notice of issuance of agency directives; correction.

SUMMARY: The Forest Service published a document in the **Federal Register** of May 4, 2004, providing notice of the issuance of agency directives for implementation of the National Forest Organizational Camp Fee Improvement Act of 2003. The document contained several incorrect amendment and interim directive numbers.

FOR FURTHER INFORMATION CONTACT: Kenneth Karkula, Recreation, Heritage,

and Wilderness Resources Staff (202–205–1426), USDA, Forest Service.

Correction

In the **Federal Register** of May 4, 2004, in FR Doc. 04–10064, on page 24559, in the second column, correct the third sentence in the "Summary" to read: These revisions involve amendments and interim directives (IDs) to Forest Service Manual (FSM) 2340 (Amendment 2300–2004–1); FSM 2700, zero code chapter (Amendment 2700–2004–1); FSM 2720 (Amendment 2700–2004–2); and Forest Service Handbook (FSH) 2709.11, chapter 30 (ID 2709.11–2004–1), chapter 40 (ID 2709.11–2004–2), and chapter 50 (Amendment 2709.11–2004–2).

Dated: May 11, 2004.

Gloria Manning,

Associate Deputy Chief.

[FR Doc. 04–11442 Filed 5–19–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Yellow River Watershed Structure No. 16: Gwinnett County, GA

AGENCY: Natural Resources Conservation Service, Agriculture.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102[2][c] of the National Environmental Policy Act of 1969, the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Yellow River Watershed Structure No. 16, Gwinnett County, Georgia.

FOR FURTHER INFORMATION CONTACT: Jimmy Bramblett, Water Resources Programs Leader, Natural Resources Conservation Service, Federal Building, 355 East Hancock Avenue, Athens, Georgia 30601, Telephone [706] 546–2073, E-Mail *jimmy.bramblett@ga.usda.gov.*

SUPPLEMENTARY INFORMATION: The Environmental Assessment of this federal assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Leonard Jordan, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purpose is continued flood prevention. The planned works of improvement include upgrading an existing floodwater retarding structure.

The Notice of a Finding of No Significant Impact [FONSI] has been forwarded to the U.S. Environmental Protection Agency and to various Federal, State, and local agencies and interest parties. A limited number of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jimmy Bramblett at the above number.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Leonard Jordan,

State Conservationist.

[This activity is listed in the Catalog of Federal Domestic Assistance under 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernment consultation with State and local officials].

Finding of No Significant Impact for Yellow River Watershed Structure No. 16, Gwinnett County, Georgia, May 2004

Introduction

The Yellow River Watershed is a federally assisted action authorized for planning under Public Law 106–472, the Watershed Rehabilitation Act, which amends Public Law 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, 355 East Hancock Avenue, Athens, Georgia 30601.

Recommended Action

This document describes a plan for upgrading an existing floodwater retarding structure, Yellow River Watershed Structure No. 16[Y–16], to meet current dam safety criteria in Georgia. The plan calls for construction of a roller compacted concrete spillway over the embankment of the existing earthen dam. Works of improvement will be accomplished by providing financial and technical assistance through an eligible local sponsor.

The principal project measures are to:

1. Construct a 260-foot wide rollover compacted concrete [RCC] chute spillway to protect underlying soil materials from erosion during overtopping. The RCC will be constructed as a staged broad-crested weir. This constructed auxiliary spillway is designed to bring the existing dam into compliance with current dam safety criteria in Georgia. The current auxiliary spillway will be removed from service.

2. The measures will be planned and installed by developing a contract with the current operator of the dam.

Effects of Recommended Action

Installing a roller compacted concrete spillway will bring Yellow River Watershed Structure No. 16 into compliance with current dam safety criteria. This will essentially eliminate the risk to loss of life for individuals in 40 homes, 1 recreational facility, and 1 road downstream. Additional effects will include continued protection against flooding, continued water quality benefits, continued fishing activities, continued recreational opportunities, protected land values, protected road and utility networks, and reduced maintenance costs for public infrastructure.

Wildlife habitat will not be disturbed during installation activities. No wetlands, wildlife habitat, fisheries, prime farmland, or cultural resources will be destroyed or threatened by this project. Some 13 acres of wetland and wetland type wildlife habitat will be preserved. Fishery habitats will also be maintained.

No endangered or threatened plant or animal species will be adversely affected by the project.

There are no wilderness areas in the watershed.

Scenic values will be complemented with improved riparian quality and cover conditions resulting from the installation of conservation animal waste management system and grazing land practices.

Alternatives

Eight alternative plans of action were considered in project planning. No significant adverse environmental impacts are anticipated from installation of the selected alternative. Also, the planned action is the most practical, complete, and acceptable means of protecting life and property of downstream residents.

Consultation—Public Participation

Original sponsoring organizations include the Gwinnett County Government, Gwinnett County Soil and Water Conservation District, and the Upper Ocmulgee River Resource Conservation and Development Council. At the initiation of the planning process, meetings were held with representatives of the original sponsoring organizations to ascertain their interest and concerns regarding the Yellow River Watershed. Gwinnett County agreed to serve as "lead sponsor" being responsible for leading the planning process with assistance from NRCS. As lead sponsor they also agreed to provide non-federal cost-share, property rights, operation and maintenance, and public participation during, and beyond, the planning process. Meetings with the project sponsors were held throughout the planning process, and project sponsors provided representation at planning team, technical advisory, and two public meetings.

An Interdisciplinary Planning Team provided for the "technical" administration of this project. Technical administration includes tasks pursuant to the NRCS nine-step planning process, and planning procedures outlined in the NRCS–National Planning Procedures Handbook. Examples of tasks completed by the Planning Team include, but are not limited to, Preliminary Investigations, Hydrologic Analysis, Reservoir Sedimentation Surveys, Economic Analysis, Formulating and Evaluating Alternatives, and Writing the Watershed Plan—Environmental Assessment. Data collected from partner agencies, databases, landowners, and others throughout the entire planning process, were evaluated at Planning Team meetings. Informal discussions amongst planning team members, partner agencies, and landowners were conducted throughout the entire planning period.

A Technical Advisory Group was developed to aid the Planning Team with the planning process. The following agencies were involved in developing this plan and provided representation on the Technical Advisory Group:

- Gwinnett County Government
- Gwinnett County Soil and Water Conservation Districts
- Georgia Department of Natural Resources, Environmental Protection Division [EPD], Safe Dams Program
- Georgia Department of Natural Resources, Wildlife Resources Division [WRD], Game and Fisheries Section
- United States Environmental Protection Agency [EPA], Region IV
- USDA, Natural Resources Conservation Service [NRCS]
- USDI, Fish and Wildlife Service [F&WS]
- U.S. Army Corps of Engineers [COE]

A meeting and field tour with the Technical Advisory Group was held on February 27, 2002 to assess proposed measures and their potential impact on resources of concern. A review of National Environmental Policy Act [NEPA] concerns was initiated at this meeting. Effects of proposed measures on NEPA concerns reviewed were documented. Additional field tours were held with the COE on March 11, 2002 to determine the most efficient 404 permitting process.

Suzanne Kenyon, Cultural Resources Specialist with the NRCS–National Water Management Center, visited the project site in the fall of 2001. She provided a methodology for considering culturally significant resources, which was followed in this planning process. An inventory of the watershed, and associated downstream impacted area was completed with no culturally important or archaeological sites noted. The area of potential effect was provided to the Georgia State Historic Preservation Office with passive concurrence provided.

Public Participation

A public meeting was held on November 13, 2002 to explain the Watershed Rehabilitation Program and to scope resource problems, issues, and concerns of local residents associated with the Y–16 project area. Potential alternative solutions to bring Y–16 into compliance with current dam safety criteria were also presented. Through a voting process, meeting participants provided input on issues and concerns to be considered in the planning process, and identified the most socially acceptable alternative solution.

A second public meeting was held on April 1, 2004 to summarize planning accomplishments, convey results of the reservoir sedimentation survey, and present various structural alternatives.

The roller compacted concrete chute spillway was identified as a complete, acceptable, efficient, and effective plan for the watershed and is the alternative preferred by the homeowners as indicated in the public meetings.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant adverse local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the recommended plan of action on Yellow River Watershed Structure No. 16 is not required.

Dated: May 11, 2004.

Leonard Jordan,

State Conservationist.

[FR Doc. 04–11423 Filed 5–19–04; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet June 8, 2004, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Public Session

1. Opening remarks by the Chairman
2. Presentation of papers or comments by the public
3. Update on Export Administration Regulations
4. Demonstration on Excluded Parties Listing System (EPLS)
5. Update on technology controls and deemed export initiatives
6. Update on encryption controls initiatives
7. Update on country group revision project
8. Update on Automated Export System (AMES)
9. Discussion on Simplified Network Application Process (SNAP)
10. Reports from working groups

Closed Session

11. Discussion of matters that would include the disclosure of trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and of matters the premature disclosure of which would be likely to frustrate implementation of a proposed agency action as described in 5 U.S.C. 552b(c)(9)(B).

A limited number of seats will be available for the public session.

Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to Ms. Lee Ann Carpenter at *Lcarpent@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on May 6, 2004, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the portion of the meeting dealing with trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting dealing with matters the disclosure of which would be likely to frustrate the implication of agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. App. 2 §§ 10(a)1 and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: May 17, 2004.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 04–11430 Filed 5–19–04; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0253]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Subcontracting Policies and Procedures

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through July 31, 2004. DoD proposes that OMB extend its approval for use through July 31, 2007.

DATES: DoD will consider all comments received by July 19, 2004.

ADDRESSES: Respondents may submit comments via the Internet at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@osd.mil.* Please cite OMB Control Number 0704–0253 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0253.

At the end of the comment period, interested parties may view public comments on the Internet at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cohen, (703) 602–0293. The information collection requirements addressed in this notice are available on the Internet at: *http://www.acq.osd.mil/dpap/dfars/index.htm.*

Paper copies are available from Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 244, Subcontracting Policies and Procedures; OMB Control Number 0704–0253.

Needs and Uses: Administrative contracting officers use this information in making decisions to grant, withhold, or withdraw purchasing system approval at the conclusion of a contractor purchasing system review. Withdrawal of purchasing system approval would necessitate Government consent to individual subcontracts.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 1,440.

Number of Respondents: 90.

Responses Per Respondent: 1.

Annual Responses: 90.

Average Burden Per Response: 16 hours.

Frequency: On occasion.

Summary of Information Collection

This information collection includes the requirements of DFARS 244.305–70, Granting, withholding, or withdrawing approval. DFARS 244.305–70 requires the administrative contracting officer, at the completion of the in-plant portion of a contractor purchasing system review, to ask the contractor to submit, within 15 days, its plan for correcting deficiencies or making improvements to its purchasing system.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 04–11424 Filed 5–19–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0272]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Occupational Safety

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through August 31, 2004. DoD proposes that OMB extend its approval for use through August 31, 2007.

DATES: DoD will consider all comments received by July 19, 2004.

ADDRESSES: Respondents may submit comments via the Internet at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@osd.mil*. Please cite OMB Control Number 0704–0272 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite OMB Control Number 0704–0272.

At the end of the comment period, interested parties may view public comments on the Internet at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328. The information collection requirements addressed in this notice are available on the Internet at: *http://www.acq.osd.mil/dpap/dfars/index.htm*.

Paper copies are available from Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 223, Occupational Safety, and related clauses in DFARS 252.223; OMB Control Number 0704–0272.

Needs and Uses: This information collection requires that an offeror or contractor submit information to DoD in response to DFARS solicitation provisions and contract clauses relating to occupational safety. DoD contracting officers use this information to—

- Verify compliance with requirements for labeling of hazardous materials;
- Ensure contractor compliance and monitor subcontractor compliance with DoD 4145.26–M, DoD Contractors' Safety Manual for Ammunition and Explosives, and minimize risk of mishaps;
- Identify the place of performance of all ammunition and explosives work; and
- Ensure contractor compliance and monitor subcontractor compliance with DoD 5100.76–M, Physical Security of Sensitive Conventional Arms, Ammunition, and Explosives.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 9,448.

Number of Respondents: 1,519.

Responses Per Respondent: Approximately 9.

Annual Responses: 13,507.

Average Burden Per Response: .7 hours.

Frequency: On occasion.

Summary of Information Collection

This information collection includes the following requirements:

1. *DFARS 252.223–7001, Hazard Warning Labels.* Paragraph (c) requires all offerors to list which hazardous materials will be labeled in accordance with certain statutory requirements instead of the Hazard Communication Standard. Paragraph (d) requires only the apparently successful offeror to submit, before award, a copy of the hazard warning label for all hazardous materials not listed in paragraph (c) of the clause.

2. *DFARS 252.223–7002, Safety Precautions for Ammunition and Explosives.* Paragraph (c)(2) requires the contractor, within 30 days of notification of noncompliance with DoD 4145.26–M, to notify the contracting officer of actions taken to correct the noncompliance. Paragraph (d)(1) requires the contractor to notify the contracting officer immediately of any mishaps involving ammunition or explosives. Paragraph (d)(3) requires the contractor to submit a written report of the investigation of the mishap to the contracting officer. Paragraph (g)(4) requires the contractor to notify the contracting officer before placing a subcontract for ammunition or explosives.

3. *DFARS 252.223–7003, Changes in Place of Performance—Ammunition and Explosives.* Paragraph (a) requires the offeror to identify, in the Place of Performance provision of the solicitation, the place of performance of all ammunition and explosives work covered by the Safety Precautions for Ammunition and Explosives clause of the solicitation. Paragraphs (b) and (c) require the offeror or contractor to obtain written permission from the contracting officer before changing the place of performance after the date set for receipt of offers or after contract award.

4. *DFARS 252.223–7007, Safeguarding Sensitive Conventional Arms, Ammunition, and Explosives.* Paragraph (e) requires the contractor to notify the cognizant Defense Security Service field office within 10 days after award of any subcontract involving sensitive conventional arms, ammunition, and explosives within the scope of DoD 5100.76–M.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 04–11426 Filed 5–19–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Technical Assistance Relating to Machine Tools

AGENCY: Department of Defense (DoD).

ACTION: Notice.

SUMMARY: This notice implements that portion of Section 823 of the Fiscal Year 2004 National Defense Authorization Act that requires the Secretary of Defense to publish information on resources available to assist machine tool companies and users of machine tools in understanding Government contracting procedures and in locating opportunities for contracting with DoD.

FOR FURTHER INFORMATION CONTACT: Susan L. Schneider, Procurement Analyst, Defense Procurement and Acquisition Policy, OUSD(AT&L), 3060 Defense Pentagon, Washington, DC 20301–3060, (703) 614–4840; or e-mail to *Susan.Schneider@osd.mil*.

SUPPLEMENTARY INFORMATION: This notice contains information required under Section 823 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) to assist machine tool companies and users of machine tools in Government contracting. It identifies several important resources that are available to assist prospective contractors in understanding Government contracting procedures and in locating opportunities for contracting with DoD.

The DoD Procurement Technical Assistance (PTA) Cooperative Agreement Program was established by Congress in 1985 to provide DoD assistance to eligible entities in obtaining and performing under DoD contracts. Due to its initial success, it was later expanded to include all Federal agencies, as well as State and local governments. The Defense Logistics Agency, Director of Small and Disadvantaged Business Utilization, is responsible for management of the PTA program. The PTA program manager has advised PTA program participants of DoD's emphasis on the need to be responsive to machine tool companies and users of machine tools in Government contracting by providing assistance and counseling consistent with the requirements of Section 823 as outlined below.

Under this program, PTA centers provide day-to-day assistance to firms seeking to do business with Federal agencies and State and local governments in the form of such services as helping to prepare bids and proposals, marketing to potential buyers, establishing electronic commerce capability, setting up or improving quality assurance and accounting systems, and resolving payment problems. This specialized and professional assistance may consist of, but is not limited to, outreach and counseling services. Participants in this program make a concerted effort to seek out and assist small businesses, small disadvantaged businesses, women-owned small businesses, historically underutilized business zone small businesses, historically Black colleges and universities and minority institutions, and veteran-owned small businesses (including service-disabled veteran-owned small businesses. A listing of the current PTA centers can be viewed at *http://www.dla.mil/pta.*

In addition, there are three other sources of information that provide assistance to prospective contractors in finding DoD contracting opportunities. The "Guide to DoD Contracting Opportunities" is a publication that provides a step-by-step approach to business dealings with DoD. It is located at *http://www.acq.osd.mil/sadbu/Doing_Business/index.htm* and provides marketing ideas and helpful advice for registering your company. Also, FedBizOpps is a single Governmentwide point of entry for Federal procurement opportunities. Government buyers are able to publicize their business opportunities by posting information directly to FedBizOpps via the Internet, and commercial vendors seeking jobs can search, monitor, and retrieve opportunities solicited by the entire Federal contracting community. Additional information on FedBizOpps can be found at *http://www.fedbizopps.gov.* This is also a useful site to identify subcontracting opportunities, since contract awards to prime contractors are also published at FedBizOpps.

The Federal Acquisition Regulation (FAR) and the Defense FAR Supplement (DFARS) are the regulations that govern DoD contracting. The FAR and the DFARS work in tandem. They prescribe contractor responsibilities and employment practices that apply to all contractors, large and small. The Defense Acquisition Regulations Directorate maintains electronic copies of these regulations, and they are readily accessible to the public at *http://www.acq.osd.mil/dpap/dars/index.htm.*

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 04–11425 Filed 5–19–04; 8:45 am]

BILLING CODE 5201–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 19, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 14, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: Annual Performance Report Grants Under the Smaller Learning Communities Program.

Frequency: Annually.

Affected Public:

State, Local, or Tribal Gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 400.

Burden Hours: 26,000.

Abstract: The Annual Performance Report form requests information from grantees regarding progress made in achieving the objectives identified in the grantee's application including student outcome data and program implementation information.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2548. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address Sheila *Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–11380 Filed 5–19–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 19, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 14, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.

Title: Annual Performance Report for the Ronald E. McNair Postbaccalaureate Achievement (McNair) Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 179.

Burden Hours: 895.

Abstract: McNair grantees must submit the report annually. The reports are used to evaluate the performance of grantees prior to awarding continuation funding and to assess a grantee's prior experience at the end of the budget period. The Department will also aggregate the data across grantees to provide descriptive information on the program and to analyze the impact of the program on the academic progress of participating students.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2554. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at his e-mail address *Joe Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–11381 Filed 5–19–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The EIA is soliciting comments on the proposed reinstatement and three-year extension of Form EIA–457A–G, "Residential Energy Consumption Survey (RECS)."

DATES: Comments must be filed by July 19, 2004. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Send comments to Stephanie J. Battles or Michael T. Laurence. To ensure receipt of the comments by the due date, submission by FAX (202–586–0018) or e-mail (*stephanie.battles@eia.doe.gov* or *michael.laurence@eia.doe.gov*) is recommended. The mailing address is Office of Energy Markets and End-Use, Energy Consumption Division, EI–63, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Stephanie J. Battles may be contacted by telephone at (202) 586–7327 and Michael T. Laurence may be contacted by telephone at (202) 586–2453.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of any forms and instructions should be directed to Ms. Battles or Mr. Laurence at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the DOE Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the EIA to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer-term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the

Office of Management and Budget (OMB) under section 3507(a) of the Paperwork Reduction Act of 1995.

The Residential Energy Consumption Survey (RECS) is a periodic survey of U.S. residential households to collect energy consumption and expenditures data and track changes over time. The data are widely used throughout the government and the private sector for policy analysis and are made available to the public in print and electronic media products. Comprehensive data for the most recent survey, the 2001 RECS, are available only in electronic form at EIA's Residential Web site home page at *http://www.eia.doe.gov/emeu/recs/contents.html*. Results from the 1997 and 1993 RECS are available in both printed form (*e.g.*, U.S. Department of Energy, Energy Information Administration, *A Look at Residential Consumption in 1997*, November 1999, DOE/EIA–0632(97); *Housing Characteristics 1993*, June, 1995, DOE/EIA–0314(93); and *Household Energy Consumption and Expenditures 1993*, October 1995, DOE/EIA–032 (93)) and on the EIA Residential Web site home page. Results from all previous RECS are available only in printed form.

Please refer to the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

II. Current Actions

This is a reinstatement of OMB No. 1905–0092 that expired February 29, 2004. The reinstatement will be for a three-year period. No significant content or methodological changes are being implemented. Due to funding restraints, the RECS is conducted on a quadrennial schedule, a schedule established with the 1997 RECS. Computer-Assisted Personal Interviewing (CAPI), a technology implemented with the 1997 RECS, and used again in the 2001 RECS, will be continued.

Most of the content of the survey questionnaires to be used in the 2005 RECS will be substantially the same as those used in the 2001 RECS. On a few of the questions minor wording changes may be made in the interest of clarity. Some questions that yielded little useful data will be deleted, while questions dealing with new energy-consuming appliances and important analytical issues such as energy efficiency will be added. Questions that would enhance EIA's ability to more accurately identify the end-uses for which energy in households is consumed, and support end-use allocation and estimation algorithms, may also be added.

The Environmental Protection Agency (EPA) has submitted a request to include questions on RECS relating to potential appliances for an Energy Star rating such as computers and ceiling fans. In another request, Lawrence Berkeley National Laboratory, with EPA as the potential sponsor, has submitted a request to include questions on RECS relating to household water use. Both requests are for information they need but don't feel it necessary to create a whole new survey. Including the added questions would assist EPA with their decision on adding new Energy Star appliances. Also, no comparable water or water-energy survey currently exists at the national level. Since the RECS is highly detailed and constructed to be representative of the entire population, EPA-sponsored water questions on the RECS would be indispensable for analysis and policy planning on household water use. However, EPA funding has not yet been approved for either request, and if it is not approved, the additional questions relating to potential Energy Star products and household water use, will not be included on the RECS. This will be explained in the information collection request to OMB.

The 2005 RECS will be conducted under the provisions of the Confidential Information Protection and Statistical Efficiency Act (CIPSEA) of 2002 (title 5, subtitle A, Pub. L. 107–347). As in the past, information provided by respondents will be used only for statistical purposes.

Under the provisions of the law, every EIA employee, EIA contractor employee, and agent must keep confidential any individually identifiable information in his or her possession, and is subject to a jail term, a fine, or both, if he or she discloses or releases any identifiable information for nonstatistical purposes, without the informed consent of the respondent. The CIPSEA permits EIA to obtain actual identifiers of survey respondents and process raw survey data on its physical premises while protecting information associated with individual respondents.

III. Request for Comments

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments. Please indicate to which form(s) your comments apply.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent to the Request for Information

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information to be collected?

B. Are the instructions and definitions clear and sufficient? If not, which instructions need clarification?

C. Can the information be submitted by the due date?

D. Public reporting burden for this collection is estimated to average 40 minutes per response for Form EIA–457A, Household Questionnaire; 20 minutes per response for Form EIA–457B, Mail version of the Household Questionnaire; 15 minutes per response for Form EIA–457C, Rental Agents, Landlords, and Apartment Managers; 30 minutes per response for Form EIA–457D, Household Bottle Gas (LPG or Propane) Usage; 30 minutes per response for Form EIA–457E, Household Electricity Usage; 30 minutes per response for Form EIA–457F, Household Natural Gas Usage; and 30 minutes per response for Form EIA–457G, Household Fuel Oil or Kerosene Usage. The estimated burden includes the total time necessary to provide the requested information. In your opinion, how accurate is this estimate?

E. The agency estimates that the only cost to a respondent is for the time it will take to complete the collection. Will a respondent incur any start-up costs for reporting, or any recurring annual costs for operation, maintenance, and purchase of services associated with the information collection?

F. What additional actions could be taken to minimize the burden of this collection of information? Such actions may involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

G. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the methods of collection.

As a Potential User of the Information To Be Collected

A. What actions could be taken to help ensure and maximize the quality, objectivity, utility, and integrity of the information disseminated?

B. Is the information useful at the levels of detail to be collected?

C. For what purpose(s) would the information be used? Be specific.

D. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

Issued in Washington, DC, May 12, 2004.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 04–11414 Filed 5–19–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Dakotas Wind Transmission Study

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of the draft Study Scope.

SUMMARY: Notice is given to interested parties of the draft Study Scope language for performing studies associated with the Dakotas Wind Transmission Study (DWTS). The DWTS involves transmission studies on the placement of 500 megawatts (MW) of wind power in the Dakotas. Public comments on the draft Study Scope will be considered prior to finalizing the Study Scope language and performing the transmission studies.

DATES: The consultation and comment period begins today and will end June 21, 2004. Western will present a detailed informational explanation of the draft Study Scope associated with the DWTS at public information forums.

The public information forum dates are:

1. June 15, 2004, 7–9 p.m. CDT, Pierre, SD.

2. June 16, 2004, 7–9 p.m. CDT, Bismarck, ND.

Western will have a comment forum immediately after each information forum and accept written comments anytime during the consultation and comment period.

ADDRESSES: Send written comments to Robert J. Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266, e-mail *UGPDakotasWindTS@wapa.gov.*

The public information forum locations are:

1. Pierre—Best Western Ramkota Hotel, 920 West Sioux, Pierre, SD.

2. Bismarck—Best Western Ramkota Hotel Bismarck, 800 South Third Street, Bismarck, ND.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Harris, Regional Manager, Upper Great Plains Region, Western Area Power Administration, Box 35800, Billings, MT 59107–5800, telephone (406) 247–7405; or Mr. C. Sam Miller, Project Manager, Upper Great Plains Region, Western Area Power Administration, P. O. Box 35800, Billings, MT 59107–5800, telephone (406) 247–7466, e-mail *CSmiller@wapa.gov.*

SUPPLEMENTARY INFORMATION: In 2003, Congress passed legislation that included funding for the Western Area Power Administration (Western) to perform "a transmission study on the placement of 500 megawatt[s] [of] wind energy in North Dakota and South Dakota." (Energy and Water Development Appropriations Act, 2004)

The Dakotas lead the nation in wind resources and have the potential to generate more than 100 times their current use of electricity. Wind power in the Dakotas currently totals 110 MW, producing about 2½ percent of the electric energy consumed in the two states.

The Dakotas are already an exporting region with total generation of electricity more than twice consumption. Exports on the region's transmission system are limited by both stability (transient and voltage) and thermal loading.

A number of wind energy transmission studies in the Dakotas have been completed, for both interconnection and delivery. Most notable is Western's "Montana/Dakotas Transmission Study Scope" completed in 2002, *http://www.wapa.gov/ugp/study.* This study made significant progress in highlighting key wind-related transmission issues. Additional investigations are building on the results of this work. Several new studies are currently underway.

In late February 2004, Western requested public comments to help develop the scope of the DWTS. Announcements were made through news coverage and mailings to interested groups. Comments were requested on study objectives, outcomes, and methods. In response, Western received 70 comments from stakeholders, landowners, individual citizens, elected officials, and utilities. All were carefully considered. Western also reviewed recent technical work related to scope development for the DWTS.

Objectives

The objectives of the DWTS include: (1) Perform transmission studies on the placement of 500 MW of wind power in North Dakota and South Dakota; (2) recognize and build upon prior related technical study work; (3) coordinate with current related technical study work; (4) solicit and incorporate public comments; and (5) produce meaningful, broadly supported results through a technically rigorous, inclusive study process. Western seeks public comments on the following proposed scope of work.

DWTS Work Scope

Task 1: Analyze Non-Firm Transmission Potential Relative to New Wind Generation

The existing total transfer capability across the major paths in the Dakotas is already reserved under long-term contracts. However, the scheduled amount of capacity is often less than the total amount, leaving unused capacity in many hours of the year. Wind power, as a variable, nondispatchable energy source may be able to fit in the transmission grid in these hours as an energy provider. The possibility of delivering wind energy through long-term, non-firm access, and curtailing wind power deliveries during congested periods, will be studied in this task.

The three key corridors to be studied are: (1) The North Dakota Export Boundary (a monitored regional flow gate comprised of 18 individual transmission lines in North Dakota, South Dakota, and Minnesota), (2) a 230 kilovolt (kV) transmission line, Watertown-Granite Falls, and (3) a group comprised of eight transmission lines running east and southeast from Fort Thompson and west and northwest from Fort Randall (two 230-kV transmission lines, Fort Thompson-Huron; two 230-kV transmission lines, Fort Thompson-Sioux Falls; one 345-kV transmission line, Fort Thompson-Grand Island; two 230-kV transmission lines, Fort Thompson-Fort Randall; and one 115-kV transmission line, Bonesteel-Fort Randall). The evaluation

will include hourly, daily, and seasonal analysis for a minimum of 1 year for two cases: historical and projected.

Western will evaluate and compare administratively committed and actual usage across each corridor using actual historical data (*e.g.*, this type of comparison can be found in the Western Interconnection Transmission Path Flow Study, February 2003, *http://www.ssg-wi.com/documents/320-2002_Reportfinal_pdf.pdf*); and projected system data based on a full year system model (*e.g.*, PROMOD IV) of the Integrated System and surrounding control areas.

Western will evaluate and develop power production profiles of the Dakotas wind generation using actual historical data and statistically representative wind profiles (several years of historical data normalized to several decades of climate data). Western will coordinate with the National Renewable Energy Laboratory to identify the representative wind power production time series and develop the wind models.

Western will evaluate and compare the time synchronized transmission usage profiles and wind generation profiles over each timeframe (hourly, daily, and seasonal analysis for a minimum of 1 year) for both the historical and the projected case.

Western will develop annual flow duration curves for each corridor studied, assess the opportunity to deliver non-firm wind energy, and quantify the annual hours and time period of curtailment of the wind energy.

Western will run additional modeling cases to bracket key sensitivities including high- and low-hydropower scenarios, demand growth scenarios, and natural gas price scenarios.

Task 2: Assess Potential of Transmission Technologies Relative to New Wind Generation

Normal power flow on the transmission system often results in less than full use of the physical transmission capacity. One or more transmission lines may be loaded up to their thermal limits while the remaining lines are loaded to levels far below their thermal capacity. In the Dakotas, stability issues can limit transfer capacity before thermal limits are reached. Technology-based solutions that can increase the use of existing network transmission lines without jeopardizing reliability are now in a mature development phase and have been applied where economically justified on various utility networks. The Flexible AC Transmission System is a set of controller devices designed to provide dynamic control of power transmission parameters such as transmission line impedance, voltage magnitude, and phase angle. Many of these technologies were identified as possible solutions to transmission constraints in the Montana/Dakotas Transmission Study Scope. This analysis will be developed further in this task.

This task will evaluate the opportunities and costs of increasing the use of existing transmission lines and corridors in the Dakotas while maintaining safe operation of the network. Specific opportunities will be identified and quantified.

Technologies to be studied include: (1) Static var compensation to improve transmission system performance by providing the reactive power required to control dynamic voltage swings, (2) series compensation to improve stability by generating self-regulated reactive power, (3) phase-shifting transformers to improve stability and thermal loading by assisting with the control of power flow, (4) dynamic line ratings to increase transfer capacity by calculating the real time dynamic thermal rating of transmission lines based on real-time monitoring of lines and weather conditions, and (5) reconductoring to increase transfer capacity by replacing transmission line conductors with newer composite materials that can carry more current at the same or higher voltage. This evaluation will include an assessment of impacts on existing tower structures and right-of-ways.

Task 3: Study Interconnection of New Wind Generation

Seven wind generation zones will be evaluated for interconnection. They were developed from public comments, wind resource maps, the Western interconnection queue, tribal projects, and developer projects. The zones are generally located near:

Garrison, North Dakota
Wishek/Ellendale/Edgeley, North Dakota
Pickert, North Dakota
Rapid City, South Dakota
Mission, South Dakota
Fort Thompson, South Dakota
Summit/Watertown/Toronto/White/Brookings/Flandreau. South Dakota

Aggregate interconnection studies to determine the local impacts of new wind generation will be prepared for each site at four wind generation levels of 50, 150, 250, and 500 MW. Impacts to be studied include steady state power flow analysis, constrained interface analysis, short circuit analysis, and dynamic stability analysis.

Task 4: Study the Delivery to Market of New Wind Generation

Aggregate delivery studies will be performed on the four most favorable interconnection zones in Task 3. Several delivery scenarios will be developed for the new wind power based upon markets both inside and outside of the Dakotas.

The incremental transmission delivery capability of each zone will be identified along with the necessary transmission improvements for each level of generation. Both steady state and stability analysis will be completed and losses will be evaluated. Transmission improvement options will be ranked by technical feasibility, right-of-way impact, and cost.

Study Guidelines

All models and system data will be coordinated with and consistent with existing Mid-Continent Area Power Pool and Midwest Independent System Operator models and databases. Current wind turbine models will be used.

Next Phase of Study

If any of the appropriated funding remains after the DTWS is completed, the following concepts will be explored by Western: (1) developing a cost share loan and/or grant program for partially funding transmission studies for wind power projects connecting in the Dakotas and (2) updating the models developed for Tasks 3 and 4 at regular intervals to incorporate ongoing changes to the transmission system in the Dakotas.

Availability of Information

All studies, comments, letters, memorandums, or other documents that Western initiates or uses are available for inspection and copying at the Upper Great Plains Regional Office, located at 2900 4th Avenue North, Billings, Montana. Many of these documents and supporting information are also available on its Web site under the "Dakotas Wind Transmission Study" section located at: *http://www.wapa.gov/ugp/study/DakotasWind*.

Regulatory Procedure Requirements

Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed

rulemaking. Western has determined this action does not require a regulatory flexibility analysis since it is not a rulemaking that involves rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*); Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and DOE NEPA Regulations (10 CFR part 1021), Western has determined this action is categorically excluded from preparing an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; so this notice requires no clearance by Office of Management and Budget.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking to approve or prescribe rates or services and involves matters of agency procedure.

Dated: May 11, 2004.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 04–11412 Filed 5–19–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Determination of the Post-2004 Marketable Resources.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), announces its determination of the Post-2004 Marketable Resources (which consists of both capacity and energy) from the Salt Lake City Area Integrated Projects (SLCA/IP) developed under the requirements of Subpart C—Power Marketing Initiative of the Energy Planning and Management Program (Program) Final Rule. Western has evaluated hydrologic studies that indicate, most importantly, the need to reduce the energy component of the Marketable Resources for the 20 years of the contract period. In fiscal year (FY) 2005 (beginning October 1, 2004), the energy component of the Marketable Resources begins at its lowest level and then gradually increases over the next 5 years. It reaches a level in the fifth year that remains constant through the remainder of the contracting period, subject to change only under the terms of the contract. Firm electric service contracts (Contracts) between Western and its existing and new customers will permit delivery to begin with the October 2004 billing period and continue through the September 2024 billing period (Contract Period).

DATES: The Determination of Marketable Resources will become effective June 21, 2004 and will be available for contracting October 1, 2004.

ADDRESSES: All documents developed or retained by Western in developing its determination of Marketable Resources are available for inspection and copying at the Colorado River Storage Project Management Center, 150 East Social Hall Avenue, Suite 300, Salt Lake City, UT 84111.

SUPPLEMENTARY INFORMATION: Western published its Final Post-2004 Resource Pool Allocation Procedures (Procedures) in the **Federal Register** (64 FR 48825, September 8, 1999) to implement Subpart C—Power Marketing Initiative of the Program's Final Rule (10 CFR 905), published in the **Federal Register** (60 FR 54151, October 20, 1995). The Program, developed in part to implement section 114 of the Energy Policy Act of 1992, became effective November 20, 1995. The goal of the Program is to require planning and efficient electric energy use by Western's long-term firm power customers and to extend Western's firm power resource commitments.

Following publication of the Procedures, Western executed amendments to all Contracts with existing firm electric service customers. These amendments specified that each existing customer would be provided its proportional share of 93 percent of the Marketable Resources for the Contract Period. The amendments also provided that prior to October 1, 2004, Western would solely determine the quantities of Marketable Resources (both capacity and energy), which would be available for the Contract Period. Western is announcing its determination of this marketable capacity and energy with this notice.

The remaining 7 percent of the Marketable Resources available for the Contracting Period, not extended on a proportional share basis to Western's existing customers, was used in accordance with the Procedures to establish a project-specific power resource pool that allocated power to new eligible customers.

The deadline for applications from new eligible customers was June 8, 2000, and Western received 66 applications. Following evaluation, proposed allocations for new customers were published in the **Federal Register** (66 FR 31910, June 13, 2001), and final allocations were published in the **Federal Register** (67 FR 5113, February 4, 2002). Adjusted final allocations were published in the **Federal Register** (67 FR 49019, July 29, 2002) due to minor inconsistencies in the treatment of the allocations for three applicants.

To the extent this Notice of Determination of Marketable Resources establishes the quantities of marketable capacity and energy available to all SLCA/IP customers as of October 1, 2004, the determination will also impact the 7 percent of capacity and energy to be proportionally allocated to the new customers.

In making its Determination of Marketable Resources, Western has consulted with its existing and new customers in an extensive process through meetings and in presentations to individual customers and customer groups. Western solicited comments about the proposal by providing each existing and new customer with written draft proposals. After Western carefully considered the comments received, a final proposal was developed and provided to the new and existing customers prior to the publication of this **Federal Register** notice. Western has also consulted with the Bureau of Reclamation (Reclamation) in making this determination.

Determination of Marketable Resources

A. Marketable Energy

Western has made the determination to reduce the amount of SLCA/IP marketable energy that will be available beginning October 1, 2004. Western believes this decision minimizes the financial impacts of drought conditions and will sustain the financial health of the SLCA/IP.

The reason for lowering the amount of marketable energy is the significant reduction in forecasted electrical generation from the SLCA/IP during the 20-year contract period. Drought conditions in the Upper Colorado River Basin during the last 5 years have significantly lowered reservoir storage levels and reduced water releases through the SLCA/IP power plants. These dry conditions resulted in

Western purchasing extraordinary quantities of energy to firm its contractual energy commitments. Western developed forecasts of SLCA/IP generation for the 20-year contract period based on projections of water releases through the SLCA/IP facilities. Because of the lowered reservoir levels, the near-term forecasts indicate the most severe reductions, and lower generation amounts are also forecasted for the entire 20-year contract period.

Western's determination of the marketable energy is calculated from Reclamation's hydrological projections. The table shows the SLCA/IP marketable energy available in each fiscal year. Beginning in FY 2005, the amount of marketable energy available will increase each year until the marketable energy level plateaus in FY 2009.

SLCA/IP MARKETABLE ENERGY LEVELS

[Excludes Reclamation Project Use Reservations]

Fiscal year	Marketable annual energy (GWh)
FY 2005 (10/1/04–9/30/05)	4,557.5
FY 2006 (10/1/05–9/30/06)	4,655.3
FY 2007 (10/1/06–9/30/07)	4,753.1
FY 2008 (10/1/07–9/30/08)	4,851.0
FY 2009–FY 2024 (10/1/08–9/30/24)	4,948.8

Western will support these yearly energy levels with any necessary firming purchases and establishing an appropriate firm power rate. Any future changes, if necessary, in levels of marketable energy will be made following the contract notification provisions.

Western recognizes the reduction in the amount of marketable energy may pose hardships for some customers. Western believes the reduction in marketable resources can be improved from time to time by providing Available Hydro Power (AHP) under the contract. Should hydrologic projections periodically improve to the extent energy is available from the SLCA/IP power plants in excess of marketable energy, Western will make AHP energy available to its customers.

B. Marketable Capacity

Western has decided to maintain SLCA/IP marketable capacity at present levels for the entire Contract Period. As previously published in the **Federal Register**, existing customers will be extended 93 percent of their current capacity allocations. New customers will receive the capacity allocations as published in the July 29, 2002, **Federal Register** (67 FR 49019).

Effect on Power Allocations

As detailed above, the determination of Marketable Resources will result in a reduction of previously published energy allocations to both existing and new customers. The determination will not result in a reduction of previously published capacity allocations. Allocations for existing customers were published April 2, 1987 (52 FR 10620), and revised August 24, 1989 (54 FR 35234). Some allocations may now differ due to contractual changes that have occured since the original publication. Allocations for new customers were published on July 29, 2002 (67 FR 49019). The new, reduced energy levels will be distributed to all firm electric service customers on a proportional basis and will be reflected in a new, revised Exhibit A for each customer. Western will be submitting a new, revised Exhibit A to each customer after the effective date of this notice.

Regulatory Procedure Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and if there is a legal requirement to issue a general notice of proposed rulemaking. This action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

Western completed an "Energy Planning and Management Program Environmental Impact Statement" (EIS) on the Program in 1995, pursuant to the National Environmental Policy Act (NEPA) of 1969, 42 U.S.C. 4321, *et seq.*; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR 1500–1508); and the DOE NEPA Implementing Procedures and Guidelines (10 CFR 1021). The Record of Decision was published in the **Federal Register** (60 FR 53181, October 12, 1995). Western's NEPA review assured all environmental effects related to these procedures had been analyzed. The application of the Program's Power Marketing Initiative to the SLCA/IP was specifically addressed in another EIS, the "Salt Lake City Area Integrated Projects Electric Power Marketing Final Environmental Impact Statement," published in January 1996. The Record of Decision for this EIS was published in the **Federal Register** on November 1, 1996 (61 FR 56534). The Power Marketing Initiative was applied under the provisions of the approved Program, and public notice of the specific terms was published in the **Federal Register** on June 25, 1999 (64 FR 34414). Final allocations from the SLCA/IP resource pool were also published in the **Federal Register** (67 FR 49019, July 29, 2002). The two referenced EISs and associated Records of Decision provide adequate NEPA review for the determination of SLCA/IP marketable resources addressed in this notice.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: May 10, 2004.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 04–11413 Filed 5–19–04; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7664–6]

Meetings of the Ozone Transport Commission and Mid-Atlantic/Northeast Visibility Union

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the 2004 Annual Meetings of the Ozone Transport Commission (OTC) and the Mid/Atlantic/Northeast Visibility Union (MANE–VU). The OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context, particularly from the transportation sector. The MANE–VU meeting will provide an update of states' progress towards developing state implementation plans (SIPs) for visibility, particularly the determination

of sources contributing toward visibility degradation in Class I areas and the establishment of a baseline for natural visibility levels.

DATES: The OTC meeting will be held on June 8, 2004, and June 9, 2004, starting at 1 p.m. (e.d.t.); the MANE-VU meeting will be held on June 10, 2004, starting at 9 a.m. (e.d.t.).

ADDRESSES: The Crystal Point Hotel, 146 Bodman Place, Red Bank, New Jersey 07701; (732) 747–2500.

FOR FURTHER INFORMATION CONTACT: Judith M. Katz, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; (215) 814–2100.

For Documents and Press Inquiries Contact: Ozone Transport Commission, 444 North Capitol Street, NW., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: otcair.org; Web site: *http://www.otcair.org/*.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an "Ozone Transport Region" (OTR) comprised of the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia. The purpose of the Ozone Transport Commission is to deal with ground level ozone formation, transport, and control within the OTR. The MANE–VU is comprised of the states of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, the District of Columbia, and the Tribes within those states. The purpose of MANE–VU is to address Regional Haze and visibility goals.

The purpose of this notice is to announce that the OTC and MANE–VU will meet on June 8 through June 10, 2004. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of the Ozone Transport Commission and MANE–VU are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

Type of Meeting: Open.

Agenda: Copies of the final agenda will be available from the OTC office (202) 508–3840 (by e-mail: otcair.org or via our Web site at *http://www.otcair.org/*) by Friday, May 28, 2004. The purpose of these meetings is to discuss ways in which OTC and MANE–VU states and Tribes can meet their statutory and regulatory responsibilities under the Clean Air Act. The OTC meeting will explore options available for reducing ground-level ozone precursors in a multi-pollutant context, particularly from the transportation sector. The MANE-VU meeting will provide an update of states' progress towards developing state implementation plans (SIPs) for visibility, particularly the determination of sources contributing toward visibility degradation in Class I areas and the establishment of a baseline for natural visibility levels. These meetings are not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

Dated: May 13, 2004.

Richard J. Kampf,

Acting Regional Administrator, Region III.

[FR Doc. 04–11436 Filed 5–19–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7665–5]

Peer Consultation Workshop on Physiologically-Based Pharmacokinetic Modeling of Trichloroethylene and Its Metabolites

AGENCY: Environmental Protection Agency.

ACTION: Notice of a peer consultation workshop and public meeting.

SUMMARY: The U.S. Air Force (USAF) and the U.S. Environmental Protection Agency (EPA) are jointly announcing that Toxicology Excellence for Risk Assessment (TERA), under contract to the USAF, will convene a panel of experts and organize and conduct a peer consultation workshop to discuss physiologically-based pharmacokinetic (PBPK) modeling of trichloroethylene (TCE) and its metabolites. The public is invited to attend this workshop.

DATES: The one-day peer consultation workshop will be held on June 29, 2004, from 8 a.m. to 4:30 p.m.

ADDRESSES: The peer consultation workshop will be held at Marriott Kingsgate Conference Center at the University of Cincinnati, Cincinnati, OH. TERA, under contract to the USAF, is organizing, convening, and conducting the peer consultation workshop. To attend the workshop as an observer, register by sending an e-mail to Patricia Nance at *nance@tera.org*. If you wish to make comments available to panel for consideration, please provide them to TERA before June 18, 2004. You can also call Patricia Nance at 513–542–7475 ext. 25, or send a facsimile to 513–542–7487. The availability of the draft workgroup document will be announced on the TERA Web site at *http://www.tera.org/vera/TCEwelcome.htm*.

FOR FURTHER INFORMATION CONTACT: For more information on the workshop, contact Dr. Jay Zhao, TERA; telephone: 513–542–7475 ext. 16; facsimile: 513–542–7487; or e-mail: *zhao@tera.org*. Additional information on this joint USAF–EPA effort, including workshop information, registration, and logistics, will be available on the TERA Web page at *http://www.tera.org/vera/TCEwelcome.htm*. The USAF contact for this project is Dr. Brian Howard; telephone: (210) 536–4548; facsimile: (210) 536–1130 or e-mail: *Brian.Howard@brooks.af.mil*. The EPA contact for this project is Dr. Weihsueh Chiu; telephone: (202) 564–7789; facsimile: (202) 565–0079; or e-mail: *chiu.weihsueh@epa.gov*.

SUPPLEMENTARY INFORMATION:

Background Information

The USAF and EPA are announcing a public peer consultation workshop to discuss physiologically-based pharmacokinetic (PBPK) modeling of trichloroethylene (TCE) and its metabolites. A joint USAF–EPA workgroup, with support from *TERA* under contract to the USAF, has been working to develop a harmonized PBPK model for TCE and its metabolites based on the most recent science and data. The joint USAF–EPA workgroup's efforts will be summarized in a draft document that will be the basis of the peer consultation, and which will be made available to the public several weeks before the workshop. The workgroup will consider advice obtained from the peer consultation in revising and calibrating its harmonized PBPK model, and in developing its final report. The results of this joint USAF–EPA project will serve as important input to ongoing TCE risk assessment activities, including a planned multi-agency consultation with the National Academy of Sciences on TCE science issues as well as EPA's revised TCE human health risk assessment.

Dated: May 13, 2004.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 04–11437 Filed 5–19–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Correction—National Advisory Council for Healthcare Research and Quality; Request for Nominations for Public Members

The original notice was published in the **Federal Register** on May 6, 2004 under Volume 69, Number 88, Pages 25391–25392 *(http://a257.g.akamaitech.net/7/257/2422/14mar* 20010800/edocket.access.gpo.gov/2004/04–10283.htm). With this notice, the Agency for Healthcare Research and Quality (AHRQ) is informing the public that the correct contact numbers are: Phone #: 301–427–1330 and Fax # 301–427–1341.

Dated: May 13, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–11372 Filed 5–19–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Opportunity To Collaborate in the Evaluation of Topical Microbicides To Reduce Sexual Transmission of Human Immunodeficiency Virus (HIV)

AGENCY: Centers for Disease Control and Prevention, Department of Health and Human Services (HHS).

ACTION: Opportunities for collaboration for evaluation of topical microbicides.

The Centers for Disease Control and Prevention (CDC), National Center for HIV, STD, and TB Prevention (NCHSTP), Division of HIV/AIDS Prevention-Surveillance and Epidemiology (DHAP–SE), Epidemiology Branch (EpiBr), announces an opportunity for collaboration to evaluate the safety and preliminary efficacy of topical microbicides designed for vaginal and/or rectal application to reduce HIV transmission. These evaluations will include in-vitro assays, macaque studies, and phase I/phase II trials in women and men.

SUMMARY: The Division of HIV/AIDS Prevention-Surveillance and Epidemiology (DHAP–SE) of the National Center of HIV, STD, and TB Prevention (NCHSTP) at the Centers for Disease Control and Prevention (CDC) of the Department of Health and Human Services (DHHS) seeks one or more pharmaceutical, biotechnical, or other companies that hold a proprietary position on agents which may be useful as microbicides to prevent sexual transmission of HIV infection. The selected company and CDC will execute an Agreement under which the company will provide a product for CDC to study the product's safety and preliminary efficacy as a topical microbicide. Initial studies will include in-vitro assays and may include macaque studies. Agents will be selected for phase I and phase II trials in women and men based upon data obtained in the CDC studies as well as other available published and unpublished safety and efficacy data. Each collaboration would have an expected duration of one (1) to five (5) years. The goals of the collaboration include the timely development of data to further the identification and commercialization of effective topical microbicides and the rapid publication of research findings to increase the number of HIV prevention technologies proven effective and available for use.

Confidential proposals, preferably 10 pages or less (excluding appendices), are solicited from companies with patented or licensed agents which have undergone sufficient preclinical testing to be prepared to submit an Investigational New Drug (IND) application to the FDA within six months of submitting the proposal.

DATES: This Notice will be open indefinitely.

ADDRESSES: Formal proposals should be submitted to Carmen Villar, Epidemiology Branch, Division of HIV/AIDS Prevention—Surveillance and Epidemiology, NCHSTP, CDC, 1600 Clifton Road, Mailstop E–45, Atlanta, GA 30333; Phone: (direct) 404–639–5259, (office) 404–639–6130; Fax: 404–639–6127; e-mail: *CVillar@cdc.gov.* Scientific questions should be addressed to Lisa A. Grohskopf, MD, MPH, Epidemiology Branch, Division of HIV/AIDS Prevention—Surveillance and Epidemiology, NCHSTP, CDC, 1600 Clifton Road, Mailstop E–45, Atlanta, GA 30333; Phone: (direct) 404–639–6116, (office) 404–639–6146; Fax: 404–639–6127; e-mail: *lkg6@cdc.gov.* Inquiries directed to "Agreement" documents related to participation in this opportunity should be addressed to Thomas E. O'Toole, MPH, Deputy Director, Technology Transfer Office, CDC, 1600 Clifton Road, Mailstop K–79, Atlanta, GA 30333; Phone: (direct) 770–488–8611, (office) 770–488–8607; Fax: 770–488–8615; e-mail: *TEO1@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Technology Available

One mission of the Epidemiology Branch (EpiBr) of DHAP–SE/NCHSTP is to develop and evaluate biomedical interventions to reduce HIV transmission. To this end, the EpiBr is establishing contracts to conduct phase I and phase II trials of topical microbicides. EpiBr also funds research in the Division of AIDS, STD, and TB Laboratory Research (DASTLR) of the National Center for Infectious Diseases (NCID) at CDC and with external laboratories to conduct macaque studies and in-vitro studies in support of human microbicide trials. The goal of these efforts is to provide scientific and technical expertise and key resources for the evaluation of topical microbicides through late preclinical, phase I and phase II safety and phase II efficacy clinical trials.

Technology Sought

EpiBr now seeks potential collaborators having licensed or patented agents for use as vaginal and/or rectal microbicides which:

(1) Have laboratory or animal model evidence of anti-HIV activity;

(2) Have been formulated for vaginal or rectal application;

(3) Are not entering phase III clinical trial in the next 12 months;

(4) Have sufficient preclinical data to submit an IND application within approximately six months following submission of proposal; and

(5) Have manufacturing arrangements for production of clinical trial-grade product (and applicator if necessary) under Good Manufacturing Process (c–GMP) standards.

NCHSTP and Collaborator Responsibilities

The NCHSTP anticipates that its role may include, but not be limited to, the following:

(1) Providing intellectual, scientific, and technical expertise and experience to the research project;

(2) Planning and conducting preclinical (in-vitro and in-vivo) research studies of the agent and interpreting results;

(3) Publishing research results;

(4) Depending on the results of these preclinical investigations, NCHSTP may elect to conduct additional research with macaques to evaluate safety and/or efficacy proof-of-concept; and

(5) Depending on the results of preclinical and/or macaque studies and FDA approval, NCHSTP may elect to conduct phase I/II clinical trials of the agent.

The NCHSTP anticipates that the role of the successful collaborator(s) will include the following:

(1) Providing intellectual, scientific, and technical expertise and experience to the research project;

(2) Participating in the planning of research studies, interpretation of research results, and as appropriate, joint publication of conclusions;

(3) Providing NCHSTP access to necessary proprietary technology and/or data in support of the research activities; and

(4) Providing NCHSTP clinical grade (c-GMP) agent for use in preclinical and clinical studies covered in this collaboration.

Other contributions may be necessary for particular proposals.

Selection Criteria

In addition to evidence of the ability to fulfill the roles described above, proposals submitted for consideration should address, as best as possible and to the extent relevant to the proposal, each of the following:

(1) Data on the in-vitro anti-HIV activity of the agent;

(2) Animal and other data on the safety of the agent when applied to mucosal surfaces;

(3) Data on the effects of the agent on vaginal and/or rectal commensal microbial organisms; and

(4) Data on the in-vitro activity of the agent against other sexually transmitted organisms.

Dated: May 14, 2004.

James D. Seligman,

Associate Director for Program Services, Centers for Disease Control and Prevention.

[FR Doc. 04–11402 Filed 5–19–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0221]

Medicare Prescription Drug, Improvement, and Modernization Act of 2003; Study on Making Prescription Pharmaceutical Information Accessible for Blind and Visually-Impaired Individuals; Establishment of Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is establishing a docket to receive information and comments on certain issues related to the accessibility of pharmaceutical information to blind and visually-impaired individuals. This action is intended to ensure that there is a venue for information and comments to be communicated to the agency for consideration in a study on making prescription drug information accessible for blind and visually-impaired individuals, which was mandated by the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Medicare Modernization Act).

DATES: The agency encourages interested parties to submit information and comments by June 21, 2004.

ADDRESSES: Submit written comments and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm.1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Poppy Kendall, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360, e-mail: *poppy.kendall@fda.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On December 8, 2003, President Bush signed the Medicare Modernization Act (Public Law 108–173). Section 107(f) of this legislation requires that the Secretary of Health and Human Services undertake a study on how to make prescription pharmaceutical information, including drug labels and usage instructions, accessible to blind and visually-impaired individuals. The legislation requires that the study "include a review of existing and emerging technologies, including assistive technology, that makes essential information on the content and prescribed use of pharmaceutical medicines available in a usable format for blind and visually-impaired individuals."

II. Request for Comments

To assist in this effort, we are asking for public comment on the following issues:

A. Information About the Population of Interest:

1. What is known about the population of people who are blind and visually-impaired in the United States (e.g., information on age of onset; cause of impairment (e.g., congenital defect versus disease-related versus injury); extent and type of impairment; association between visual impairment and age, hearing loss, comorbidities, health outcomes, socioeconomic status, health literacy, and adaptive learning capabilities)?

2. Is there an appropriate way to divide this population into subpopulations to better evaluate needs and beneficial technologies?

B. Information About the Use of Prescription Medication Information By People Who Are Blind or Visually-Impaired:

1. How do people who are blind and visually-impaired currently get their prescription drug information?

2. What aspects of visual impairment are important to addressing the issue of access to prescription drug information? What other factors (see examples listed in Question #A1) might be important to addressing this issue?

3. How can essential drug information be effectively communicated to people who are blind or visually impaired?

4. Are there data associating medication errors with blindness? With visual impairment? What types of medication errors are most common among people who are blind or visually impaired?

C. Information About Existing and Emerging Technologies (Including Internet-based Information Sources):

1. What assistive technologies are currently used by people who are blind or visually-impaired? In what setting?

2. What proportion of people who are blind and visually-impaired currently use these technologies? Are there specific characteristics (see examples listed in Question #A1) of this "user" population that distinguish them from blind and visually-impaired individuals who do not use these technologies?

3. Are there data on the effectiveness of these technologies?

4. Do these technologies contribute to an increase or decrease in medication errors reported amongst people who are blind or visually impaired?

5. What is the cost of these technologies?

6. Who are the primary purchasers of these technologies? Is use of these technologies currently subsidized by any government or private program?

7. What are barriers to use of these assistive technologies?

8. What is the practicability of these assistive technologies?

9. How do people who are blind or visually-impaired learn of these technologies?

9a. What are the most effective resources for conveying information about these assistive technologies to blind and visually impaired individuals.

10. Are there emerging technologies that show promise? If so, what is the

anticipated cost and timeline for market entry?

III. Submission of Comments

All comments submitted to the public docket are public information and may be posted to FDA's Web site at: *http://www.fda.gov* for public viewing. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be reviewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 12, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–11365 Filed 5–19–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0468]

Guidance for Industry on the Manufacture and Labeling of Raw Meat Foods for Companion and Captive Noncompanion Carnivores and Omnivores; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance for industry (#122) entitled "Manufacture and Labeling of Raw Meat Foods for Companion and Captive Noncompanion Carnivores and Omnivores." The purpose of this document is to provide guidance on the manufacture and labeling of foods that contain raw meat, or other raw animal tissues, for consumption by dogs, cats, other companion or pet animals, and captive noncompanion animal carnivores and omnivores.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the guidance document to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http:///www.fda.gov/dockets/ecomments*. Comments should be identified with the full title of the guidance document and the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: William Burkholder, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0179, e-mail: *William.burkholder@fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 18, 2002 (67 FR 77500), FDA published a notice of availability for a draft guidance entitled "Draft Guidance for Industry on Manufacture and Labeling of Raw Meat Foods for Companion and Captive Noncompanion Carnivores and Omnivores." FDA gave interested persons until March 3, 2003, to comment. FDA considered all comments received and, where appropriate, incorporated them into the guidance.

II. Paperwork Reduction Act of 1995

According to the Paperwork Reduction Act of 1995, a collection of information should display a valid OMB control number. This guidance contains no collections of information.

III. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking about the manufacture and labeling of raw meat foods for companion and captive noncompanion carnivores and omnivores. It does not create or confer any rights for or on any person and will not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

IV. Comments

As with all of FDA's guidance, the public is encouraged to submit written or electronic comments on this guidance. FDA periodically will review the comments in the docket and, where appropriate, will amend the guidance.

Interested persons may, at any time, submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**) regarding this guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

Electronic comments may be submitted on the Internet at *http://www.fda.gov/dockets/ecomments*. Once on this site, select [2002D–0468] "Manufacture and Labeling of Raw Meat Foods for Companion and Captive Noncompanion Carnivores and Omnivores" and follow the directions. Copies of this guidance may be obtained on the Internet at *http://www.fda.gov/cvm/guidance/published.htm*.

Dated: May 12, 2004.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 04–11366 Filed 5–19–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Guidance and Forms for the Title V Section 510 Abstinence Education Grant Program Application/Annual Report—NEW

The Application Guidance for Section 510 of the Social Security Act is used annually by all States and jurisdictions in applying for Abstinence Education Block Grants under Section 510 of Title

V of the Social Security Act, and in preparing the required annual report. This guidance provides guidelines to the State Maternal and Child Health Agencies (MCH) on how to apply for the appropriated Section 510 Abstinence Education funds.

The Section 510 Abstinence Education Grant program enables States to provide abstinence education, and at the option of States, where appropriate, mentoring, counseling, and adult supervision to promote abstinence from sexual activity, with a focus on those groups most likely to bear children out-of-wedlock. Projects must meet the legislative requirements as provided in Section 510 of Title V of the Social Security Act. State agencies funded under the program are required to report annually on four national performance measures and a minimum of two State-developed performance measures.

The guidance used annually by the 47 States and 4 jurisdictions that have applied for and received Section 510 Abstinence Education Grant funding have an estimated average burden of 170 hours. The burden estimate for this activity is based upon information provided by the pilot States as well as previous experience by States in completing the application. The estimated response burden is as follows:

Application and report	Number of respondents	Responses per respondent	Total responses	Burden hours per response	Total burden hours
States and Jurisdictions	51	1	51	170	8,670

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Desk Officer, Health Resources and Services Administration, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 14, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–11367 Filed 5–19–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Border and Transportation Security Directorate

Submission for Review; Extension of Currently Approved Information Collection Requests for United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT)

AGENCY: Border and Transportation Security Directorate, DHS.

ACTION: Notice; 30-day notice of information collections under review.

SUMMARY: The Department of Homeland Security (DHS) has submitted the following information collection request (ICR) 1600–0006 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 January 5, 2004, at 69 FR 479, allowing for OMB review and a 60-day public comment period. Comments received by DHS are being reviewed as applicable. The purpose of this notice is to allow an additional 30 days for public comments on the information collections under review.

DATES: Comments are encouraged and will be accepted until June 21, 2004.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice should be directed to Desk Officer for Homeland Security, Room 10235, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Steve Yonkers, Privacy Officer, US–VISIT, (202) 298–5200 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: This process is conducted in accordance with 5 CFR 1320.10. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Paperwork Reduction Act Contact listed above. The Office of Management and Budget is particularly interested in comments which:

(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 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 submissions of responses.

Analysis

Agency: Border and Transportation Security Directorate, Department of Homeland Security.

Title: United States Visitor and Immigrant Status Indicator Technology Program (US–VISIT).

Title of Form: No form. Collection of biometrics will be in electronic or photographic format.

OMB Number: 1600–0006.

Frequency: On occasion.

Affected Public: Individual aliens. Non-immigrant visa holders who seek admission to the United States at air and sea ports of entry and designated departure locations.

Estimate Number of Respondents: From January 5, 2004, to January 5, 2005, the number of nonimmigrant visa-holders required to provide biometrics at the air and sea ports of entry is anticipated to be approximately 24 million, comprised of approximately 19.3 million air travelers and 4.5 million sea travelers.

Estimated Time per Respondent: The average processing time per person for whom biometrics will be collected is approximately one minute and fifteen seconds at entry, with 15 seconds being the additional time added for biometric collection over and above the normal inspection processing time. The average additional processing time upon exit is estimated at one minute per person. There are no additional fees for traveling aliens to pay.

Estimated Burden Hours: Approximately 100,800.

Total Burden Cost (Capital/Startup): None.

Total Burden Cost (Operating/Maintaining): None.

Description: The biometric information to be collected is for nonimmigrant visa holders who seek admission to the United States at the air and sea ports of entry, and certain

departure locations. The collection of information is necessary for the Department to continue its compliance with the mandates in section 303 of the Border Security Act, 8 U.S.C. 1732 and sections 403(c) and 414(b) of the USA PATRIOT Act, 8 U.S.C. 1365a note and 1379, for biometric verification of the identities of alien travelers and authentication of their biometric travel documents through the use of machine readers installed at all ports of entry. The arrival and departure inspection procedures are authorized by 8 U.S.C. 1225 and 1185.

Dated: May 17, 2004.

Mark Emery,

Chief Information Officer, Deputy CIO for DHS.

[FR Doc. 04–11431 Filed 5–19–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2004–17659]

Compass Port LLC Liquefied Natural Gas Deepwater Port License Application

AGENCY: Coast Guard, DHS, and Maritime Administration, DOT.

ACTION: Notice of application.

SUMMARY: The Coast Guard and the Maritime Administration (MARAD) give notice, as required by the Deepwater Port Act of 1974, that they have received an application for the licensing of a liquefied natural gas (LNG) deepwater port, and that the application appears to contain the required information. This notice summarizes the applicant's plans and the procedures that will be followed in considering the application.

DATES: Any public hearing held in connection with this application must be held no later than January 17, 2005, and it would be announced in the **Federal Register**. A decision on the application must be made within 90 days after the last public hearing held on the application.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2004–17659 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) 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. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call Lieutenant Commander Kevin Tone at 202–267–0226, or e-mail at *ktone@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

You may submit comments concerning this application. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use their Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2004–17659), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Receipt of application; determination. On March 29, 2004, the Coast Guard and MARAD received an application from Compass Port LLC (Compass Port), a wholly owned subsidiary of ConocoPhillips Company, PO Box 2197, Houston, Texas 77252–2197 for all federal authorizations required for a license to own, construct and operate a deepwater port off the coast of Alabama. The application was received on March 29, 2004. A portion of the initial submission was in a format not compatible with our software. However, by mid-April, we had received the information in a suitable format to allow us to complete our review. On April 27, 2004, we determined that the application contains all information required by the Deepwater Port Act of 1974, as amended, 33 U.S.C. 1501 *et seq.* ("the Act"). The application and related documentation supplied by the applicant (except for certain protected information specified in 33 U.S.C. 1513) will be made available for viewing in the public docket (see **ADDRESSES**).

Background. According to the Act, a deepwater port is a fixed or floating manmade structure other than a vessel, or a group of structures, located beyond State seaward boundaries and used or intended for use as a port or terminal for the transportation, storage, and further handling of oil or natural gas for transportation to any State.

A deepwater port must be licensed, and the Act provides that a license applicant submit detailed plans for its facility to the Secretary of Transportation, along with its application. The Secretary has delegated the processing of deepwater port applications to the U.S. Coast Guard and MARAD. The Act allows 21 days following receipt of the application to determine if it contains all required information. If it does, we must publish a notice of application in the **Federal Register** and summarize the plans. This notice is intended to meet those

requirements of the Act and to provide general information about the procedure that will be followed in considering the application.

Application procedure. The application is considered on its merits. Under the Act, we must hold at least one public hearing within 240 days from the date this notice is published. A separate **Federal Register** notice will be published to notify interested parties of any public hearings that are held. At least one public hearing must be held in each adjacent coastal state. Pursuant to 33 U.S.C. 1508, we designate Alabama as an adjacent coastal state for this application. Other states may apply for adjacent coastal state status in accordance with 33 U.S.C. 1508 (a)(2). After the last public hearing, Federal agencies have 45 days in which to comment on the application, and approval or denial of the application must follow within 90 days of the last public hearing. Details of the application process are described in 33 U.S.C. 1504 and in 33 CFR part 148.

Summary of the application. The application plan calls for the proposed deepwater port to be located in the Mobile Outer Continental Shelf (OCS) and Mississippi Sound areas of the U.S. Gulf of Mexico, approximately 11 miles off Dauphin Island, Alabama in lease block Mobile 910. Compass Port would serve as an LNG receiving, storage, and regasification facility, located in approximately 70 feet of water depth, and will incorporate docking facilities, unloading facilities, two LNG storage tanks, regasification facilities, an offshore pipeline and support facilities.

Compass Port proposes the installation of approximately 26.8 miles of 36-inch diameter natural gas transmission pipelines on the OCS. The proposed pipeline would connect the deepwater port with existing gas distribution pipelines near Coden, Alabama.

The deepwater port facility would consist of two concrete gravity-based structures (GBS) that would contain the LNG storage tanks, LNG carrier berthing provisions, LNG unloading arms, low and high pressure pumps, vaporizers, metering, utility systems, general facilities and accommodations. The terminal would be able to receive LNG carriers up to 255,000 cubic meters cargo capacity. LNG carrier arrival frequency would be planned to match specified terminal gas delivery rates. LNG would be stored in two integral full-containment tanks, each with a capacity of 150,000 cubic meters, and a combined capacity of 300,000 cubic meters of LNG.

The regasification process would consist of lifting the LNG from the storage tanks, pumping the LNG to pipeline pressure, vaporizing across heat exchanging equipment, and sending out through the pipeline to custody transfer metering for ultimate delivery to downstream interstate pipeline capacity. No gas conditioning is required since the incoming LNG will meet the gas quality specifications of the downstream pipelines.

The deepwater port would be designed to handle a nominal capacity of 7.5 million metric tons per annum of LNG. This is equivalent to an average delivery of approximately 1.02 billion cubic feet per day (bcf/d) of pipeline quality gas.

Dated: May 12, 2004.

Howard L. Hime,

Acting Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

Raymond R. Barberesi,

Director, Office of Ports and Domestic Shipping, U.S. Maritime Administration.

[FR Doc. 04–11391 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the USGS Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made within 60 days directly to the USGS Clearance Officer, U.S. Geological Survey, 807 National Center, Reston, VA 20192.

As required by OMB regulations at CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments regarding the proposed information collection as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the USGS, including whether the information will have practical utility;

2. The accuracy of the USGS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The utility, quality, and clarity of the information to be collected; and,

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Consolidated Consumers' Report.

Current OMB approval number: 1028–0070.

Abstract: Respondents supply the U.S. Geological Survey with domestic consumption data of 12 metals and ferroalloys, some of which are considered strategic and critical. This information will be published as chapters in Minerals Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications, for use by Government agencies, industry, education programs, and the general public.

Bureau form number: 9–4117–MA.

Frequency: Monthly and Annually.

Description of respondents: Consumers of ferrous and related metals.

Annual Responses: 2,278.

Annual burden hours: 1,709.

Bureau clearance officer: John E. Cordyack, Jr., 703–648–7313.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. 04–11422 Filed 5–19–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–81053]

Notice of Invitation To Participate in Coal Exploration Program

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation to participate in Coal Exploration program Canyon Fuel Company, LLC, Muddy Tract, in Muddy Creek—Greens Hollow Area. Canyon Fuel Company is inviting all qualified parties to participate in its proposed exploration of certain Federal coal deposits in Sanpete and Sevier Counties, Utah.

SUPPLEMENTARY INFORMATION: This notice of invitation to participate in Coal Exploration program Canyon Fuel Company, LLC, Muddy Tract, Muddy Creek—Greens Hollow Area. Canyon Fuel Company, LLC is inviting all

qualified parties to participate in its proposed exploration of certain Federal coal deposits in the following described lands in Sanpete and Sevier Counties, Utah:

T. 20 S., R. 5 E., SLM, Utah
Sec. 20, SE;
Sec. 29, All;
Sec. 32, N2;
Sec. 33, NW.
Containing 1,280.00 acres.

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145, and to Mark Bunnell, Mine Geologist, Canyon Fuel Company, LLC, Skyline Mine, HC 35 Box 380, Helper, Utah 84526. Such written notice must be received within thirty days after publication of this notice in the **Federal Register**.

Any party wishing to participate in this exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rata basis.

An exploration plan submitted by Canyon Fuel Company, LLC, detailing the scope and timing of this exploration program is available for public review during normal business hours in the public room of the BLM State Office, 324 South State Street, Salt Lake City, Utah, under serial number UTU–81053.

FOR FURTHER INFORMATION CONTACT: Bill Buge, Salt Lake City, Bureau of Land Management, (801) 539–4086.

Kent Hoffman,

Deputy State Director, Lands and Minerals.

[FR Doc. 04–11378 Filed 5–19–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Savage Rapids Pumping Facilities/Dam Removal Project, Josephine County, Rogue River Basin, OR

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental assessment (EA) to determine need for a supplemental environmental impact statement (EIS).

SUMMARY: Section 220 of the fiscal year 2004 Energy and Water Appropriations Bill (Pub. L.108–137) authorized the Secretary of the Interior to construct pumping facilities and remove Savage Rapids Dam. These actions were evaluated in a 1995 EIS prepared by the Bureau of Reclamation. Modifications to the preferred alternative identified in the 1995 EIS are now being considered. Reclamation, pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, will prepare an EA to determine if the proposed modifications would result in significant impacts not addressed in the 1995 EIS. If the EA indicates that such impacts are likely, Reclamation intends to prepare a supplemental EIS.

DATES: Written comments identifying issues and concerns regarding the proposed project's environmental effects will be accepted until June 21, 2004.

ADDRESSES: Comments and requests to be added to the mailing list may be submitted to the Bureau of Reclamation, Pacific Northwest Regional Office, Attention: Robert Hamilton (PN–6309), 1150 North Curtis Road, Suite 100, Boise, ID 83706–1234.

FOR FURTHER INFORMATION CONTACT: Robert Hamilton, Bureau of Reclamation, telephone: 208–378–5087, fax: 208–378–5102, or by e-mail at *Savage_Rapids@pn.usbr.gov*. The hearing impaired may contact Mr. Hamilton at the above number via a toll free TTY relay: 1–800–833–6388.

SUPPLEMENTARY INFORMATION:

Background

Savage Rapids Dam is located on the Rogue River in southwestern Oregon, about 5 miles east of the city of Grants Pass. The privately owned dam is the primary irrigation diversion facility of the Grants Pass Irrigation District (GPID).

Fish passage at Savage Rapids Dam has been an issue since the dam was constructed in 1921 by the GPID. The concrete structure has a height of 39 feet. A fish ladder was constructed on the north side at the time the dam was built and a ladder on the south side was completed in 1934. Rotating fish screens were an initial part of the gravity diversion. Early attempts to screen the pumping diversion were unsuccessful, and it remained essentially unscreened until 1958. Fish passage improvements made in the late 1970's helped reduce losses, but fish passage problems continue. The existing fish screens at the pump intake do not meet current criteria of the National Oceanic and Atmospheric Administration (NOAA) Fisheries.

An EIS for Fish Improvements at Savage Rapids Dam was issued in August 1995. A Record of Decision was issued in March 1997 indicating that Reclamation would not pursue implementation of the preferred alternative (installation of pumping plants with dam removal) identified in the EIS because of lack of public support.

In 1997 the National Marine Fisheries Service (now NOAA Fisheries) listed the Southern Oregon-Northern California coho salmon as threatened. In August 2001, a Consent Decree was issued to settle a pending Federal court case against GPID under the Endangered Species Act and a water right cancellation case pending in the Supreme Court of the State of Oregon. The Consent Decree provided that the GPID should seek authorization and funding for implementing the Pumping/Dam Removal Plan as identified in the 1995 EIS, and that the GPID must cease operating the Dam as its diversion facility by November 1, 2005, with an extension to November 1, 2006, if necessary. Section 220 of the fiscal year 2004 Energy and Water Appropriations Bill (Pub. L. 108–137) authorized the Secretary of the Interior to construct pumping facilities and remove Savage Rapids Dam.

The general need for the project remains the same as identified in the 1995 EIS: to improve fish passage while maintaining a water diversion for the GPID. The original preferred alternative included two pumping stations (one located on each side of the river) and full dam removal. Modifications now being considered include substituting a single large pumping station for the two originally-planned stations; constructing an overhead pipeline crossing the river; and using some of the existing dam piers to support a pipe bridge or constructing new piers. Alternatives related to pump station location may also be evaluated. Cost-saving measures, including leaving portions of the dam abutments in place, are also under consideration.

Reclamation will prepare an EA to update the analysis in the 1995 EIS and determine if significant impacts not identified in the 1995 EIS would result from possible modifications to the original preferred alternative. If the EA indicates that such impacts are likely, Reclamation intends to prepare a supplemental EIS.

Identity Disclosure

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or

address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: April 17, 2004.

J. William McDonald,

Regional Director, Pacific Northwest Region.

[FR Doc. 04–11403 Filed 5–19–04; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Meeting of the Yakima River Basin Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, WA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Yakima River Basin Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington, established by the Secretary of the Interior, will hold a public meeting. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary and the State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Friday, June 4, 2004, 9 a.m.–4 p.m.

ADDRESSES: Bureau of Reclamation Office, 1917 Marsh Road, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. James Esget, Manager, Yakima River Basin Water Enhancement Project, 1917 Marsh Road, Yakima, Washington, 98901; (509) 575–5848, extension 267.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review the reduction of flows in drains due to conservation and develop recommendations. This meeting is open to the public.

Dated: May 7, 2004.

James A. Esget,

Program Manager.

[FR Doc. 04–11404 Filed 5–19–04; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–487]

In the Matter of Certain Agricultural Vehicles and Components Thereof; Notice of Issuance of General Exclusion Order, Limited Exclusion Orders, and Cease and Desist Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to issue a general exclusion order, two limited exclusion orders, and cease and desist orders in the above-captioned investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3090. Copies of the ALJ's ID and all other 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. 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–ON–LINE) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 13, 2003, based on a complaint filed by Deere & Company ("Deere") of Moline, Illinois. 68 FR 7388 (February 13, 2003). The complaint, as supplemented 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 agricultural vehicles and components thereof by reason of infringement and dilution of U.S. Registered Trademarks Nos. 1,254,339; 1,502,103; 1,503,576; and 91,860.

On August 27, 2003, the Commission issued notice that it had determined not to review Order No. 14, granting complainant's motion to amend the complaint and notice of investigation to add U.S. Trademark Registration No. 2,729,766.

On November 14, 2003, the Commission issued notice that it had determined not to review Order No. 29, granting complainant's motion for summary determination that complainant had met the technical prong of the domestic industry requirement.

Twenty-four respondents were named in the Commission's notice of investigation. Several of these have been terminated from the investigation on the basis of consent orders. Several other respondents have been found to be in default.

On January 13, 2004, the presiding administrative law judge ("ALJ") issued his final initial determination ("ID") finding a violation of section 337. He also recommended the issuance of remedial orders. Two groups of respondents petitioned for review of the ID. Complainant and the Commission investigative attorney ("IA") filed oppositions to those petitions.

On February 18, 2004, the Commission issued notice that it had decided to extend the time to determine whether to review the ID to March 29, 2004, and to extend the target date for completing the investigation to May 13, 2004.

On March 30, 2004, the Commission issued notice that it had decided not to review the ID and set a schedule for written submissions on remedy, the public interest, and bonding. Complainant, respondents, and the IA timely filed such submissions.

Having examined the relevant portions of the record in this investigation, including the ALJ's recommended determination, the written submissions on remedy, public interest, and bonding, and the replies thereto, the Commission determined to issue (1) a general exclusion order prohibiting the unlicensed entry for consumption of European version self-propelled forage harvesters manufactured by or under the authority of Deere & Co. which infringe any of the asserted trademarks, (2) a limited exclusion order prohibiting the unlicensed entry for consumption of European version telehandlers manufactured by or under the authority of Deere & Co. which infringe any of the asserted trademarks, (3) a limited exclusion order prohibiting the unlicensed entry for consumption of agricultural tractors which infringe one or more of U.S. Registered Trademarks Nos. 1,254,339; 1,502,103; and 1,503,576, (4) cease and desist orders to

certain respondents prohibiting activities concerning the importation and sale of European version self-propelled forage harvesters manufactured by or under the authority of Deere & Co. which would constitute infringement of any of the asserted trademarks, (5) cease and desist orders to certain respondents prohibiting activities concerning the importation and sale of agricultural tractors which would constitute infringement of one or more of U.S. Registered Trademarks Nos. 1,254,339; 1,502,103; and 1,503,576.

The Commission also determined that the public interest factors enumerated in section 337(d) do not preclude the issuance of the aforementioned remedial orders and that the bond during the Presidential review period shall be 90 percent of the entered value of the articles in question.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, the Administrative Procedure Act, and sections 210.41–51 of the Commission's Rules of Practice and Procedure, 19 CFR 210.41–51.

Issued: May 14, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–11388 Filed 5–19–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 10, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Job Corps Enrollee Allotment Determination.

OMB Number: 1205–0030.

Frequency: On occasion.

Affected Public: Individuals or households; Federal Government.

Number of Respondents: 1100.

Number of Annual Responses: 1100.

Estimated Time Per Response: 3 minutes.

Burden Hours Total: 55.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Job Corps enrollees may elect to have a portion of their readjustment allowance/transition payment sent biweekly to a dependent. This form provides the information necessary to administer these allotments and qualifications for the allotment.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–11383 Filed 5–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 14, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Revision of a currently approved collection.

Title: Job Corps Health Questionnaire.

OMB Number: 1205–0033.

Frequency: Other; Once.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local, or Tribal government.

Number of Respondents: 102,833.

Number of Annual Responses: 102,833.

Estimated Time Per Response: 5 minutes.

Total Burden Hours: 8,569.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Applicants wishing to enroll in the Job Crops program must

first be deemed eligible based on the eligibility criteria as defined in 20 CFR 670.400 and then selected based on the additional selection factors in 20 CFR 670.410. This admission process is carried out by admission counselors. The information on the ETA 6–53 is collected by the admissions counselors to enable the centers to determine the health needs of the applicant. After the admission counselors have determine eligibility and the applicant has been selected for assignment into the Job Cops program, the applicant completes the form, and sends it with the admission packet to the Job Crops center for review.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–11384 Filed 5–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 14, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Extension of a currently approved collection.

Title: Job Corps Placement and Assistance Record.

OMB Number: 1205–0035.

Frequency: On occasion.

Affected Public: Individuals or household: Business or other for-profit; Not-for-profit institutions; State, Local, or Tribal Government.

Number of Respondents: 48,318.

Number of Annual Responses: 48,318.

Estimated Time Per Response: Between 3 and 5 minutes.

Burden Hours Total: 3,661.

Total annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $48,000.

Description: This automated form is used to obtain information about student training for placement of students in jobs, further education or military service. They are prepared by the Job Corps centers and placement specialist for each student separating from Job Corps centers and have no further impact on the public.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–11385 Filed 5–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

May 13, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Extension of a currently approved collection.

Title: Report on Occupational Employment.

OMB Number: 1220–0042.

Frequency: Semi-annually.

Type of Response: Reporting.

Affected Public: Business or other for-profit; Not-for-profit institutions; and State, Local, or Tribal Government.

Number of Respondents: 315,900.

Number of Annual Responses: 315,900.

Estimated Time Per Response: Ranges from 30 minutes to 6 hours (depending on establishment size).

Total Burden Hours: 236,925.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Occupational Employment Statistics (OES) survey is a Federal/State establishment survey of wage and salary workers designed to produce data on current occupational employment and wages. OES survey data assist in the development of employment and training programs established by the 1998 Workforce

Investment Act and the Perkins Vocational Education Act of 1984.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–11386 Filed 5–19–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This process helps to ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed continuation of a reporting and performance standards system for Indian and Native American programs under Title I, Section 166 of the Workforce Investment Act (WIA). A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the address section of this notice.

DATES: Submit comments on or before July 19, 2004.

ADDRESSES: Send comments to Athena R. Brown, Chief, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–3737 (voice) or (202) 693–3818 (fax) (these are not toll-free numbers), or Internet: *brown.athena@dol.gov*.

FOR FURTHER INFORMATION CONTACT: Greg Gross, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room S–4203, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–3752 (voice) or (202) 693–3818 (fax) (these are not toll-free numbers), or Internet: *gross.gregory@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

ETA is requesting continuation of the current reporting and performance standards system for WIA Title I, Section 166 Indian and Native American grantees for one year (July 1, 2004, to June 30, 2005), in part to coincide with the proposed expiration of the Section 166 financial report (ETA–9080) which is currently requested through June 30, 2005, under OMB Control Numbers 1205–0422 and 1205–0423. In evaluating the last few years' reporting experience of the grantees who receive funding under WIA Section 166, including those receiving Supplemental Youth Services (SYS) funds, and in light of the continuing statutory requirements of WIA applicable to Section 166 grantees, the Department has decided to extend the currently approved reporting requirements which it believes supports the current statutory requirements under WIA as they relate to the Indian and Native American Program. The only anticipated change(s) would be to accommodate the information collection requirements of the proposed "OMB Common Measures" for evaluating all federally funded employment and training programs. Further details of these possible changes are available on request. However, it should be noted that WIA comes up for reauthorization during 2004, which could result in additional, statutorily mandated reporting changes which would need to be covered in this data collection.

II. Desired Focus of Comments

The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed ICR can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Action

This ICR will be used by approximately 145 WIA Section 166 grantees as the primary reporting and performance measurement vehicle for enrolled individuals, their characteristics, training and services provided, outcomes, including job placement and employability enhancements, as well as detailed financial data on program expenditures. Grantees participating in the demonstration under Public Law 102–477 will not be affected by this collection, and have not been included in the following burden estimates.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Reporting and Performance Standards system for Indian and Native American (INA) Programs under Title I, Section 166 of the Workforce Investment Act (WIA) (1205–0422) and WIA Employment and Training Administration Financial Requirements for INA Grantee Activities (1205–0423).

OMB Number (current): 1205–0422 and 1205–0423.

Catalog of Federal Domestic Assistance Number: 17.265 (for PY 2002 and beyond).

Record Keeping: Grantees shall retain supporting and other documents necessary for the compilation and submission of the subject reports for three years after submission of the final financial report for the grant in question (29 CFR 97.42 and/or 29 CFR 95.53). It should be noted that the burden estimates for this collection as originally approved by OMB in April of 2001 were for 27,795 responses totaling some 78,615 hours.

Affected Public: Federally recognized Indian tribes, bands, and groups; Alaska Native entities; Hawaiian Native entities; private non-profit Indian-controlled organizations; State Indian Commissions or Councils (Native American-controlled); consortia of any and/or all of the above.

Cite/Reference/Form/etc.: ETA–9084 and ETA–9085 (1205–0422):

Form No.	Respondents	Frequency	Total responses	Average time per response (hours)	Total burden hours
ETA–9084 (Comprehensive Services)	145	semi-annual	290	9.67	2,804
ETA–9085 (Supplemental Youth Services)	105	semi-annual	210	9.67	2,031
Recordkeeping	145	(as needed)	27,295	2.7	73,780
Total	250	semi-annual	27,795	9.67	78,615

ETA 9080 (1205–0423): 150 Respondents × Quarterly Reporting × 12 hours per report = 1,800 Burden Hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): Costs associated with this collection will vary widely among grantees, from nearly no additional cost to some higher figure, depending on the state of automation attained by each grantee and the wages paid to the staff actually completing the various forms. However, because all expenditures associated with the preparation of these reports will come from the Federal grant funds themselves, there will be no costs to the grantees. The grantees will not be obligated to expend their own (i.e., non-Department) resources to fulfill these reporting requirements. All costs associated with the submission of these forms are allowable grant expenses. Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 14th day of May, 2004.

John R. Beverly, III,

Administrator, Office of National Programs.

[FR Doc. 04–11387 Filed 5–19–04; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Combined Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Folk & Traditional Arts: June 14–15, 2004, Room 716 (Access to Artistic Excellence category). This meeting, from 9 a.m. to 6:30 p.m. on June 14th and from 9 a.m. to 5 p.m. on June 15th, will be closed.

Visual Arts: June 23–25, 2004, Room 716 (Access to Artistic Excellence category). This meeting, from 9 a.m. to 5:30 p.m. on June 23rd and June 24th and from 9 a.m. to 4:15 p.m. on June 25th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 14, 2004, these sessions will be closed to the public pursuant to subsection (c) (6) of 5 U.S.C. 552b.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: May 14, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 04–11373 Filed 5–19–04; 8:45 am]

BILLING CODE 7537–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49707; File No. PCAOB–2003–10]

Public Company Accounting Oversight Board; Order Approving Proposed Auditing Standard No. 1, References in Auditors' *Reports to the Standards of the Public Company Accounting Oversight Board* ("Auditing Standard No. 1")

May 14, 2004.

I. Introduction

On December 23, 2003, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") proposed Auditing Standard No. 1, References in Auditors' Reports to the Standards of the Public Company Accounting Oversight Board ("Auditing Standard No. 1") pursuant to sections 101, 103 and 107 of the Sarbanes-Oxley Act of 2002 (the "Act").[1] Auditing Standard No. 1 would require registered public accounting firms to refer to the standards of the PCAOB in their audit reports, rather than to U.S. generally accepted auditing standards, or "GAAS," as is currently the case. Notice of the proposed standard was published in the **Federal Register** on April 9, 2004,[2] and the Commission received five comment letters. For the reasons discussed below, the Commission is granting approval of the proposed standard. Simultaneously with this order, the Commission also is issuing an interpretive release to address certain implementation issues relating to Auditing Standard No. 1.

II. Description

The Act establishes the PCAOB to oversee the audits of public companies and related matters, to protect investors, and to further the public interest in the preparation of informative, accurate and independent audit reports.[3] Section 103(a) of the Act directs the PCAOB to establish auditing and related attestation standards, quality control standards, and ethics standards to be used by registered public accounting firms in the preparation and issuance of audit reports as required by the Act or the rules of the Commission. The Board has defined the term "auditing and related professional practice standards" to mean the standards established or adopted by the Board under section 103(a) of the Act.

The Board's proposed Auditing Standard No. 1 requires that an auditor's report issued in connection with any engagement performed in accordance with the auditing and related professional practice standards of the PCAOB state that the engagement was performed in accordance with "the standards of the Public Company Accounting Oversight Board (United States)." The auditor also must include

[1] 15 U.S.C. 7201, *et seq.*

[2] Release No. 34–49528 (April 6, 2004).

[3] Section 101(a) of the Act.

in its report the city and state (or city and country, in the case of non-U.S. auditors) from which the auditor's report was issued.

Audit reports currently are required to state that the audits that supported those reports were performed in accordance with generally accepted auditing standards.[4] The PCAOB adopted those generally accepted auditing standards, including their respective effective dates, as they existed on April 16, 2003, as interim PCAOB standards. Therefore, changing the reference from "generally accepted auditing standards" to "the standards of the Public Company Accounting Oversight Board (United States)" does not change the substantive procedures performed by an auditor. Because GAAS and the standards of the PCAOB are one and the same for PCAOB-registered public accounting firms, the PCAOB believes that a reference to GAAS in auditors' reports would no longer be appropriate or necessary.

III. Discussion

The Commission received five comment letters in response to its request for comments on Auditing Standard No. 1. Several commenters sought clarification with respect to certain implementation issues. One of the issues they raised is addressed in the Commission interpretive release discussed below. The Commission staff is aware of the other issues and will consider whether any guidance is needed in the future. One commenter recommended that the PCAOB undertake a near-term project to make conforming amendments to other standards affected by Auditing Standard No. 1, and another suggested changes to the form of auditor's report that were not related to the topic of this standard. We are forwarding these comments to the PCAOB for its consideration in future standard setting. Two commenters repeated an earlier suggestion to the PCAOB that the auditor's report should specify that the audit was conducted in accordance with the *auditing* standards of the PCAOB rather than using a reference that included all PCAOB standards, including quality control, ethics and independence standards. In response to the earlier comments, the PCAOB declined to limit the categories of standards that might be applicable to an audit, and the Commission concurs with that position.

In order to address certain issues relating to implementation of Auditing Standard No. 1, the Commission is issuing an interpretive release simultaneously with the issuance of this order. The Commission believes that publication of the interpretive release will assist the PCAOB, registrants, auditors and investors by, among other things, addressing certain transitional implementation issues and clarifying the impact of Auditing Standard No. 1 on existing references in Commission rules and regulations to "generally accepted auditing standards."

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed Auditing Standard No. 1 is consistent with the requirements of the Act and the securities laws and is necessary and appropriate in the public interest and for the protection of investors.

It is thefore ordered, pursuant to section 107 of the Act and section 19(b)(2) of the Securities Exchange Act of 1934, that proposed Auditing Standard No. 1, *References in Auditors' Reports to the Standards of the Public Company Accounting Oversight Board* (File No. PCAOB–2003–10) be and hereby is approved.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11400 Filed 5–19–04; 8:45 am]

BILLING CODE 8010–01–P

[4] Item 2–02 (b) of Regulation S–X.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49704; File No. PCAOB–2003–07]

Public Company Accounting Oversight Board; Order Approving Proposed Rules Relating to Investigations and Adjudications

May 14, 2004.

I. Introduction

On October 10, 2003, the Public Company Accounting Oversight Board (the "Board" or the "PCAOB") filed with the Securities and Exchange Commission (the "Commission") proposed rules pursuant to Section 107 of the Sarbanes-Oxley Act of 2002 (the "Act") and Section 19(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), relating to investigations and adjudications. Notice of the proposed rules was published in the **Federal Register** on March 26, 2004.[1] The Commission received five comment letters relating to these rules. For the reasons discussed below, the Commission is granting approval of the proposed rules.

[1] Release No. 34–49454 (March 19, 2004).

II. Description

Section 105 of the Act directs the PCAOB to establish fair procedures for the investigation and disciplining of registered public accounting firms and associated persons of such firms. In furtherance of this provision, the PCAOB proposed rules to establish procedures for investigations and adjudications, and adopted the proposed rules on September 29, 2003. Pursuant to the requirements of section 107(b) of the Act and Section 19(b) of the Exchange Act, the Commission published the proposed rules for public comment on March 26, 2003. The proposed rules on investigations and adjudications consist of 64 rules (PCAOB Rules 5000 through 5469 and 5500 through 5501), plus certain definitions that appear in PCAOB Rule 1001.

The proposed rules on investigations and adjudications provide that the PCAOB and its staff may conduct investigations concerning any acts or practices, or omissions to act, by registered public accounting firms and persons associated with such firms that may violate any provisions of the Act, the rules of the PCAOB, the provisions of the securities laws relating to the preparation and issuance of audit reports and the obligations and liabilities of accountants with respect thereto, including Commission rules issued under the Act or professional standards. Pursuant to the Act, the PCAOB's proposed rules provide that it may require registered public accounting firms and their associated persons to cooperate with Board investigations and may seek information from other persons, including clients of registered firms.

When violations are detected, the proposed rules provide an opportunity for a hearing, and in appropriate cases, for the PCAOB to impose sanctions designed to prevent a repetition of the violation and to enhance the quality and reliability of future audits. These sanctions may include temporarily or permanently prohibiting a firm or associated person from participating in audits of public companies or from being associated with a registered public accounting firm. Sanctions also may require special remedial measures, such as training, new quality control procedures, and the appointment of an independent monitor.

The PCAOB also may hold hearings on disapproved registration applications, pursuant to Section 102 of the Act. Under the PCAOB's registration

rules, if the PCAOB is unable to determine that a public accounting firm has met the standard for approval of an application, the PCAOB may provide the firm with a notice of a hearing, which the firm may elect to treat as a written notice of disapproval for purposes of making an appeal to the Commission under Section 107(c) of the Act. If the firm chooses to request a hearing, the PCAOB would, in appropriate circumstances, afford the firm a hearing pursuant to its proposed rules relating to investigations and adjudications.

At the time the PCAOB approved the rules relating to investigations and adjudications, it separately approved, and submitted for Commission approval on an accelerated basis, a subset of those rules that were intended to serve as temporary hearing rules in the event the PCAOB decided to disapprove an application for registration while the Commission was still considering action on the rules relating to investigations and adjudications. The Commission approved the PCAOB's temporary hearing rules on an accelerated basis on November 10, 2003, with the expectation that if it approved the proposed rules relating to investigations and adjudications, those permanent rules would supersede and replace the temporary hearing rules.[2]

III. Discussion

The PCAOB rules relating to investigations and adjudications generally establish a basic procedural framework for conducting investigations and disciplinary proceedings. Several of the comments the Commission received on the proposed rules reflected concern about the rules' lack of specificity with respect to certain matters left to the discretion of the PCAOB and its staff. These matters include, for example, the determination as to which persons will be permitted to be present during an investigatory examination. The Commission recognizes that the rules are broad in scope and that they contemplate the exercise of discretion by the PCAOB and its staff in a number of important areas. We fully expect the PCAOB and its staff to exercise this discretion in a balanced and fair-minded fashion with due regard for both the purposes of Section 105 of the Act and the legitimate concerns of the firms and individuals affected by the rules. The Commission also recognizes that the rules are new and undoubtedly will be revised and improved over time, as the PCAOB gains experience with their implementation. As this process continues, we would encourage the PCAOB to consider carefully the concerns expressed by commenters and others affected by the rules.

The Commission previously indicated its concern with the operation of proposed Rule 5424(b), which would permit the PCAOB to request issuance of Commission subpoenas in connection with PCAOB disciplinary proceedings, either on the PCAOB's own behalf or for the benefit of the party that is the subject of the proceeding. The Commission notes, in connection with proposed Rule 5424(b), that the issuance of Commission subpoenas in connection with PCAOB disciplinary proceedings would be a novel and potentially complex arrangement, and the Commission staff has discussed with the PCAOB staff the need to develop and implement additional rules and procedures regarding the handling of subpoena requests. The two comment letters that addressed this issue supported the idea that respondents in a PCAOB hearing could ask the PCAOB to request a Commission subpoena to compel appearance by non-parties to the hearing. They agreed, however, that this procedure raised novel issues, and that the Commission and the PCAOB should adopt additional, carefully crafted rules to implement Rule 5424(b). The additional rules and procedures being developed by the PCAOB and Commission staffs would address, among other things, the steps that the parties to PCAOB proceedings would need to follow prior to applying for Commission subpoenas, as well as the Commission's processes for handling such requests once they are received. It is our understanding and expectation, which we have discussed with the PCAOB staff, that Rule 5424(b) will not be available for use in PCAOB proceedings until these additional rules and procedures have been developed and implemented to our satisfaction.

We are satisfied that the rules proposed by the PCAOB create a reasonable operating framework for investigating and disciplining registered public accounting firms and their associated persons.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rules are consistent with the requirements of the Act and the securities laws and are necessary and appropriate in the public interest and for the protection of investors.

It is therefore ordered, pursuant to Section 107 of the Act and Section 19(b)(2) of the Exchange Act, that the proposed rules on investigations and adjudications (File No. PCAOB–2003–07) be and hereby are approved (with the understanding that Rule 5424(b) will not be available for use in PCAOB proceedings until the appropriate implementation framework is in place), and that such rules, as of the date of this approval, supersede and replace the temporary hearing rules (File No. PCAOB–2003–06) in their entirety.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11377 Filed 5–19–04; 8:45 am]

BILLING CODE 8010–01–P

[2] Release No. 34–48765 (November 10, 2003).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49700; File No. SR–Amex–2004–12]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Audit Committee Meeting Requirements Applicable to Registered Closed-End Management Investment Companies

May 13, 2004.

I. Introduction

On February 13, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Section 121 of the Amex *Company Guide* to modify the audit committee meeting requirements applicable to registered closed-end management investment companies ("closed-end funds"). On March 12, 2004, the Commission published the proposed rule change for comment in the **Federal Register**.[3] The Commission received one comment letter on the proposal.[4] This Order approves the proposed rule change.

II. Description of the Proposed Rule Change

In December 2003, the Commission approved a broad array of enhancements to the corporate governance requirements applicable to companies

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49371 (March 5, 2004), 69 FR 11919 (March 12, 2004).

[4] Letter from Dorothy M. Donohue, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated March 31, 2004 ("ICI Letter").

listed on the Amex.[5] Included within those changes was a revision to Section 121 of the Amex *Company Guide* to explicitly require listed company audit committees to meet on at least a quarterly basis. The Amex states that the quarterly meeting requirement was intended to codify the existing practice of virtually all operating companies. The Amex proposes to modify this requirement with respect to closed-end funds to specify that the audit committee of a closed-end fund must meet on a regular basis as often as necessary to fulfill its responsibilities, including at least annually in connection with the issuance of the fund's audited financial statements. The Amex believes that its proposal would align more closely the requirement for closed-end funds with the customary practices of most of these entities.

The one comment letter received by the Commission with respect to the proposal supported the proposed rule change.[6]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.[7] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In the Commission's view, Amex's proposal to require the audit committee of a closed-end fund to meet on a regular basis as often as necessary to fulfill its responsibilities, including at least annually in connection with issuance of the fund's audited financial statements, is designed to help ensure the effective operation of a closed-end fund's audit committee. Under the Investment Company Act of 1940,[9] a closed-end fund is not required to file quarterly reports, and thus the Amex proposal does not mandate quarterly meetings of the audit committee. Nevertheless, as recognized by the Exchange, the proposed rule change would require closed-end fund audit committees to meet as often as necessary, even if more frequently than quarterly, if the unique circumstances facing a particular fund so require.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[10], that the proposed rule change (File No. SR–Amex–2004–12) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11376 Filed 5–19–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49698; File No. SR–CBOE–2004–09]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Options on Certain CBOE Volatility Indexes

May 13, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 17, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE hereby proposes to amend certain of its rules to provide for the listing and trading of options on three separate volatility indexes; specifically: the CBOE Increased-Value Volatility Index ("Increased-Value VIX"); the CBOE Increased-Value Nasdaq 100® Volatility Index ("Increased-Value VXN"); and the CBOE Increased-Value Dow Jones Industrial Average® Volatility Index ("Increased-Value VXD") (collectively, "Increased-Value Volatility Indexes"). Options on each index would be cash-settled and would have European-style expiration. The text of the proposed rule change is set forth below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

CHAPTER XXIV—Index Options

* * * * *

Rule 24.1 Definitions

(a)–(x) No change.

* * * Interpretations and Policies:

.01 The reporting authorities designated by the Exchange in respect of each index underlying an index option contract traded on the Exchange are as follows:

[Add the following to the current list:]

CBOE Increased-Value Volatility Index® ..... Chicago Board Options Exchange

CBOE Increased-Value Nasdaq 100® Volatility Index ..... Chicago Board Options Exchange

CBOE Increased-Value Dow Jones Industrial Average® Volatility Index. Chicago Board Options Exchange

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[5] See Securities Exchange Act Release No. 48863 (December 1, 2003), 68 FR 68432 (December 8, 2003) (order approving File No. SR–Amex–2003–65).

[6] Specifically, the commenter maintained that because Commission rules do not require closed-end funds to file quarterly financial statements, it is not necessary or appropriate to impose a quarterly audit committee meeting requirement on them. *See* ICI Letter.

[7] 15 U.S.C. 78(b). In approving the proposed rule change, as amended, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78(b)(5).

[9] 15 U.S.C. 80a–1 *et seq.*

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

* * * * *

Rule 24.9 Terms of Index Option Contracts

(a) General.

(1)–(2) No change.

(3) European-Style Exercise. The following European-style index options, some of which are A.M.-settled as provided in paragraph (a)(4), are approved for trading on the Exchange:

[Add the following to the end of the current list]

CBOE Increased-Value Volatility Index®

CBOE Increased-Value Nasdaq 100® Volatility Index

CBOE Increased-Value Dow Jones Industrial Average® Volatility Index

(4) A.M. Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that in the event that the primary market for an underlying security does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on that day, or in the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Rule 24.7(e).

The following A.M.-settled index options are approved for trading on the Exchange:

[Add the following to the end of the current list]

CBOE Increased-Value Volatility Index®

CBOE Increased-Value Nasdaq 100® Volatility Index

CBOE Increased-Value Dow Jones Industrial Average® Volatility Index

(5) Other Methods of Determining Exercise Settlement Value. Exercise settlement values for the following index options are determined as specified in this paragraph:

(i)–(iii) No Change.

(iv) CBOE Volatility Indexes and CBOE Increased-Value Volatility Indexes. The current index value at expiration shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration. The current index value for such purposes shall be calculated by the Chicago Board Options Exchange as a Special Opening Quotation (SOQ) of each respective Volatility or Increased-Value Volatility Index using the sequence of opening prices of the options that comprise each Index. The opening price for any series in which there is no trade shall be the average of that option's bid price and ask price as determined at the opening of trading.

(b)–(c) No change.

* * * Interpretations and Policies:

.01 The procedures for adding and deleting strike prices for index options are provided in Rule 5.5 and Interpretations and Policies related thereto, as otherwise generally provided by Rule 24.9, and include the following:

(a) The interval between strike prices will be no less than $5.00; provided, that in the case of the following classes of index options, the interval between strike prices will be no less than $2.50:

[Add the following to the end of the current list]

CBOE Increased-Value Volatility Index®

CBOE Increased-Value Nasdaq 100® Volatility Index

CBOE Increased-Value Dow Jones Industrial Average® Volatility Index

(b)–(d) No change.

.02–.11 No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would permit the Exchange to list and trade cash-settled, European-style options on increased-value versions of existing volatility indexes, specifically, the CBOE Volatility Index ("VIX"); the CBOE Nasdaq 100® Volatility Index ("VXN"); and the CBOE Dow Jones Industrial Average® Volatility Index ("VXD").[3] According to the CBOE, each of the existing volatility indexes—VIX, VXN, and VXD—is calculated using real-time quotes of out-of-the-money nearby and second nearby index puts and calls of the S&P 500® Index ("SPX®"), the Nasdaq 100® Index (NDX®) and the Dow Jones Industrial Average® Index ("DJX®"), respectively. Generally, volatility indexes provide investors with up-to-the-minute market estimates of expected volatility of the corresponding securities index that each particular volatility index tracks. For example, the VIX tracks the expected volatility of the SPX®. The VIX, VXN, and the VXD are each calculated by extracting implied volatilities from real-time index option bid/ask quotes of the underlying securities indexes.

VIX, VXN, and VXD are all quoted in absolute numbers that represent the underlying stock index volatility in percentage points per annum. For example, an index level of 14.34 (the closing value of the VIX as of January 21, 2004) represents an annualized volatility of 14.34%. The Increased-Value Volatility Indexes would be calculated by simply multiplying the corresponding value of the VIX, VXN, and VXD, respectively, by ten. To illustrate, where the index level of the VIX would be 14.34 on January 21, 2004, the Increased-Value VIX would have an index value of 143.40 (ten times 14.34). Similarly, the index level of the increased-value versions of the VXN and the VXD always would be ten times the index level of the VXN and the VXD, respectively. Each of the Increased-Value Volatility Indexes would be listed and traded under a unique symbol, to be determined at a later date by the

[3] The Commission recently granted approval for the CBOE to list options on the VIX, VXN, and VXD indexes. *See* Securities Exchange Act Release No. 49563 (April 14, 2004), 69 FR 21589 (April 21, 2004) (SR–CBOE–2003–40). Index description and option contract specifications related to options on VIX, VXN, and VXD are set forth in the related notice of the proposed rule change. *See* Securities Exchange Act Release No. 48807 (November 19, 2003), 68 FR 66516 (November 26, 2003) (SR–CBOE–2003–40).

Exchange. The CBOE would notify the Commission and The Options Clearing Corporation of these symbols. In addition, the Exchange would disseminate prices for Increased-Value Volatility Indexes every 15 seconds through the Option Price Reporting Authority.

The purpose of calculating and maintaining increased-value versions of CBOE's volatility indexes would be to offer additional investment and risk management alternatives to institutional customers. Based on past experience, CBOE believes that institutional customers would prefer a larger-sized contract that would be more sensitive to changes in the underlying index. Such a contract would be more consistent with customers' hedging needs. CBOE believes that having the flexibility to offer both sized volatility index products would permit the Exchange to better meet the needs of both institutional and retail investors

Index Design, Calculation, and Option Trading

Again, the Increased-Value Volatility Indexes would be designed and calculated by simply multiplying the index levels of the VIX, VXN, and VXD indexes by ten. The contract specifications for options on the Increased-Value Volatility Indexes would be the same as that of the VIX, VXN, and VXD. Strike prices would be set to bracket the index in 2½ point increments for strikes below 200 and in 5-point increments above 200. The minimum tick size for series trading below $3 will be 0.05 and for series trading above $3 the minimum tick would be 0.10. The trading hours for options on the Increased-Value Volatility Indexes would be from 8:30 AM to 3:15 PM CST.

Exercise and Settlement

Similarly, exercise and settlement on the Increased-Value Volatility Indexes would be identical to the existing volatility indexes. The proposed options on each Increased-Value Volatility Index would expire on the Wednesday immediately prior to the third Friday of each month. For example, February 2004 Increased-Value VIX options would expire on Wednesday, February 18, 2004. Increased-Value Volatility Index options would be A.M.-settled. The exercise settlement value would be determined by a Special Opening Quotation ("SOQ") of each respective Increased-Value Volatility Index calculated from the sequence of opening prices of the options that comprise that index. The opening price for any series in which there is no trade would be the average of that option's bid price and ask price as determined at the opening of trading.

The exercise-settlement amount would be equal to the difference between the exercise-settlement value and the exercise price of the option, multiplied by $100. When the last trading day falls on an Exchange holiday, the last trading day for expiring options would be the day immediately preceding the last regularly-scheduled trading day. When the date on which the exercise settlement value is to be determined would fall on an Exchange holiday, the exercise settlement value would be determined on the day immediately preceding the regularly-scheduled settlement date.

Surveillance

The Exchange would use the same surveillance procedures currently utilized for each of the Exchange's other index options, including options on the VIX, VXN, and VXD,[4] to monitor trading in options on each Increased-Value Volatility Index. The Exchange further represents that these surveillance procedures shall be adequate to monitor trading in options on these indexes. For surveillance purposes, the Exchange would have complete access to information regarding trading activity in the pertinent underlying securities.

Position Limits

The Exchange proposes to establish position limits for options on each Increased-Value Volatility Index at 25,000 contracts on either side of the market and no more than 15,000 of such contracts would be able to be in series in the nearest expiration month. This would be consistent with CBOE Rule 24.4 (Position Limits for Broad-Based Index Options).

Exchange Rules Applicable

Except as modified herein, the Rules in Chapter XXIV would be applicable to the Increased-Value Volatility Index options. Each Increased-Value Volatility Index would be classified as a "broad-based index" and, under CBOE margin rules, specifically, Rule 12.3(c)(5)(A), the margin requirement for a short put or call on each respective index would be 100% of the current market value of the contract plus up to 15% of the respective underlying index value.

In accordance with CBOE Rule 24A.4(b) (Special Terms for FLEX Index Options), CBOE reserves the right to approve and open for trading FLEX options on the Increased-Value Volatility Indexes.

[4] *Id.*

Additionally, CBOE affirms that it possesses the necessary systems capacity to support new series that would result from the introduction of Increased-Value Volatility Index options. CBOE also has been informed that OPRA has the capacity to support such new series.

The Exchange intends to issue a circular detailing index and option contract specifications to CBOE membership prior to the listing of options series on the Increased-Value Volatility Indexes.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with section 6(b) of the Act,[5] in general, and furthers the objectives of section 6(b)(5) of the Act,[6] in particular, in that it would permit trading in options based on the Increased-Value Volatility Indexes pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby would provide investors with the ability to invest in options based on an additional index.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–09 on the subject line.

Paper comments:

Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

All submissions should refer to File Number SR–CBOE–2004–09. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–09 and should be submitted on or before June 10, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act.[7] Specifically, The Commission believes that the proposed change does not raise any significant regulatory issues that were not addressed in the Commission's prior approval order regarding the listing and trading of options on the VIX, VXN and VXD on the CBOE.[8] The proposed rule change would merely expand upon the existing list of indexes underlying index option contracts traded on the Exchange to include increased-value versions of existing volatility indexes, *i.e.* the Increased-Value VIX, Increased-Value VXN, and Increased-Value VXD.

The CBOE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register** to accommodate the listing and trading of options on the Increased-Value VIX, Increased-Value VXN, and Increased-Value VXD. Accordingly, the Commission finds good cause, pursuant to section 19(b)(2) of the Act,[9] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because these products are similar to other products currently trading on the CBOE.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–2004–09), is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11375 Filed 5–19–04; 8:45 am]

BILLING CODE 8010–01–P

[7] *Id.*

[8] *See* supra note 3.

[9] 15 U.S.C. 78s(b)(2).

[10] *Id.*

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49709; File No. SR–DTC–2004–03]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to the Processing of Deliveries in DTC's Money Market Instrument Program

May 14, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], notice is hereby given that on, March 18, 2004, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, DTC would modify its procedures relating to how deliveries are processed in DTC's Money Market Instrument ("MMI") Program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under DTC's procedures applicable to MMI transactions, early on the maturity date (generally around 2 a.m.)[2] DTC initiates deliveries of maturing paper from the accounts of participants having position in the maturing paper to the MMI participant account of the Issuing/Paying Agent ("IPA"). These transactions are processed as the equivalent of valued delivery orders ("DO"). The IPA can "refuse to pay" for maturing paper of a particular issuer by communicating that intention to DTC before 3 p.m. on the maturity date. DTC will inform all participants by broadcast message. DTC will then, among other things, reverse any completed maturity presentments by recrediting them to presenting participants.

The MMI procedures also provide for participants that are receivers of new MMI issuance DOs (*e.g.*, custodian banks) to have until 3:30 p.m. to reclaim those DOs back to the IPA.[3] Since the reclaim can be "matched" with a DO processed on the same day, the reclaim is permitted to bypass the Receiver Authorized Delivery ("RAD") system and DTC's risk management controls (*e.g.*, net debit cap and collateral monitor) if the value of the DO is less than $15 million.[4]

Although the current procedures have worked well, since the events of September 11, 2001, participants in

[1] 15 U.S.C. 78s(b)(1).

[2] All times are Eastern Standard Time.

[3] Reclaims, or reclamations, are the means by which receivers can return erroneous deliveries.

[4] RAD is a control mechanism that allows participants to review transactions prior to completion of processing and that limits participants' exposure from misdirected or erroneously entered delivery orders. The bypassing of DTC's risk management controls is designed to address industry concern that the receiver not be "stuck" with a delivery it should not have received because of DTC's risk management controls.

DTC's MMI program have been working with DTC on changes that would reduce risk without introducing processing inefficiencies. IPAs have raised concerns about potentially having to fund an issuer's maturity at a level higher than anticipated at the time IPA decides not to exercise a "refusal to pay" because the IPA fails to receive the settlement credits associated with new issuance DOs that are reclaimed after 3 p.m. As a result, IPAs are forced to make "refusal to pay" decisions based on incomplete data and increases the exposure of an IPA to an individual issuer.

The proposed rule change would address these concerns by subjecting reclamations of all new MMI issuance DOs received after 2:30 p.m. to RAD controls and treating them as original transactions subject to DTC's normal risk management controls.[5] To reduce the potential impact of the proposed change in the processing of reclaims received after 2:30 p.m., the proposed rule change would provide receivers of new issuance DOs with the option of having those deliveries made subject to RAD at 2 p.m. thereby giving these participants electing this option one-half hour to consider whether to accept or reject the DOs.[6] While the cutoff for the Issuing/Paying agent ("IPA") to exercise its "refusal to pay" option will remain at 3 p.m., the proposed rule change clarifies that since under certain circumstances DTC may extend the 2 p.m. and 2:30 p.m. cutoffs referred to above, DTC may also extend the 3 p.m. cutoff.

The proposed rule change is consistent with the requirements of section 17A(b)(3)(A) of the Act[7] and the rules and regulations thereunder because it will promote the prompt and accurate settlement of securities transactions and will be implemented in a manner that is consistent with DTC's risk management controls.

[5] As a result, these post 2:30 p.m. reclamations will not be eligible for processing during the exclusive reclaim period (3:20 pm. to 3:30 p.m.) and may not be "re-reclaimed" by the receiver.

[6] All new issuance DOs processed after 2 p.m. will automatically be subject to RAD unless the participant instructs DTC to the contrary. DTC participants may opt-out of forced RAD by completing the "Forced MMI RAD Election Form" and submitting it to their DTC relationship manager. The election form is available on DTC's Web site *www.dtc.org* as Attachment A to DTC Important Notice #5337. A participant that, at first, elected to opt out of the forced RAD functionality may opt back in by submitting a completed election form to its DTC relationship manager.

[7] 15 U.S.C. 78q(b)(3)(A).

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The subject proposals were developed in consultation with participants in the MMI market and are included as recommendations in a Discussion Paper issued jointly by The Bond Market Association and The Depository Trust & Clearing Corporation on March 31, 2003. DTC advised participants of the proposed modifications in Important Notice 5337 (March 19, 2004).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in Federal Register, or within such longer period: (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which DTC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

• Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)* or

• Send an E-mail to *rule-comments@sec.gov*. Please include File Number SR–DTC–2004–03 on the subject line.

Paper comments:

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–DTC–2004–03. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC and on DTC's Web site at *http://www.dtc.org*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2004–03 and should be submitted on or before June 10, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 04–11401 Filed 5–19–04; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part T of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). The Office of the Deputy Commissioner, Communications (ODCComm) is establishing the Office of Electronic Communications which will be responsible for the development, content, and coordination of SSA's internal and external Web marketing activities. The new material and changes are as follows:

SectionTE.10 *The Office of Deputy Commissioner, Communications*—(Organization):

Establish under paragraph D. The Office of Communications Planning and Technology (TEB) as number 3:

3. The Office of Electronics Communications (SAC Needed)

SectionTE.20 *The Office of the Deputy Commissioner, Communications*—(Functions):

[8] 17 CFR 200.30–3(a)(12).

Add as last sentence in paragraph D:

Serves as the focal point for all issues involving the development, clearance and placement of content material on SSA's official Internet/Intranet websites. Responsible for the development, content, and coordination of SSA's internal and external Web marketing activities.

Add as paragraph number 3 under paragraph D:

3. The Office of Electronic Communications (SAC Needed)

a. Directs the Agency's internal and external communications activities as disseminated via the Internet/Intranet.

b. Provides ongoing technical advice and support to all SSA Headquarters and field components on the full range of Public Information/Public Affairs (PI/PA) issues as they relate to the Internet/Intranet.

c. Develops, implements and monitors national policies, standards, guidelines, objectives and measures of PI/PA as they relate to the Internet/Intranet.

d. Develops strategies to address PI/PA issues, such as special communications needs of the non-English speaking population and people with disabilities through the use of the Internet/Intranet.

e. Consults and negotiates with key Agency officials and leaders of other public and private organizations to achieve desired outcomes.

f. Directs and coordinates content management activities requiring cross-component cooperation.

g. Provides guidance on organization, clarity and audience focus of content submitted for placement on SSA's internal and external websites.

h. Directs, coordinates and develops internal and external web marketing activities and materials.

Dated: May 12, 2004.

Reginald F. Wells,

Deputy Commissioner for Human Resources.

[FR Doc. 04–11368 Filed 5–19–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4703]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9 a.m. on Monday, June 14, 2004, in Room 6319 of the United States Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the 47th Session of the International Maritime Organization (IMO) Sub-Committee on Stability and Load Lines and on Fishing Vessels Safety to be held at IMO Headquarters in London, England from September 13th to 17th.

The primary matters to be considered include:

—Harmonization of damage stability provisions in SOLAS Chapter II–1;
—Large passenger ship safety;
—Review of the Intact Stability Code;
—Revision of the Fishing Vessel Safety Code and Voluntary Guidelines;
—Review of the Offshore Supply Vessel Guidelines;
—Harmonization of the damage stability provisions in other IMO instruments, including the 1993 Torremolinos Protocol (probabilistic method);
—Review of the 2000 HSC Code and amendments to the DSC Code and the 1994 HSC Code.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Paul Cojeen, Commandant (G–MSE), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1308, Washington, DC 20593–0001 or by calling (202) 267–2988.

Dated: May 12, 2004.

Margaret F. Hayes,

Chairman, Shipping Coordinating Committee, Department of State.

[FR Doc. 04–11416 Filed 5–19–04; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4704]

Shipping Coordinating Committee, Facilitation Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Tuesday, June 22, 2004, in Room 1303 of the United States Coast Guard Headquarters building, 2100 Second Street SW., Washington, DC 20593–0001. The primary purpose of the meeting is to prepare for the thirty-first session of the Facilitation Committee (FAL 31) of the International Maritime Organization (IMO), to be held from July 19 to 23, 2004, at IMO Headquarters in London, England.

The primary matters for discussion for FAL 31 will include the following:

- Convention on Facilitation of International Maritime Traffic
- Consideration and adoption of proposed amendments to the Annex to the Convention
- Electronic means for the clearance of ships
- Application of the Committee's Guidelines
- General review of the Convention including harmonization with other international instruments
- Measure to enhance maritime security—Facilitation aspects
- Measures and procedures for the treatment of people rescued at sea—Facilitation aspects
- Formalities connected with the arrival, stay and departure of ships
- Formalities connected with the arrival, stay and departure of persons—Stowaways
- Ship/port interface
- Facilitation aspects of other IMO forms and certificates
- Technical co-operation sub-programme for facilitation

Please note that hard copies of documents associated with FAL 31 will not be available at this meeting. Documents will be available in Adobe Acrobat format on CD–ROM. To request documents, please contact Mr. David Du Pont via e-mail at *DDuPont@comdt.uscg.mil* or write to the address provided below.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. David Du Pont, Commandant (G–MSR), U.S. Coast Guard Headquarters, 2100 Second Street SW., Room 1400, Washington, DC 20593–0001 or by calling (202) 267–0971.

Dated: May 12, 2004.

Margaret F. Hayes,

Chairman, Shipping Coordinating Committee, Department of State.

[FR Doc. 04–11417 Filed 5–19–04; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Aransas County Airport, Rockport, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Aransas County Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before June 21, 2004.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Eugene Johnson, Airport Manager, at the following address: Aransas County Airport Services, PO Box 1270, Rockport, Texas 78381.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Clark, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650, Telephone: (817) 222–5659, E-mail: *Rodney.Clark@faa.gov*, Fax: (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Aransas County Airport under the provisions of the AIR 21.

The following is a brief overview of the request:

The city of Rockport requests the release of 39.739 acres of non-aeronautical airport property. The land was purchased through the City's General Operating Budget in 1942 and 1943. The funds generated by the release will be used for upgrading, maintenance, operation and development of the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Aransas County Airport, telephone number (361) 790–0141.

Issued in Fort Worth, Texas on October 23, 2003.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 04–11395 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Notice of Intent To Prepare an Environmental Assessment for Proposed Rerouting of Regional Jet/Turboprop Aircraft Within Boston Consolidated Terminal Radar Approach Control (TRACON) Airspace

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to prepare an environmental assessment.

SUMMARY: The Federal Aviation Administration (FAA), New England Region, is issuing this notice to advise the public, pursuant to the National Environmental Policy Act of 1969, as amended (NEPA), 42 U.S.C. 4332(2)(C) that the FAA intends to prepare an Environmental Assessment (EA) for Proposed Rerouting of Regional Jet/Turboprop Aircraft within Boston Consolidated Terminal Radar Approach Control (TRACON) airspace. The FAA is issuing this Notice of Intent to prepare an EA to facilitate public involvement. The EA will assess the potential environmental impacts of proposed modifications to air traffic routings within the Boston Consolidated TRACON airspace. The FAA is considering a range of alternatives including the proposed action, a no-action alternative, and an intermediate "split" alternative.

DATES: The FAA anticipates publishing the Draft EA in June 2004.

ADDRESSES: Ms. Theresa Flieger, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803; telephone: (781) 238–7524 or Mr. Christopher DePaolo at (781) 238–7533.

SUPPLEMENTARY INFORMATION: The purpose of the FAA's proposed rerouting of regional jet and turboprop aircraft is to reduce and/or eliminate efficiency degradation in the Boston Consolidated TRACON Rockport Sector. The proposed rerouting will move all regional jets and turboprop aircraft making approaches into Boston-Logan International Airport from the north and northeast away from the SCUPP arrival fix east to Boston, to an existing turboprop route over the LWM arrival fix in the vicinity of Lawrence Municipal Airport. Operations over LWM at or above 5000 feet Above Ground Level (AGL) will increase by an average of 29 aircraft per day. From LWM, aircraft will be vectored to various flight tracks depending on the runway in use at Boston-Logan. With the exception of when Boston-Logan is using runways 27/22L, aircraft will merge back with existing tracks above 3000 AGL. FAA expects that the number of operations below 3000 feet AGL approaching Runway 22L will increase by an average of eight aircraft per day. A preliminary noise analysis of the proposed action revealed that communities potentially impacted from procedure changes below 3000 AGL would include: East Boston, Winthrop, Revere, Nahant, Swampscott, Marblehead, Salem, Lynn, Peabody, and Saugus.

Dated: May 13, 2004.

William C. Yuknewicz,

Acting Manager, Air Traffic Division FAA, New England Region.

[FR Doc. 04–11394 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lawton-Ft. Sill Regional Airport, Lawton, OK

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 a PFC at Lawton-Ft. Sill Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 21, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, TX 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Barbara McNally, Manager of Lawton-Ft. Sill Regional Airport at the following address: Airport Manager, PO Box 351, Lawton-Ft. Sill Regional Airport, Lawton, OK 73502.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation

Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, TX 76193–0610, (817) 222–5613.

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 Lawton-Ft. Sill Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 11, 2004, the FAA determined the application to impose and use the revenue from a PFC submitted by the Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than September 4, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2004.

Proposed charge expiration date: June 1, 2007.

Total estimated PFC revenue: $253,021.

PFC application number: 04–04–C–00–LAW.

Brief description of proposed project(s):

Projects To Impose and Use PFC's

1. Reconstruct and Realign Taxiway A, D, E and F.
2. Construct Engine Runup Apron and Aircraft Bypass at South End of Taxiway.
3. Rehabilitation of Taxiway Lighting.
4. Install REIL on Runway 35.
5. Reconstruct Taxiway F from Regional Air Hangar Apron Northerly to it terminus.
6. Reconstruct Apron Next to Terminal Air Hangar No. 1.
7. Construct Equipment Building.

Proposed class or classes of air carriers to be exempted from collecting PFC's: FAR Part 135 on demand air Taxi/Commercial Operator (ATCO) reporting on FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, TX 76137–4298.

In addition, any person may, on request, inspect the application, notice and other documents relevant to the application in person at Lawton-Ft. Sill Regional Airport.

Issued in Fort Worth, Texas, on May 11, 2004.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 04–11396 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Technical Standard Order—C170, High Frequency (HF) Radio Communications Transceiver Equipment Operating Within the Radio Frequency Range 1.5 to 30.00 Megahertz

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of and request comments on a proposed Technical Standard Order (TSO)–C170, HF Radio Communications Transceiver Equipment Operating within the Radio Frequency Range 1.5 to 30.00 Megahertz. The proposed TSO tells manufacturers seeking TSO authorization or letter of design approval what minimum performance standards (MPS) their HF radio communications transceiver equipment must first meet for approval and identification with the applicable TSO markings.

DATES: Submit comments on or before June 18, 2004.

ADDRESSES: Send all comments on the proposed TSO–C170 to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Avionic Systems Branch, AIR–130, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. ATTN. Mr. Moin Abulhosn, AIR–130. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Moin Abulhosn, AIR–130, Room 815 Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 385–4648, FAX: (202) 385–4651, or e-mail: *moin.abulhosn@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed TSO identified in this notice by submitting written data, views, or arguments to the address listed above. Your comments should identify "Comments to proposed TSO–C170". You may examine all comments revised on the proposed TSO before and after the comment closing date at the Federal Aviation Administration, Room 815 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received on or before the closing date before issuing the final TSO.

Background

This proposed TSO–C170 combines into one TSO the proposed minimum performance standards of TSO–C31d, High Frequency Radio Communications Transmitting Equipment Operating Within the Radio Frequency Range of 1.5 to 30.00 Megahertz and the proposed TSO–C32d, High Frequency Radio Communications Receiving Equipment Operating Within the Radio Frequency Range of 1.5 to 30.00 Megahertz. Furthermore TSO–C170 conforms to the latest TSO boilerplate wording to include a functionality definition used to specify the Failure Hazard Classification unique to HF radio communication transceiver equipment. This proposed TSO also changes the technical requirements necessary to meet the MPS such as:

a. The environmental conditions and test procedures specified in TRCA/DO–160D, Environmental Conditions and Test Procedures for Airborne Equipment, dated July 29, 1997, Change 1, Change 2 and Change 3; and

b. The software development guidelines specified in TRCA/DO–189B, Software Considerations in Airborne Systems and Equipment Certification, dated December 1, 1992.

The basic TSO provides minimum operational performance standards for HF radio communications transceiver equipment that should be helpful to users, designers, manufacturers, and installers of HF radio communications transceiver equipment.

How To Obtain Copies

You may get a copy of the proposed TSO from the Internet at: *http://av-info.faa.gov/tso/Tsopro/Proposed.htm.* You may also request a copy from Mr. Moin Abulhosn. See the section entitled

FOR FURTHER INFORMATION CONTACT for the complete address.

Issued in Washington, DC, on May 17, 2004.

Susan J.M. Cabler,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04–11453 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Order 8110.ICA, Instructions for Continued Airworthiness, Responsibilities, Requirements, and Content.

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and request for public comments.

SUMMARY: This notice announces the availability of and requests comments on proposed Order 8110.ICA. This proposed Order provides guidance on the responsibilities, requirements, and contents for Instructions for Continued Airworthiness (ICA) per the requirements of Title 14 of the Code of Federal Regulations (14 CFR) § 21.50. This notice is necessary to give all interested persons an opportunity to present their views on the proposed policy.

DATES: Comments must be received on or before June 21, 2004.

ADDRESSES: Send all comments on the proposed policy to: Michael Reinert, Delegation and Airworthiness Programs Branch, P.O. Box 26460, Oklahoma City, OK 73125. Comments may be faxed to (405) 954–4104 or emailed to: *mike.reinert@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Reinert, Aircraft Engineering Division, Airworthiness Programs Branch (AIR–140), P.O. Box 26460, Oklahoma City, OK 73125. Telephone: (405) 954–4815, or FAX: (405) 954–4104.

SUPPLEMENTARY INFORMATION:

Comments Invited

You are invited to comment on the proposed Order by submitting such written data, views, or arguments to the address or FAX number listed above. You comments should identify "Order 8110.ICA." The Associated Administrator for Regulation and Certification will consider all communications received on or before the closing date before issuing the final Order.

Background

This proposed Order explains to the Aircraft/Engine Certification Office (ACO/ECO) and Aircraft Evaluation Group (AEG) personnel their responsibilities and methods on how to review and accept Instructions for Continued Airworthiness (ICA). The contents of this order supplements the regulatory requirements contained in 14 CFR 21.50(b), 23.1529 Appendix G, 25.1529 Appendix H, 27.1529 Appendix A, 29.1529 Appendix A, 31.82 Appendix A, 33.4 Appendix A, and 35.4 Appendix A. The guidance contained in this proposed Order will cancel the following documents in their entirety:

- Order 8110.50, Submitting Instructions for Continued Airworthiness for Type Certificates, Amended Type Certificates and Supplemental Type Certificates, dated October 20, 2003.
- Office of Airworthiness Policy Memorandum, Interpretation of FAR 21.50B, dated August 3, 1982.
- Office of Airworthiness Policy Memorandum, Interpretation of FAR 21.50B, dated August 8, 1983.

How To Obtain Copies

You may get a copy of the proposed Order from the Internet at: *http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgDAC.nsf/MainFrame?OpenFrameSet*. You may also request a copy from Michael Reinert. See the section entitled **FOR FURTHER INFORMATION CONTACT** for the complete address.

Issued in Washington, DC on May 17, 2004.

Susan J.M. Cabler,

Acting Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04–11452 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: City of Coronado, San Diego County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation project in the City of Coronado, San Diego County, California.

FOR FURTHER INFORMATION CONTACT: César Pérez, Team Leader (South), Federal Highway Administration, 650 Capitol Mall, Suite 4–100, Sacramento, California, 95814–4708, telephone: (916) 498–5065.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an Environmental Impact Statement (EIS) for transportation improvements in the State Route (SR) 75/SR 282 corridor within the City of Coronado, California. The FHWA has determined that the proposed project would have a significant impact on the quality of the human environment. The project entails transportation improvements to approximately a 1.6 kilometer (1.0 mile) corridor that includes SR 75 and SR 282 between the San Diego-Coronado Bridge and the Naval Air Station North Island (NASNI). This corridor serves not only Coronado residents and visitors, but also serves the largest combined military airport and aircraft carrier berthing facility on the west coast of the United States.

The project is proposed to address current traffic conditions within the SR 75/SR 282 transportation corridor. These traffic conditions include: severe congestion between 5–8 a.m. and between 3–6 p.m; and segments that operate at or below Level of Service [1] (LOS) E or F.

A Major Investment Study (MIS) for the project was completed in 2003. The MIS evaluated a full range of reasonable capital alternatives to improve mobility and access, and reduce congestion, delay and traffic intrusion into residential neighborhoods while effectively addressing associated operation, safety, environmental and financing issues. Four feasible corridor alternatives have been selected for detailed evaluation in the EIS: Third Street/Fourth Street couplet with grade separations at Orange Avenue; two-lane reversible bored traffic tunnel (single bore); two-lane reversible cut-and-cover traffic tunnel; and twin single-lane reversible bored traffic tunnels.

Comments are being solicited from appropriate federal, state and local agencies and from private organizations and citizens who have previously expressed, or are known to have, an interest in this proposal. Further

[1] The ability of a highway to accommodate traffic is typically measured in terms of level of service (LOS), based on the ratio of traffic volume to the design capacity of the facility. Roadway capacity is generally measured as the number of vehicles that can reasonably pass over a given section of roadway in a given period of time. Traffic low, classified by LOS, ranges from LOS A to LOS F. LOS A is defined as free-flow traffic, with no delays, and LOS F is defined as forced-flow, with substantial delays. LOS E and F are generally defined as unacceptable levels of service.

information regarding the proposed project can be found at the Coronado City Hall, Coronado Public Library and on the city's Web site *http://www.coronado.ca.us.*

Open house public scoping meetings will be held in the City of Coronado on June 9, 2004, from 3–5 p.m. at the Public Library Winn Room located at 640 Orange Avenue and from 6–8 p.m. at the Coronado Middle School Granzer Hall located at 550 F Avenue in the City of Coronado. Prior to the public scoping meeting on June 9, 2004, a tour of the project study area will be conducted from 1:30–2:30 p.m. on that day. The tour will leave at 1:30 p.m. from the Public Library at 640 Orange Avenue. A public hearing will be held at a later date and a public notice will be circulated stating the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 14, 2004.

Maiser Khaled,

Director, Project Development & Environment, Federal Highway Administration, Sacramento, California.

[FR Doc. 04–11439 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Programmatic Environmental Impact Statement: High Speed Rail Corridor Las Vegas, NV to Anaheim, CA

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: The FRA is issuing this notice to advise the public that FRA will prepare a programmatic environmental impact statement (PEIS) for the California-Nevada Interstate Maglev Project in cooperation with the Nevada Department of Transportation. FRA is also issuing this notice to solicit public and agency input into the development of the scope of the PEIS and to advise the public that outreach activities conducted by the program participants will be considered in the preparation of the PEIS.

The FRA will establish the purpose and need, examine the regional implications, present site-specific aspects of the project that can proceed to construction, and determine the feasible study areas to be carried forward for second tier assessments of site-specific environmental impacts.

FOR FURTHER INFORMATION CONTACT: For further information regarding the programmatic environmental review, please contact:

Mr. Christopher Bonanti, Environmental Program Manager, Office of Railroad Development, Federal Railroad Administration, 1120 Vermont Avenue (Mail Stop 20), Washington, DC 20590; Telephone (202) 493–6383; e-mail: *christopher.bonanti@fra.dot.gov.*

Mr. Jeffrey Fontaine, P.E., Director, Telephone (775) 888–7440, e-mail: *jfontaine@dot.state.nv.us;* or Mr. James Mallery, Planning Manager, Telephone (775) 888–7464, e-mail: *jmallery@dot.state.nv.us;* Nevada Department of Transportation, 1263 South Stewart Street, Carson City, NV 89712.

SUPPLEMENTARY INFORMATION:

Background

For over twenty years, the California Nevada Super Speed Train Commission (CNSSTC), a public agency chartered within the State of Nevada, has sponsored studies to examine the feasibility and the environmental impacts of linking the Las Vegas area with various points in the Los Angeles region using a high-speed ground transportation system. Most of these studies have focused on the use of magnetic levitation technology. More recently, the CNSSTC sponsored the first leg of such a project, linking a point on the outskirts of Las Vegas with the city of Primm, on the California-Nevada border, as one of the entries competing in the FRA's Maglev Deployment Program authorized in Section 1218 (23 U.S.C. 322) of the Transportation Equity Act for the 21st Century (TEA21).

The FRA prepared a programmatic EIS (PEIS) to address the potential for significant environmental impact from the Maglev Deployment Program that included the Las Vegas-Primm project as one of seven projects analyzed in the PEIS. The notice of availability of the final PEIS was published in the **Federal Register** on May 4, 2001. CNSSTC had prepared an environmental assessment for the Las Vegas-Primm project in February 2000, which was used by the FRA to assist the agency in preparing the PEIS. The PEIS for the Maglev Deployment Program is available on the FRA Web site at: *http://www.dot.fra.gov/s/env/maglev/MagPEIS.htm* and the environmental assessment is available from Mr. Bruce Aguilera, Chairman, California-Nevada Super Speed Train Commission, 400 Las Vegas Blvd. South, Las Vegas, Nevada 89101, Telephone (702) 229–4949.

Other recent documents related to the Las Vegas-Anaheim project include the preparation by the CNSSTC of Project Descriptions describing the 169-mile Las Vegas-Barstow component as a stand-alone project, which were submitted to the FRA in June 2002; and the Ontario-Anaheim segment, which was submitted to the FRA in June 2003.

The Department of Transportation and Related Agencies Appropriations Act, 2003 (Pub. L. 108–7), which provides appropriations for the FRA and other agencies, included funds specifically to conduct additional design, engineering and environmental studies concerning the California-Nevada Interstate Maglev Project under the FRA's Next Generation High Speed Rail Technology Demonstration Program. Some of these funds will be used to conduct the system-wide Programmatic EIS.

The FRA has entered into a Memorandum of Understanding with the CNSSTC, the Nevada Department of Transportation (NDOT) and the California Department of Transportation (Caltrans) governing the conduct of this Programmatic EIS. FRA is serving as the lead federal agency, NDOT is the lead state agency, and the California Department of Transportation (Caltrans) and CNSSTC are cooperating agencies. Through this PEIS, the FRA, NDOT and the cooperating agencies will examine alternative routes, viable transportation alternatives, and system-wide environmental issues, and identify site-specific problem areas deserving of more detailed analysis. In particular, in light of environmental assessment work previously completed and the likely construction sequencing should a decision be made to proceed with the project following completion of the programmatic environmental review, the PEIS will address the Las Vegas to Primm segment in greater detail that might allow this particular segment to proceed into final design and construction once the PEIS is complete.

Environmental Issues

Possible environmental impacts include displacement of commercial and residential properties, disproportionate impacts to minority and low-income populations, community and neighborhood disruption, increased noise and electromagnetic interference along rail corridors including startle effects on highway vehicles, traffic impacts associated with stations, effects to historic properties or archaeological sites, impacts to parks and recreational resources, visual quality effects, impacts to water resources, wetlands, and sensitive biological species and habitat, land use compatibility impacts, energy use, and impacts to agricultural lands.

Alternatives

The PEIS will consider alternatives including: (1) Taking no action, (2) various alignment options and station locations for the entire length of the project and (3) other viable transportation alternatives. The degree of detail in the analysis may vary at different locations. In particular, at the Nevada end, it may be sufficiently detailed to support a site-specific EIS, while in the much longer California segment, it may be of a broader programmatic scale, sufficient to support a decision to go ahead with the entire project, but requiring further analysis to resolve specific detailed routing and design issues.

Scoping and Comment

FRA encourages broad participation in the PEIS process and review of the resulting environmental documents. Comments and suggestions related to the project and potential environmental concerns are invited from all interested agencies and the public at large to ensure that the full range of issues related to the proposed action and all reasonable alternatives are addressed and all significant issues are identified. The public is invited to participate in the scoping process, to review the Draft PEIS when published, and to provide input at public meetings. Letters describing the proposed scope of the PEIS and soliciting comments will be sent to appropriate Federal, State and local agencies, elected officials, community organizations, and to private organizations and citizens who have previously expressed interest in this proposal. Several public meetings to be advertised in the local media will be held in the project area regarding this proposal. Release of the Draft PEIS for public comment and public meetings and hearings related to that document will be announced as those dates are established.

Persons interested in providing comments on the scope of the programmatic EIS should do so within thirty days of the publication of this Notice of Intent. Comments can be sent in writing to FRA or NDOT representatives at the addresses listed above.

Public Scoping Meetings will be held at the following respective locations and dates:

Las Vegas, Nevada

Date: June 21, 2004.
Time: 4 p.m.–9 p.m.
Location: City of Las Vegas, City Council Chambers, 400 Stewart Ave., Las Vegas, NV 89101.

Ontario, California

Date: June 22, 2004.
Time: 4 p.m.–9 p.m.
Location: Ontario Convention Center, 2000 Convention Center Way, Ontario, CA 91764.

Victorville, California

Date: June 23, 2004.
Time: 4 p.m.–9 p.m.
Location: Victorville Activity Center, 15075 Hesperia Rd., Victorville, CA 92392.

Barstow, California

Date: June 24, 2004.
Time: 4 p.m.–9 p.m.
Location: Barstow College, Norman Smith Center, 2700 Barstow Rd., Barstow, CA 92311.

Anaheim, California

Date: June 28, 2004.
Time: 4 p.m.–9 p.m.
Location: City Hall West, 2nd Floor, Gordon Hoyt Conference Room, 201 S. Anaheim Blvd., Anaheim, CA 92805.

Issued in Washington, DC, on May 14, 2004.

Jo Strang,

Deputy Associate Administrator of Railroad Development.

[FR Doc. 04–11397 Filed 5–19–04; 8:45 am]
BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and approval. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 23, 2004. No comments were received.

DATES: Comments must be submitted on or before June 21, 2004.

FOR FURTHER INFORMATION CONTACT: Kelly Farrell, Maritime Administration, 400 7th Street SW., Washington, DC 20590. Telephone: 202–366–9041; FAX: 202–366–7485 or e-mail: *kelly.farrell@marad.dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: Elements of Request for Course Approval.

OMB Control Number: 2133–NEW.

Type of Request: New Collection.

Affected Public: Respondents are public and private maritime security course training providers.

Forms: None.

Abstract: Under this proposed voluntary collection, public and private maritime security training course providers may choose to provide the Maritime Administration (MARAD) with information concerning the content and operation of their courses. MARAD will use this information to evaluate whether the course meets the training standards and curriculum promulgated under Section 109 of the Maritime Transportation Security Act of 2002 (MTSA) (Pub. L. 107–295). Courses found to meet these standards will receive a course approval.

Annual Estimated Burden Hours: 3,000 hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention MARAD Desk Officer.

Comments are invited on: 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; the accuracy of the agency's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of

automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Issued in Washington, DC on May 13, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–11326 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: 2004–17816]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel BEACH BUM.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17816 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 21, 2004.

ADDRESSES: Comments should refer to docket number MARAD 2004–17816.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 Seventh St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 7th Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel BEACH BUM is:

Intended Use: "Day sail charter."

Geographic Region: "US East Coast."

Dated: May 17, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–11419 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: 2004–17813]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ISLAND GIRL.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17813 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 21, 2004.

ADDRESSES: Comments should refer to docket number MARAD 2004–17813. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ISLAND GIRL is:

Intended Use: "Short term charter passengers for hire, cruising, scuba, fishing."

Geographic Region: "US Atlantic Coast, Gulf Coast and the Bahamas."

Dated: May 17, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–11420 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: 2004–17814]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MARIANA QUEEN.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17814 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 21, 2004.

ADDRESSES: Comments should refer to docket number MARAD 2004–17814. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MARIANA QUEEN is:

Intended Use: "Charter cruises."
Geographic Region: "California."

Dated: May 17, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–11418 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: 2004 17812]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TALIESIN.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17812 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before June 21, 2004.

ADDRESSES: Comments should refer to docket number MARAD 2004–17812. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel TALIESIN is:

Intended Use: "Oceanographic research and testing of marine electronics designed primarily for small recreational vessels."

Geographic Region: "Northeast coastal waters-Cape Cod to Cape May."

Dated: May 17, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–11421 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17766]

Notice of Receipt of Petition for Decision That Nonconforming 2002–2004 Mercedes Benz S-Class (220) Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2002–2004 Mercedes Benz S-Class (220) passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2002–2004 Mercedes Benz S-Class (220) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United

States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is June 21, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590 (Docket hours are from 9 a.m. to 5 p.m.). Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Automobile Concepts of North Miami, Florida (Registered Importer 01–278) has petitioned NHTSA to decide whether 2002–2004 Mercedes Benz S-Class (220) passenger cars are eligible for importation into the United States. The vehicles that Automobile Concepts believes are substantially similar are 2002–2004 Mercedes Benz S-Class (220) passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it compared non-U.S. certified 2002–2004 Mercedes Benz S-Class (220) passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Automobile Concepts submitted information with its petition intended to demonstrate that non-U.S. certified 2002–2004 Mercedes Benz S-Class (220) passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2002–2004 Mercedes Ben S-Class (220) passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 135 *Passenger Car Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* and 302 *Flammability of Interior Materials.*

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR Part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) inscription of the word "brake" on the instrument cluster in place of the international ECE warning symbol or installation of a U.S.-model instrument cluster; (b) modification of the speedometer to read in miles per hour by downloading U.S. version software information or replacement of the speedometer through the installation of a U.S.-model instrument cluster.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of the following components on vehicles that are not already so equipped: (a) U.S.-model headlamps; (b) U.S.-model front sidemarker lamps that incorporate reflex reflectors; (c) U.S.-model taillamp assemblies that incorporate rear sidemarker lamps and reflex reflectors.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* inscription of the required warning statement on the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* reprogramming of the vehicle's computers to the U.S.-mode to ensure compliance with the standard.

Standard No. 118 *Power-Operated Window Partition, and Roof Panel Systems:* reprogramming of the vehicle's computers to the U.S.-mode to ensure compliance with the standard.

Standard No. 208 *Occupant Crash Protection:* (a) reprogramming of the vehicle's computers to the U.S.-mode to activate the seatbelt warning buzzer; (b) inspection of all vehicles and installation of U.S.-model components, as necessary, to ensure compliance with the standard. The petitioner states that the vehicles are equipped with dual front air bags and knee bolsters, and with combination lap and shoulder belts at the outboard front and rear seating positions that are self-tensioning and capable of being released by means of a single red push button.

Standard No. 209 *Seat Belt Assemblies:* inspection of all vehicles and installation of U.S.-model components on vehicles that are not already so equipped to ensure compliance with the standard.

Standard No. 210 *Seat Belt Assembly Anchorages:* inspection of all vehicles and installation of U.S.-model components on vehicles that are not already so equipped to ensure compliance with the standard.

Standard No. 301 *Fuel System Integrity:* inspection of all vehicles and installation of U.S.-model components on vehicles that are not already so equipped, to ensure compliance with the standard.

Standard No. 401 *Interior Trunk Release:* inspection of all vehicles manufactured on or after September 1, 2001, and installation of U.S.-model components on those vehicles that are not already so equipped to ensure compliance with the standard.

Petitioner states that all vehicles must be inspected to ensure compliance with the Theft Prevention Standard at 49 CFR part 541 and that U.S.-model anti-theft devices will be installed, as necessary, on vehicles that are not already so equipped. The petitioner expressed the belief that the vehicles do in fact comply with this standard.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590 (Docket hours are from 9 a.m. to 5 p.m.). It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 04–11454 Filed 5–19–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34501]

James Riffin d/b/a The Northern Central Railroad—Acquisition and Operation Exemption—in York County, PA

James Riffin d/b/a The Northern Central Railroad (NCR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the Commissioners of York County, PA, and operate approximately 19 miles of rail line, known as USRA Line 145, between milepost 35.6 (at or near the Maryland/Pennsylvania line) and milepost 54.6 (Hyde), in York County, PA. NCR proposes to interchange with the Genesee and Wyoming Railroad.

NCR certifies that its projected annual 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. NCR intends to commence these activities within 90 days from the date the notice of exemption was filed (April 28, 2004).

This notice is applicant's second attempt to acquire similar authority. In *James Riffin d/b/a The Northern Central Railroad-Acquisition and Operation Exemption-in York County, PA and Baltimore County, MD,* STB Finance Docket No. 34484 (STB served and published in the **Federal Register** Apr. 7, 2004) (69 FR 18420), applicant sought authorization to acquire two line segments in Baltimore County, MD, in addition to a slightly longer version of the line involved herein. However, in a decision in that proceeding served on April 20, 2004, the Board revoked the exemption stating that issues raised by the State of Maryland could not be answered under the expedited "class exemption" process. NCR was advised that if it sought to pursue the matter it should provide more detailed information in the form of an individual exemption petition under 49 U.S.C. 10502 and 49 CFR 1121, or a full application under 49 U.S.C. 10901 and 49 CFR 1150, as those procedures are designed to elicit a more complete record. NCR instead chose to file this notice for the necessary authority to acquire and operate the described line in York County in the event that it is able to reach an agreement with the Commissioners of York County for that acquisition.

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. 34501, 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 James Riffin, 1941 Greenspring Drive, Timonium, MD 21093.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: May 13, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–11327 Filed 5–19–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

[INTL–29–91]

Internal Revenue Service Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–29–91 (TD 8556), Computation and Characterization of Income and Earnings and Profits Under the Dollar Approximate Separate Transactions Method of Accounting (DASTM) (§ 1.985–3).

DATES: Written comments should be received on or before July 19, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Computation and Characterization of Income and Earnings and Profits Under the Dollar Approximate Separate Transactions Method of Accounting (DASTM).

OMB Number: 1545–1051.

Regulation Project Number: INTL–29–91.

Abstract: This regulation provides that taxpayers operating in hyperinflationary currencies must use the United States dollar as their functional currency and compute income using the dollar approximate separate transactions method (DASTM). Small taxpayers may elect an alternate method by which to compute income or loss. For prior taxable years in which income was computed using the profit and loss method, taxpayers may elect to recompute their income using DASTM.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 700.

Estimated Time Per Respondent: 1 hour, 26 minutes.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the colleotion of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 14, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–11443 Filed 5–19–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2350

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2350, Application for Extension of Time To File U.S. Income Tax Return.

DATES: Written comments should be received on or before July 19, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Application for Extension of Time To File U.S. Income Tax Return.

OMB Number: 1545–0070.

Form Number: Form 2350.

Abstract: Form 2350 is used to request an extension of time to file in order to meet either the bona fide residence test or the physical presence test to qualify for the foreign earned income exclusion and/or the foreign housing exclusion or deduction. The information furnished is used by the IRS to determine if the extension should be granted.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 22,594.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 22,594.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 14, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–11444 Filed 5–19–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–127–86; PS–128–86; PS–73–88]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–127–86, PS–128–86, and PS–73–88 (TD 8644), Generation-Skipping Transfer Tax (§§ 26.2601–1, 26.2632–1, 26.2642–1, 26.2642–2, 26.2642–3, 26.2642–4, 26.2652–2, and 26.2662–1).

DATES: Written comments should be received on or before July 19, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Generation-Skipping Transfer Tax.

OMB Number: 1545–0985.

Regulation Project Number: PS–127–86; PS–128–86; PS–73–88.

Abstract: This regulation provides rules relating to the effective date, return requirements, definitions, and certain rules covering the generation-skipping transfer tax. The information required by the regulation will require individuals and/or fiduciaries to report information on Forms 706, 706NA, 706GS(D), 706GS(D–1), 706GS(T), 709, and 843 in connection with the generation skipping transfer tax. The information will facilitate the assessment of the tax and taxpayer examinations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of OMB approval.

Affected Public: Individuals and households, and business or other for-profit organizations.

Estimated Number of Respondents: 7,500.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 3,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 13, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–11445 Filed 5–19–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Friday, June 18, and Saturday, June 19, 2004.

FOR FURTHER INFORMATION CONTACT: Judi L. Nicholas at 1–888–912–1227, or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Friday, June 18, 2004 from 1 p.m. P.s.t. to 4 p.m. P.s.t. and Saturday, June 19, 2004 from 8:30 a.m. P.s.t. to 4:30 p.m. P.s.t. at 1401 SW., Natio Parkway, Portland, Or 97201. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Judi L. Nicholas, TAP Office, 915 Second Avenue MS W–406, Seattle, WA 98174. Due to limited space, notification of intent to participate in the meeting must be made with Judi L. Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: May 17, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–11446 Filed 5–19–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted in New Orleans, LA. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, June 18, 2004 and Saturday, June 19, 2004.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227 (toll-free), or 954–423–7979 (non toll-free).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, June 18, 2004, from 8 a.m. to 12 p.m. and from 1 p.m. to 5 p.m. e.d.t. and Saturday, June 19, 2004, from 8 a.m. to 12 p.m. e.d.t. in New Orleans, LA at Homewood Suites, 901 Poydras Street, New Orleans, LA 70112. For information or to confirm attendance, notification of intent to attend the meeting must be made with Sallie Chavez. Mrs. Chavez may be reached at 1–888–912–1227 or 954–423–7979 or write Sallie Chavez, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324, or post comments to the Web site: *http://www.improveirs.org*.

The agenda will include: Various IRS issues.

Dated: May 17, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–11447 Filed 5–19–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–3: OTS Nos. H–4089 and 04354]

Dearborn Financial Corporation, Lawrenceburg, IN; Approval of Conversion Application

Notice is hereby given that on May 13, 2004, the Assistant Managing Director, Examinations and Supervision—Operations, Office of Thrift Supervision (OTS), or her designee, acting pursuant to delegated authority, approved the application of Dearborn Savings Association, F.A., Lawrenceburg, Indiana, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Southeast Regional Office, 1475 Peachtree Street, NE., Atlanta, GA 30309.

Dated: May 17, 2004.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 04–11456 Filed 5–19–04; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–02: OTS Nos. H–3828 and 17934]

SBU Bank, Utica, NY, and Partners Trust Financial Group, Inc., Utica, NY; Approval of Conversion Application

Notice is hereby given that on May 7, 2004, the Assistant Managing Director, Examinations and Supervision—Operations, Office of Thrift Supervision ("OTS"), or her designee, acting pursuant to delegated authority, approved the application of Partners Trust, MHC and SBU Bank, both of Utica, New York, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail: *Public.Info@OTS.Treas.gov*) at the Public Reading Room, OTS, 1700 G Street, NW., Washington, DC 20552, and OTS Northeast Regional Office, 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.

Dated: May 17, 2004.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Corporate Secretary.

[FR Doc. 04–11455 Filed 5–19–04; 8:45 am]

BILLING CODE 6720–01–M

Corrections

Federal Register
Vol. 69, No. 98
Thursday, May 20, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04132]

Organ Transplant Infection Detection and Preventon Program

Correction

In notice document 04–10535 beginning on page 25904 in the issue of Monday May 10, 2004, make the following correction:

On page 25907 in the first column, under the heading "*IV.3. Submission Dates and Times*" in the 10th and 11th lines, "June 21, 2004" should read "June 24, 2004".

[FR Doc. C4–10535 Filed 5–19–04; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as Amended; System of Records

Correction

In notice document 04–10851 beginning on page 26432 in the issue of Wednesday, May 12, 2004, make the following correction:

On page 26432, in the second column, under **DATES**, in the fourth line, "June 6, 2004" should read "June 21, 2004".

[FR Doc. C4–10851 Filed 5–19–04; 8:45 am]

BILLING CODE 1505–01–D

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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S. 2315/P.L. 108–228

To amend the Communications Satellite Act of 1962 to extend the deadline for the INTELSAT initial public offering. (May 18, 2004; 118 Stat. 644)

Last List May 10, 2004

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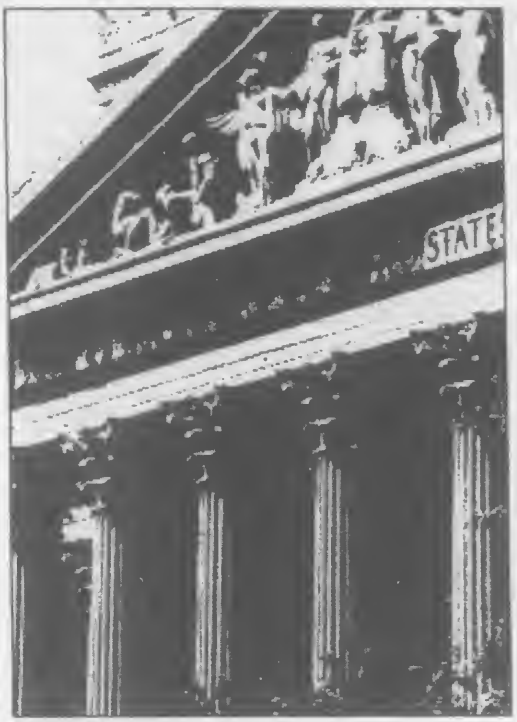

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