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7–27–04 Tuesday
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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB90

Common Crop Insurance Regulations; Processing Tomato Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes amendments to the Processing Tomato Crop Insurance Provisions. The intended effects of this action are to clarify that producers who have production contracts with tomato brokers are eligible for insurance, allow the Special Provisions statements to provide a replant payment amount that more adequately reflects the regional cost of tomatoes, and restrict the effect of the current Processing Tomato Crop Provisions to the 2004 and prior crop years.

DATES: This rule is effective August 26, 2004.

FOR FURTHER INFORMATION CONTACT: John McDonald, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 426 Kansas City, MO, 64133–4676, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be Not-Significant for the purposes of Executive Order 12866 and, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through February 28, 2005.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts, or a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part ll and 7 CFR part 400, subpart J for the informal administrative review process of good farming practices, as applicable, must be exhausted before any action against FCIC for judicial review may be brought. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

On November 14, 2003, FCIC published a notice of proposed rulemaking in the **Federal Register** at 68 FR 64570–64571 to revise 7 CFR 457.160, Processing Tomato Crop Insurance. Following publication of the

proposed rule the public was afforded 60 days to submit written comments and opinions. A total of fifteen comments were received from an insurance service organization. Twelve of the comments received were minor editorial changes and were not considered a part of the proposed rule. However, FCIC will consider the comments when the rule is re-opened. The remaining three comments received and responses are as follows:

Comment. An insurance service organization stated that the phrase "selling and buying" in the new "broker" definition should be changed to "buying and selling" to reflect the usual sequence of events and the normal use of the phrase.

Response. FCIC agrees with the insurance service organization and has revised the provisions accordingly.

Comment. An insurance service organization stated that FCIC should consider deleting the "good farming practices" definition from the processing tomato crop provisions so it would not supersede the definition in the Basic Provisions.

Response. FCIC does not agree with the insurance servicing organization that the definition for "good farming practice" should be deleted from the processing tomato crop provisions. The current definition states that good farming practices also include the cultural practices contained in the tomato processing contract. However, FCIC revised the definition to eliminate any conflict with the Basic Provisions.

Comment. An insurance service organization questioned whether it's FCIC's intent that paragraph 12(b)(1) allow a regional maximum replanting payment to be the amount shown in the Special Provisions. As written, the regional maximum amount would not be limited by the insured share unless such a limit is included in the Special Provisions statement.

Response. It is FCIC's intent to allow a regional maximum amount of replanting payment and it will be limited by the insured share. FCIC agrees with the commenter and will revise section 12(b)(1) accordingly to add insured share.

List of Subjects in 7 CFR Part 457

Crop insurance, Tomato reporting and recordkeeping requirements.

Final Rule

■ Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 for the 2005 and succeeding crop years as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

■ 1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l) and 1506(p).

■ 2. Amend the crop insurance provisions in § 457.160 as follows:
■ a. Revise the introductory text;
■ b. Amend section 1 of the crop provisions by adding a definition for "Broker" in alphabetical order and revising the definitions of "good farming practices" and "processor contract";
■ c. Revise section 8(c); and
■ d. Revise section 12(b).

§ 457.160 Processing tomato crop insurance provisions.

The Processing Tomato Crop Insurance Provisions for the 2005 and succeeding crop years are as follows:

* * * * *

1. Definitions

* * * * *

Broker. An enterprise in the business of buying and selling tomatoes possessing all the licenses and permits required by the state in which it operates, and that has a written contract with a processor to purchase processing tomatoes on behalf of the processor and to deliver such tomatoes to the processor.

* * * * *

Good Farming Practices. In addition to the definition of "good farming practices" contained in section 1 of the Basic Provisions, good farming practices include the cultural practices required under the processor contract.

* * * * *

Processor Contract. A written agreement between the producer and a processor, or between the producer and a broker, containing at a minimum:

(a) The producer's commitment to plant and grow processing tomatoes, and to deliver the tomato production to the processor or broker;

(b) The processor's, or broker's, commitment to purchase all the production stated in the processor contract; and

(c) A price per ton that will be paid for the production.

* * * * *

8. Insured Crop

* * * * *

(c) A tomato producer who is also a processor or broker may establish an insurable interest if the following requirements are met:

(1) The processor or broker, as applicable, must comply with these Crop Provisions;

(2) Prior to the sales closing date, the Board of Directors or officers of the processor or the broker must execute and adopt a resolution that contains the same terms as an acceptable processor contract. (Such resolution will be considered a processor contract under this policy); and

(3) As applicable, our inspection reveals that the processing facilities comply with the definition of a processor contained in these Crop Provisions.

* * * * *

12. Replanting Payment

* * * * *

(b) The maximum amount of the replanting payment per acre will be determined as follows:

(1) The amount shown on the Special Provisions multiplied by your share; or

(2) If an amount is not contained in the Special Provisions, the lesser of 20 percent of the production guarantee or three tons, multiplied by your third stage (final) price election, multiplied by your share; and

(3) In no event will the replanting payment per acre exceed your actual cost of replanting.

* * * * *

Signed in Washington, DC, on July 22, 2004.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–17042 Filed 7–26–04; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560–AG53

Guaranteed Loans—Rescheduling Terms and Loan Subordinations

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Farm Service Agency (FSA) is amending its regulations governing servicing of loans made under the guaranteed farm loan program. FSA is making these changes as a result of input from program participants and problems in the administration of current provisions. This rule will allow loans to be rescheduled with balloon payments under certain circumstances and allow the approval of certain low-risk subordinations at the field office level instead of the National Office. It will also allow lenders to make debt installment payments in accordance with lien priorities, payment due dates, and clarify that packager and consultant

fees for servicing of guaranteed loans are not covered by the guarantee.

DATES: This rule is effective August 26, 2004.

FOR FURTHER INFORMATION CONTACT: Joseph Pruss, Senior Loan Officer, Farm Service Agency; telephone: (202) 690–2854; Facsimile: (202) 690–1196; e-mail: *Joseph.Pruss@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

FSA published a proposed rule on August 19, 2003, (68 FR 49723–49726) to amend its regulations governing the servicing of loans made under the guaranteed farm loan program. The comment period ended October 20, 2003.

Summary of Public Comments

Comments addressed all of the issues related to the proposed rule. FSA considered the comments and incorporates several of the recommendations and suggestions in this rule. The following is a review of the comments and the changes made in the final rule in response to the comments.

Payment of Loan Installments

FSA proposed to allow loan installments to be paid in accordance with lien priority, due date and cash flow projection in the normal course of business, but when it became evident that the borrower would be unable to make all installments, the lender had to apply payments to the guaranteed loan first. One respondent suggested that the proposal was too subjective and the Agency should adopt a policy that would require loans to be paid according to lien priority, and any exceptions would require Agency approval. The respondent also pointed out that the risk of guaranteed loans not being paid in an orderly manner is not only at liquidation and that the determination of when guaranteed loan payments would be required to be made first was extremely subjective. Two respondents generally agreed with the proposal, but one pointed out, however, that the risk to the government is not only at liquidation and questioned whether the proposal would work in practice. One respondent believed the rule should specify that a lender must apply payments to the loan as the borrower specified. Another respondent stated that the normal course of business rule should be expanded to include all situations.

The Agency agrees that the proposal was too subjective and that loan installments should be paid in lien priority in certain cases while understanding that exceptions are required so that lenders can conduct routine business practices. As a result, the agency will require a lender to pay loan installments in the order of lien priority only when the lender receives a payment from the sale of encumbered property. This policy is consistent with current practice under state laws. In other situations, where payment is received from the sale of unencumbered property or other sources of income, loan installments will be paid in order of their due date. This is consistent with typical routine business practices. This objective and simple policy should be consistently carried out by lenders. Any deviations will require Agency approval.

Regarding the comment that would allow the borrower to tell the lender which loan a payment should be applied to, the Agency has always maintained that the lender/borrower relationship is not something the Agency should interfere in, as the Agency has no authority or inclination to specify that a lender has to apply payments to whichever loan their borrower chooses. Based on the comments received, which were generally supportive, the Agency will implement the proposed change as modified.

Approval of Subordinations

FSA proposed to place authority for subordination approval at the local level when the lender is refinancing existing debt secured by a lien superior to the guaranteed loan and no additional debt is being incurred. Two respondents supported the proposal, but suggested that the Agency allow additional subordinations to be approved at the local and State level. The proposal was fully supported by four respondents.

The Agency will not adopt additional changes to allow all subordinations of guaranteed loans to be approved at local and State levels. Subordinating guaranteed loan security is rarely in the Government's best interest and, therefore, it is necessary for top level management to be informed of all requests where additional debt is being incurred by guaranteed borrowers. Based on the unanimous support of the other respondents, the Agency adopts its proposed policy on subordinations as final.

Payment of Interest on Repurchased Loans

FSA proposed to correct wording concerning interest payments to specify that the holder, not the lender, would request Agency repurchase of the loan after unsuccessfully requesting the lender to do so. Two comments were received regarding this change. One supported the change, while the other acknowledged that it is simply a correction in wording. The present language has the words "lender" and "holder" reversed, and the change will correct the error. The proposed correction is adopted in the final rule as a result of the comments received.

Balloon Payments

The proposal to allow balloon payments in restructuring guaranteed loans generated several comments, mostly positive. One respondent was opposed to all balloon payments, and viewed them as a way to guarantee nonpayment of the loan. Another respondent generally supported the proposal but did not believe it was necessary to have an appraisal showing the loan would be secured when the balloon payment was due. This respondent also suggested that the Agency set a minimum number of years before the balloon payment comes due and that a lien on all assets be taken when restructuring with balloon payments. One respondent supported the proposal but was concerned that lenders use of appraisals would vary widely. One respondent wondered if lenders, at the time of the restructuring, would have to develop a positive cash flow projection for the time when the balloon payment came due and noted that foundation livestock herds were not specifically discussed.

Three respondents fully supported the proposal. Another respondent also supported the proposal, but recommended that the appraisal requirement should only apply to loans with an unequal or graduating amortization, which would be more risky to the Agency.

The Agency believes the balloon payment option is a necessary tool that lenders can use to salvage operations that would otherwise be liquidated. With the proper controls in place, this servicing option can be very beneficial to users of the guaranteed loan program. In response to concerns regarding lenders conducting a wide range of appraisals, FSA has added more direction in §762.145(b)(4). The paragraph explains that the projected value for real estate will be derived from a current appraisal adjusted for depreciation of depreciable property such as buildings and other improvements that occurs until the balloon payment is due. A current appraisal is required for equipment security. The lender will project the value of the equipment at the time the

balloon payment is due based on the remaining life of the equipment or the depreciation schedule on the borrower's Federal income tax return. The Agency does not agree that appraisals are not necessary, or should be required only when there is unequal or graduating amortization. An appraisal will always be necessary when restructuring with a balloon payment in order to provide some assurance that there is adequate security for the debt. Lenders, however, will not have to develop long-term cash flow projections as the volatility of the agricultural sector and changing nature of individual farming operations often render long-term projections meaningless.

Foundation livestock was not mentioned in the proposed rule because balloon payments for guaranteed loans secured by livestock or crops alone will not be authorized. Unlike real estate and equipment, livestock and crops are perishable, and balloon payments on such operations are extremely risky.

The Agency does agree with the suggestion that it should set a minimum number of years before the balloon payment comes due, the time depending on the type of loan being restructured. Therefore, § 762.145 provides that balloon payments for loans secured by real estate will have a minimum of 5 years before the balloon comes due. For other loans, there will be minimum of 3 years. If statutory term limits prevent such terms, balloon payments will not be used. As suggested, to further protect the Government's interest when a balloon payment is set up, a lien on all assets will be required.

Revised Security Requirements for Loans Rescheduled With Balloon Payments

FSA proposed to require loans restructured with balloon payments to be fully secured when the balloon payment became due. Three comments were received addressing the issue of security requirements. One respondent agreed with the requirements, but believes they should be more specific as to how a lender is to arrive at the value of the security used to protect the balloon installment. Two respondents fully supported the proposal, while one questioned if Preferred Lender Program lenders would be allowed to use their in-house appraisals to support the fully secured claim.

Additional guidance has been provided on appraisal values as discussed above. Current Agency policy on lenders not being allowed to use in-house real estate appraisals will not change. The potential for conflict of interest is too great to entertain such a proposal.

Payment of Packager and Outside Consultant Fees

Five comments, all positive, were received regarding the proposed clarification that packager fees and outside consultant fees for servicing are not covered by the guarantee. One respondent believed the Agency should allow for the payment of in-house fees. The respondent stated that inside legal counsel may have knowledge of cases, which could actually make the process more efficient, thereby saving on legal expenses. Two respondents support the proposal, but believe it should be clarified to state that the costs also cannot be passed on to the borrower.

No changes will be made in the final rule as a result of these comments. The Agency agrees in theory that inside legal counsel's knowledge of individual cases may lead to greater efficiency, and the intent of the regulation is that, if available, this counsel may be used by the lender. However, the guarantee was never intended to cover costs incurred by employees of the lender, including staff legal counsel. The Agency disagrees that it should regulate what fees lenders can pass on to their customers. It is not the mandate of the Agency to dictate terms between lenders and their customers. However, neither is the guarantee intended to cover lender labor costs for services the lender agreed to perform when obtaining the guarantee. Therefore, the Agency will not cover these costs when passed on to the lender's borrower as part of any loss claim.

Lender Bids at Foreclosure Sales

The proposal to specify the amount a lender will bid at foreclosure sales generated numerous comments. FSA proposed that the lender's bid would be the lesser of the net recovery value plus the prior lien amount, and the unpaid balance of the loan plus the prior lien amount. One respondent fully supported the proposal and believes it is good business practice and is consistent with what is done for the Agency's direct loans.

Two respondents were in favor of the proposal, but believe it should be strengthened by stating that the limits are actual limits and lenders will not be able to claim losses due to excess bids. They stated that, as written, there are too many maybes, and the wording should state that loss claims will be reduced, not that they may be reduced due to improper bidding. One comment suggested that the proposed change would not always lead to the result that was anticipated. It was pointed out that a bid is sometimes made subject to a prior lien, in which case the lender would not want to bid the net recovery value. It was also pointed out that the proposal does not contain a definition of net recovery value, which could lead to confusion. The definition of net recovery value is included among the definitions in 7 CFR 762.102.

One respondent requested that the Agency reconsider the proposal. The respondent believes the lender knows best the individual circumstances of each loan and could best determine the amount they should bid and that the proposal could actually have the opposite result of what is intended. Also, since several states have their own unique laws regarding foreclosures, redemption, and time periods which a lender must consider, the proposal would possibly hamper the lender's liquidation of the account.

Another respondent also believes the proposal is too restrictive and limits the flexibility provided by the current regulations. The respondent provided several examples of situations where bidding as proposed may not be in the best interest of the lender, the Government, or the borrower, and may lead to a borrower losing their right of first refusal. The respondent recommended that the final rule give the creditor the option to bid net recovery value, appraised value, or investment, whichever is the most advantageous in the particular circumstance, as approved by the Agency's State Office. If a prior lien has a very low interest rate, it would not make sense to require the lender to pay that debt off when acquiring the property, especially if there is a redemption period involved. Also, in some states, it is very difficult to obtain a deficiency judgment, and bidding the net recovery value or appraised value has not been a common practice.

After considering the comments received, the Agency has determined that it will remove the proposal regarding bidding at foreclosure sales. No changes will be made to the current language in 7 CFR 762.149 regarding this item. In the vast majority of cases, lenders make reasonable bids at foreclosure sales, and it is a rare occurrence when a lender makes an inaccurate bid, leading to a large increase in loss to the lender upon final disposition of the collateral. In those cases, the Agency will continue to use the option to reduce or completely deny loss claims as necessary and appropriate. Differences in state laws regarding foreclosure proceedings, redemption laws, and obtaining

deficiency judgments make it difficult to cover all possible scenarios in one rule. It would also reduce a lender's options and flexibility in servicing loans.

Executive Order 12866

This rule has been determined to be not significant and was not reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Agency certifies that this rule will not have a significant economic effect on a substantial number of small entities because it does not require any specific actions on the part of the borrower or the lenders. The Agency, therefore, is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, Public Law 96–534, as amended (5 U.S.C. 601). This rule does not impact small entities to a greater extent than large entities.

Environmental Evaluation

The environmental impacts of this final rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 1940, subpart G. FSA concluded that the rule does not require preparation of an environmental assessment or Environmental Impact Statement.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except that lender servicing under this rule will apply to loans guaranteed prior to the effective date of the rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before requesting judicial review.

Executive Order 12372

For reasons contained in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

Unfunded Mandates

This rule contains no Federal mandates, as defined by title II of Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on 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. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Paperwork Reduction Act

The amendments to 7 CFR part 762 contained in this rule require no revisions to the information collection requirements that were previously approved by OMB under control number 0560–0155.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance: 10.406 Farm Operating Loans; 10.407 Farm Ownership Loans.

List of Subjects in 7 CFR part 762

General—Agriculture, Loan programs—Agriculture.

■ Accordingly, 7 CFR is amended as follows:

PART 762—GUARANTEED FARM LOANS

■ 1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

■ 2. Amend § 762.140 by revising paragraph (d) to read as follows:

§ 762.140 General servicing responsibilities.

* * * * *

(d) *Loan installments.* When a lender receives a payment from the sale of encumbered property, loan installments will be paid in the order of lien priority. When a payment is received from the sale of unencumbered property or other sources of income, loan installments will be paid in order of their due date. Agency approval is required for any other proposed payment plans.

* * * * *

■ 3. Amend § 762.142 by redesignating paragraph (c)(3)(ii) as (c)(3)(iii) and adding new paragraph (c)(3)(ii) to read as follows:

§ 762.142 Servicing related to collateral.

* * * * *

(c) * * *

(3) * * *

(ii) The lender may, with written Agency approval, subordinate its interest in basic security in cases where the subordination is required to allow another lender to refinance an existing prior lien, no additional debt is being incurred, and the lender's security position will not be adversely affected by the subordination.

* * * * *

■ 4. Amend §762.144 by revising paragraph (c)(3)(iii) to read as follows:

§ 762.144 Repurchase of guaranteed portion from a secondary market holder.

* * * * *

(c) * * *

(3) * * *

(iii) In the case of a request for Agency purchase, the Agency will only pay interest that accrues for up to 90 days from the date of the demand letter to the lender requesting the repurchase. However, if the holder requested repurchase from the Agency within 60 days of the request to the lender and for any reason not attributable to the holder and the lender, the Agency cannot make payment within 30 days of the holder's demand to the Agency, the holder will be entitled to interest to the date of payment.

* * * * *

■ 5. Amend § 762.145 by revising paragraphs (b)(4) and (b)(7) to read as follows:

§ 762.145 Restructuring guaranteed loans.

* * * * *

(b) * * *

(4) Loans secured by real estate and/or equipment can be restructured using a balloon payment, equal installments, or unequal installments. Under no circumstances may livestock or crops alone be used as security for a loan to be rescheduled using a balloon payment. If a balloon payment is used, the projected value of the real estate and/or equipment security must indicate that the loan will be fully secured when the balloon payment becomes due. The projected value will be derived from a current appraisal adjusted for depreciation of depreciable property, such as buildings and other improvements, that occurs until the balloon payment is due. For equipment security, a current appraisal is required. The lender is required to project the security value of the equipment at the time the balloon payment is due based

on the remaining life of the equipment, or the depreciation schedule on the borrower's Federal income tax return. Loans restructured with a balloon payment that are secured by real estate will have a minimum term of 5 years, and other loans will have a minimum term of 3 years before the scheduled balloon payment. If statutory limits on terms of loans prevent the minimum terms, balloon payments may not be used. If the loan is rescheduled with unequal installments, a feasible plan, as defined in § 762.102(b), must be projected for when installments are scheduled to increase.

* * * * *

(7) The lender's security position will not be adversely affected because of the restructuring. New security instruments may be taken if needed, but a loan does not have to be fully secured in order to be restructured, unless it is restructured with a balloon payment. When a loan is restructured using a balloon payment the lender must take a lien on all assets and project the loan to be fully secured at the time the balloon payment becomes due, in accordance with paragraph (b)(4) of this section.

* * * * *

■ 6. Amend § 762.149 by adding paragraph (d)(3), and amending paragraph (i)(2) by adding a new last sentence to read as follows:

§ 762.149 Liquidation.

* * * * *

(d) * * *

(3) Packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid in an estimated loss claim.

* * * * *

(i) * * *

(2) * * * Packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid in a final loss claim.

* * * * *

Signed at Washington, DC, on July 2, 2004.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 04–17046 Filed 7–26–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–78–AD; Amendment 39–13738; AD 2004–15–04]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing airplane models, that currently requires either inspections for discrepancies of the fueling float switch wiring in the center fuel tank and follow-on actions, or deactivation of the float switch. This amendment requires replacing the float switches in the center and wing fuel tanks with new, improved parts; installing a conduit liner system in the center fuel tank; and replacing conduit assemblies in the wing fuel tanks with new parts, which terminates the existing requirements. For certain airplanes, this amendment also requires replacing certain existing sections of the electrical conduit in the center fuel tank with new conduit. This amendment also adds one additional airplane model to the applicability and removes another. The actions specified by this AD are intended to prevent contamination of the fueling float switch by moisture or fuel, and chafing of the float switch wiring against the fuel tank conduit, which could present an ignition source inside the fuel tank that could cause a fire or explosion. This action is intended to address the identified unsafe condition.

DATES: Effective August 31, 2004.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of August 31, 2004.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 18, 1999 (64 FR 10213, March 3, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Sherry Vevea, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6514; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–05–12, amendment 39–11060 (64 FR 10213, March 3, 1999); which is applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes; was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 11, 2003 (68 FR 34843). (A correction of AD 99–05–12 was published in the **Federal Register** on March 9, 1999 (64 FR 11533)). The action proposed to continue to require inspection of the fueling float switch wiring in the center fuel tank to detect discrepancies, accomplishment of corrective actions, and installation of double Teflon sleeving over the wiring of the float switch. The action also proposed to add new requirements for replacement of the float switches with new, improved float switches and installation of a conduit liner system in the center fuel tank, and replacement of the float switches and conduit assemblies with new, improved float switches and conduit assemblies in the wing fuel tanks. (The action proposed that this replacement would terminate the requirements of the existing AD.) For certain airplanes, the action also proposed to require replacement of certain sections of conduit in the center fuel tank with new conduit. The action also proposed to add one additional airplane model to the applicability and remove another.

Comments

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

Request To Refer to Revised Service Information

Several commenters request that we revise the supplemental NPRM to refer

to the latest service information issued by the airplane manufacturer. The commenters note that the work instructions in Boeing Alert Service Bulletin 737–28A1141, Revision 1, dated December 19, 2002, have been revised to correct errors in the installation instructions.

We concur. Since the issuance of the supplemental NPRM, we have reviewed and approved Boeing Alert Service Bulletin 737–28A1141, Revision 2, dated August 21, 2003. Revision 2 of the service bulletin, among other things, modifies work instructions for installing the bonding strap to the float switch mounting bracket in the center fuel tank, modifies torque values for the B-nuts on the float switch cable conduit, and specifies that lock wire be installed on the boltheads on the front spar. Due to the nature of these changes, we have revised paragraphs (b)(1)(i)(A), (b)(1)(ii), and (h)(1) of this final rule to refer to Boeing Alert Service Bulletin 737–28A1141, Revision 2, as the appropriate source of service information for the replacement of float switches required by those paragraphs. Also, we have revised paragraph (i) of this final rule to give credit for actions accomplished before the effective date of this AD per the original issue or Revision 1 of that service bulletin, provided that the B-nuts on the float switch cable conduit are torqued to the correct values, the float switch bonding strap is installed and securely fastened to the float switch bracket or main structure, and lock wire is installed in the boltheads on the front spar, as stated in Revision 2 of the service bulletin. We find that this change does not expand the scope of the proposed AD but merely provides necessary clarification of the work instructions.

Request To Extend Compliance Time for Replacement

Three commenters request that we extend the compliance time for the proposed replacement. One commenter requests that we extend the compliance time from 2 years to 36 months due to concerns about parts availability. The commenter notes that the replacement of the fuel tank float switch that would be required by the proposed AD is also required on Model 737–600, –700, –700C, –800, and –900 series airplanes by AD 2002–26–18, amendment 39–13006 (68 FR 481, January 6, 2003). Also, another Boeing service bulletin specifies installing the same float switches on auxiliary tanks of Boeing Model 737 series airplanes. The other commenters request that we extend the compliance time from 2 years to 4 years. One of these commenters states that this would enable operators to accomplish the replacements and installations during a scheduled heavy maintenance visit. We infer that the other commenter's request is intended to minimize the number of fuel tank entries by allowing the proposed actions to be accomplished at the same time as other ADs that require fuel tank entry.

We do not concur with the commenters' request. We have confirmed with Boeing that the necessary parts will be available for the affected airplanes within the 2-year compliance time stated in this final rule. In developing an appropriate compliance time for this final rule, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, and the maintenance schedules of affected operators. In light of all of these factors, we find that 2 years represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. We have made no change to this final rule in this regard.

Request To Allow Repetitive Inspections in Lieu of Replacement

One commenter requests that we revise the supplemental NPRM to allow operators to perform repetitive inspections of the fueling float switches and wiring, at intervals not to exceed 30,000 flight hours, in lieu of accomplishing the replacement of the float switches and conduit assemblies with new, improved parts. The commenter explains that it has accomplished the actions currently required by AD 99–05–12 and has found no discrepancy and has installed double Teflon sleeving on the wiring for the float switch in the center fuel tank. The commenter also states that it has installed grease in the interior of the float switch electrical conduits per AD 93–17–02, amendment 39–8672 (58 FR 54945, October 25, 1993).

We do not concur with the commenter's request. The repetitive inspections only address issues with the wiring. The repetitive inspections do not correct the unsafe condition in the float switch. We can better ensure long-term continued operational safety by modifications or design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not provide the degree of safety necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has led us to consider placing less emphasis on special procedures and more emphasis on design improvements. The proposed replacement and installation requirements are consistent with these considerations. We have made no change to this final rule in this regard.

Request To Require Installation of Transient Suppression Devices (TSDs)

Two commenters request that we require the installation of TSDs for the fuel tank float switches to limit the transfer of electrical energy and power through the float switch wires in lieu of requiring the installation of new, improved float switches and a conduit liner system or conduit assemblies. Both commenters note that a modification for installing TSDs on the float switches has been developed for use on other airplanes, including on Boeing Model 737–600, –700, –800, and –900 series airplanes. One of the commenters considers that the proposed requirements to install improved float switches and associated modifications are not consistent with the requirements of Special Federal Aviation Regulation (SFAR) No. 88, "Transport Airplane Fuel Tank System Design Review, Flammability Reduction, and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). The commenter notes that the new, improved float switch is powered by 28 volts direct current (DC), which exceeds the intrinsically safe level for equipment located in fuel tanks, as defined by SFAR No. 88. The commenter states that installation of TSDs would be a more attractive solution for operators because installation of TSDs would not involve entry into and replacement of complex parts in the fuel tank.

We agree in principle with the commenters' statements that installation of TSDs on the fuel tank float switches may be an acceptable alternative to the requirement to replace the float switches with new, improved float switches and install a conduit liner system or conduit assemblies. We have previously approved installation of TSDs on the float switches on Model 737–600, –700, –700C, –800, and –900 series airplanes. However, at this time, a float switch TSD has not been approved for installation on the airplane models affected by this final rule. Should a float switch TSD for these airplanes be developed and approved in the future, operators may request approval of an alternative method of compliance (AMOC) for the requirements of this final rule, as provided by paragraph (k)(1) of this final rule.

With regard to the one commenter's concerns about potential non-

compliance with SFAR No. 88, we do not agree. We note that the design standards are contained within Part 25 ("Airworthiness Standards: Transport Category Airplanes") of the Federal Aviation Regulations (14 CFR part 25), not in SFAR 88. We agree that a finding of direct compliance with the requirements of part 25 could not be made for the new, improved float switch and conduit liner or conduit assemblies because the design is not fail-safe. However, we have approved the fueling float switch, conduit liner system, and conduit assemblies having a conduit liner, as providing a level of safety equivalent to the requirements of Sections 25.901 ("Powerplant installation") and 25.981(a) and (b) ("Fuel tank ignition prevention") of the Federal Aviation Regulations (14 CFR 25.901 and 25.981), relative to the fuel tank float switch installation and maintenance instructions for the subject airplane models. We find that the new, improved design of the float switch provides an equivalent level of safety because of special compensating design features and maintenance that is required. The new, improved float switch is hermetically sealed and is more resistant than the old design to contamination by fuel or water. A new flexible ethylene tetrafluorethylene (ETFE) conduit liner installed in the float switch wiring conduit protects the wiring from chafing inside the conduit. Maintenance documents specify that this conduit liner be replaced with a new liner whenever the wiring is removed from the conduit for any reason. Also, the design of the new, improved float switch, conduit, liner, and wiring system will be listed as a Critical Design Configuration Control Limitation for the Model 737 fuel system, to ensure that operators do not modify the system without appropriate design review.

We have made no change to this final rule in this regard.

Request To Revise Cost Impact Information

One commenter states that the cost impact for replacing the float switches and installing a conduit liner or conduit assemblies is higher than stated in the supplemental NPRM. The commenter states that 87 work hours are required, and the cost of required parts is $7,500. A second commenter also states that the estimated cost of parts is conservative and that the actual cost is higher.

We agree with the commenter's statement that the total number of work hours for accomplishing the required actions is somewhat higher than stated in the supplemental NPRM. Accordingly, we have revised the estimated work hours stated in the Cost Impact section of this final rule to 94.

We do not concur with the commenters' request to revise the estimated cost of required parts. We note that the estimated cost of required parts, between $3,633 and $5,061, is consistent with figures provided in the referenced service bulletin. We have made no change to this final rule in this regard.

Request To Require Similar Actions on Auxiliary Fuel Tanks

One commenter, the airplane manufacturer, requests that we revise the supplemental NPRM to refer to Boeing Alert Service Bulletin 737–28A1192, Revision 1, dated August 21, 2003. This service bulletin describes procedures for replacing the fuel tank float switch and installing a conduit liner system on Model 737 series airplanes with auxiliary fuel tanks.

We do not concur with the commenter's request. We may consider additional rulemaking to require replacing the fuel tank float switch with a new, improved float switch and installing a conduit liner system on Model 737 series airplanes with auxiliary fuel tanks. However, we have determined that it is not appropriate to add such a requirement to this AD. We have made no change to this final rule in this regard.

Request To Allow Installation of Existing Float Switch

One commenter requests that we revise the proposed AD to remove paragraph (j). The commenter notes that this paragraph prohibits the installation of the existing float switch, part number F8300–146, as of the effective date of this AD. The commenter is concerned about the need to replace an inoperative main or center tank fuel float switch on an in-service airplane that has not been modified per Boeing Alert Service Bulletin 737–28A1141.

We do not concur with the commenter's request. The new, improved float switch is more resistant to fuel and water contamination than the existing float switch. Fluid contamination in the existing float switch design could provide an electrical path between the float switch and the airplane structure, which could result in a potential ignition source in the fuel tank. Considering the criticality of the unsafe condition, we find that it would be inappropriate to allow installation of the existing float switch after the effective date of this final rule. However, in the case of a need to replace an inoperative main or center fuel tank float switch, paragraphs (c) and (d) of this final rule provide for deactivation of the float switch until the necessary replacement can be accomplished. No change to this final rule is necessary in this regard.

Request To Remove Inaccurate Statements

One commenter requests that we revise the "Actions Since Issuance of Previous Proposal" section of the supplemental NPRM to remove the statement that "the new conduit assemblies for the float switch eliminate sharp bends within the conduit. * * *" The commenter notes that this statement is not true for the affected airplane models.

We acknowledge that this statement is incorrect for the airplane models subject to this AD. This statement pertains to the new conduit assemblies that are installed in the center and wing fuel tanks on Boeing Model 737–600, –700, –700C, –800, and –900 series airplanes. However, the "Actions Since Issuance of Previous Proposal" section is not restated in this final rule, so no change is possible in this regard.

The same commenter requests that we revise the "Other Relevant Rulemaking" section of the supplemental NPRM to clarify that this AD would not require the replacement of float switch conduit assemblies in the center fuel tank.

We concur that this AD does not require replacement of all conduit assemblies in the center fuel tank. However, for airplanes subject to the inspections required by paragraph (b)(3)(ii)(A) of this final rule, this final rule does require replacement of any section of conduit where arcing or a fuel leak has occurred. Since the "Other Relevant Rulemaking" is not restated in this final rule, no change is possible in this regard.

The same commenter requests that we delete the last sentence of paragraph (b) of the supplemental NPRM, which states, "Pay particular attention to the wire bundle where it passes through the wing pylon vapor seals and under the wire bundle clamps." The commenter notes that the wing pylon vapor seal is not in the area of rework.

We concur with the commenter's request, and have deleted this sentence from paragraph (b) of this final rule.

Request To Clarify Requirement To Replace Electrical Conduit

One commenter requests that we revise the "Summary" and "Explanation of Proposed Requirements of Supplemental NPRM" sections of the supplemental NPRM to clarify what sections of the conduit in the center fuel

tank need to be replaced with new conduit. Specifically, the commenter requests that we revise these sections to specify that sections of the conduit found to have damage due to arcing must be replaced.

We acknowledge the commenter's concern, but we do not agree that any change to this final rule is necessary. The summary of an AD is intended to provide only a general description of the requirements of the AD. The reference in the "Summary" section to replacing "certain existing sections of the electrical conduit" is an accurate, although general, description of the required action. Further, we acknowledge that the wording of the "Explanation of Proposed Requirements of the Supplemental NPRM" section could have been more precise as to which sections of the conduit may need to be replaced. However, this section is not restated in this final rule, so no change is possible in this regard. We find that the requirement stated in paragraph (h)(2) of the supplemental NPRM and this final rule clearly states that any section of the electrical conduit in the center fuel tank where arcing or a leak occurred must be replaced with new conduit. We have made no change to this final rule in this regard.

Explanation of Additional Changes to Final Rule

For clarification, we have revised paragraph (b)(4) of this final rule to refer specifically to Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999; instead of to "the alert service bulletin."

Also, paragraph (e) of the supplemental NPRM states that dispatch with the float switch deactivated "is allowed until replacement float switches and wiring are available for installation or until the compliance time for the replacement required by paragraph (h) of this AD." For clarification, we have revised that paragraph to state that dispatch with the float switch deactivated "is allowed until replacement float switches and wiring are available for installation, but not later than the compliance time for the replacement required by paragraph (h) of this AD."

Also, paragraph (f) of the supplemental NPRM states that, "If the actions required by paragraph (h) of this AD are accomplished within the compliance time specified in this paragraph, operators are not required to do paragraph (b) or (c) of this AD." Our intent was that accomplishment of paragraph (h) of this final rule also entails accomplishment of paragraph (h)(2) of this final rule (as applicable). Thus, for clarification, we have revised paragraph (f) of this final rule to explicitly state that operators must accomplish the requirements of paragraph (h)(2) for the provision in paragraph (f) of this final rule to apply.

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 significantly 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 (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. However, for clarity and consistency in this final rule, we have retained the language of the supplemental NPRM regarding that material.

Change to Labor Rate Estimate

Since the issuance of the supplemental NPRM, we have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 2,886 Model 737–200, –200C, –300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,111 airplanes of U.S. registry will be affected by this AD.

The removal and inspection of the fueling float switch in the center fuel tank and installation of double Teflon sleeving, which are provided as one alternative for compliance with AD 99–05–12, takes approximately 18 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts cost approximately $30 per airplane. Based on these figures, the cost impact of the removal and inspection of the float switch and installation of double Teflon sleeving, if accomplished, is estimated to be $1,200 per airplane.

The deactivation of the float switch and installation of "Caution" signs that are provided as the other alternative for compliance with AD 99–05–12, takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the deactivation and installation, if accomplished, is estimated to be $195 per airplane.

The new replacement of float switches and installation of a conduit liner in the center fuel tank, and the replacement of float switches and conduit assemblies in the wing fuel tanks, that are required by this AD will take approximately 94 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will cost between $3,633 and $5,061 per airplane. Based on these figures, the cost impact of this replacement is estimated to be between $9,743 and $11,171 per airplane.

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

Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a

substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11060 (64 FR 10213, March 3, 1999), corrected at 64 FR 11533, March 9, 1999, and by adding a new airworthiness directive (AD), amendment 39–13738, to read as follows:

2004–15–04 Boeing: Amendment 39–13738. Docket 99–NM–78–AD. Supersedes AD 99–05–12, Amendment 39–11060.

Applicability: Model 737–200, –200C, –300, –400, and –500 series airplanes; on which the center wing tanks are activated; excluding those airplanes equipped with center wing tank volumetric top-off systems, or alternating current (AC) powered center tank float switches; certificated in any category.

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 (k)(1) 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 contamination of the fueling float switch by moisture or fuel, and chafing of the float switch wiring against the fuel tank conduit, which could present an ignition source inside the fuel tank that could cause a fire or explosion, accomplish the following:

Requirements of AD 99–05–12

Compliance Time for Initial Action

(a) For Model 737–200, –300, –400, and –500 series airplanes having line numbers (L/N) 1 through 3108 inclusive: Prior to the accumulation of 30,000 total flight hours, or within 30 days after March 18, 1999 (the effective date of AD 99–05–12, amendment 39–11060), whichever occurs later, accomplish the requirements of paragraph (b) or (c) of this AD.

Initial Inspection: Procedures

(b) Remove the fueling float switch and wiring from the center fuel tank and perform a detailed inspection of the float switch wiring to detect discrepancies (*i.e.*, evidence of electrical arcing, exposure of the copper conductor, presence or scent of fuel on the electrical wires, or worn insulation), in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999. After the effective date of this AD, only Revision 2 may be used.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Initial Inspection: Follow-On Actions

(1) If no discrepancy is detected, prior to further flight, accomplish either paragraph (b)(1)(i) or (b)(1)(ii) of this AD.

(i) Measure the resistance between the wires and the float switch housing, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999.

(A) If the resistance is less than 200 megohms, prior to further flight, replace the float switch and wiring with a new float switch and wiring, and install double Teflon sleeving over the wiring of the float switch, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999; or replace the float switch and wiring with a new, improved float switch and wiring in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1141, Revision 2, dated August 21, 2003. After the effective date of this AD, only a new, improved float switch and wiring may be installed. If a replacement float switch and wiring are not available, prior to further flight, accomplish the requirements specified in paragraphs (c) and (d) of this AD.

(B) If the resistance is greater than or equal to 200 megohms, prior to further flight, blow dirt out of the conduit, install double Teflon sleeving over the wiring of the float switch, and reinstall the existing float switch, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999.

(ii) Replace the float switch and wiring with a new float switch and wiring, and install double Teflon sleeving over the wiring of the float switch, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999; or replace the float switch and wiring with a new, improved float switch and wiring in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1141, Revision 2, dated August 21, 2003. After the effective date of this AD, only a new, improved float switch and wiring may be installed. If a replacement float switch and wiring are not available, prior to further flight, accomplish the requirements specified in paragraphs (c) and (d) of this AD.

(2) If any worn insulation is detected, and if no copper conductor is exposed, and if no evidence of arcing is detected; accomplish the requirements specified in either paragraph (b)(1)(i) or (b)(1)(ii) of this AD.

(3) If any electrical arcing or exposed copper conductor is detected, prior to further flight, accomplish either paragraph (b)(3)(i) or (b)(3)(ii) of this AD.

(i) Replace any section of the electrical conduit where the arcing occurred with a new section, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999; and accomplish the requirements specified in paragraph (b)(1)(ii) of this AD.

(ii) Perform a detailed inspection to detect fuel leaks of the electrical conduit, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999.

(A) If no fuel leak is detected, prior to further flight, accomplish the requirements specified in paragraph (b)(1)(ii) of this AD. Repeat the inspection required by paragraph (b)(3)(ii) of this AD thereafter at intervals not to exceed 1,500 flight hours, until the replacement required by paragraph (b)(3)(ii)(B) of this AD is accomplished.

(B) If any fuel leak is detected, prior to further flight, replace, with new conduit, any section of the electrical conduit where a leak is found, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999. Prior to further flight after accomplishment of the replacement, accomplish the requirements specified in paragraph (b)(1)(ii) of this AD. Accomplishment of electrical conduit replacement constitutes terminating action for the repetitive inspection requirements of paragraph (b)(3)(ii)(A) of this AD.

(4) If any presence or scent of fuel on the electrical wires is detected, prior to further flight, locate the source of the leak and replace the damaged conduit with a new conduit, in accordance with Boeing Alert

Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999; and accomplish the requirements specified in either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, unless accomplished previously in accordance with paragraph (b)(1), (b)(2), or (b)(3) of this AD.

Deactivation of Float Switch

(c) Accomplish the requirements specified in either paragraph (c)(1) or (c)(2) of this AD, in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999.

(1) Deactivate the center tank float switch (*i.e.*, cut the two wires for the float switch at the splices on the front spar and cap and stow the four wire ends), paint a "Caution" sign that shows a conservative maximum fuel capacity for the center tank on the underside of the right-hand wing near the fueling station door, and install an INOP placard on the fueling panel.

(2) Deactivate the center tank float switch (*i.e.*, cut, stow, and splice the two wires for the float switch at the splices on the front spar), and paint a "Caution" sign that shows a conservative maximum fuel capacity for the center tank on the underside of the right-hand wing near the fueling station door.

Deactivation of Float Switch: Additional Requirements

(d) For airplanes on which the requirements specified in paragraph (c) of this AD have been accomplished: Accomplish the requirements specified in paragraphs (d)(1), (d)(2), and (d)(3) of this AD.

(1) Operators must ensure that airplane fueling crews are properly trained in accordance with the procedures specified in Boeing Telex M–7200–98–04486, dated December 1, 1998, or procedures approved by the FAA. This one-time training must be accomplished prior to utilizing the procedures specified in paragraph (d)(3) of this AD.

(2) Prior to fueling the airplane, perform a check to verify that the fueling panel center tank quantity indicator is operative. Repeat this check thereafter prior to fueling the airplane. If the fueling panel center tank quantity indicator is not operative, prior to further flight, replace the fueling panel center tank quantity indicator with a serviceable part.

(3) One of the two manual fueling procedures for the center fuel tank must be used for each fueling occurrence, in accordance with Boeing Telex M–7200–98–04486, dated December 1, 1998, or a method approved by the FAA.

Note 3: For the purposes of this AD, the term "the FAA," is defined in paragraph (d) of this AD as "the cognizant Principal Maintenance Inspector (PMI)."

Note 4: Where there are differences between Boeing Alert Service Bulletin 737–28A1132 and this AD, the AD prevails.

Deactivation of Float Switch: Dispatch

(e) Dispatch with the center fuel tank float switch deactivated, in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Revision 1, dated January 15, 1999; or Revision 2, dated June 17, 1999; is allowed until replacement float switches and wiring are available for installation, but not later than the compliance time for the replacement required by paragraph (h) of this AD. Where there are differences between the Master Minimum Equipment List (MMEL) and the AD, the AD prevails.

New Requirements of This AD

Compliance Time for Initial Action for Model 737–200C Series Airplanes

(f) For Model 737–200C series airplanes having L/Ns 1 through 3108 inclusive: Prior to the accumulation of 30,000 total flight hours, or within 30 days after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraph (b) or (c) of this AD. (If the actions specified in paragraph (b) or (c) of this AD have been accomplished before the effective date of this AD, no further action is required by this paragraph.) If the actions required by paragraph (h) of this AD, including the replacement required by paragraph (h)(2) of this AD, are accomplished within the compliance time specified in this paragraph, operators are not required to do paragraph (b) or (c) of this AD.

Replacement of Conduit

(g) For airplanes having L/Ns 1 through 3108 inclusive, on which the inspection required by paragraph (b)(3)(ii) of this AD has been accomplished prior to the effective date of this AD, and on which replacement of conduit specified in paragraph (b)(3)(ii)(B) has not been accomplished: Within 1,500 flight hours or 6 months after the effective date of this AD, whichever occurs first, replace, with new conduit, any section of the electrical conduit where arcing or a leak occurred, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1132, Revision 2, dated June 17, 1999. Such replacement of the conduit constitutes terminating action for the repetitive inspection requirements of paragraph (b)(3)(ii)(A) of this AD.

Replacement of Center and Wing Tank Float Switches

(h) Within 2 years after the effective date of this AD, accomplish paragraphs (h)(1) and (h)(2) of this AD, as applicable. Except as provided by paragraph (j) of this AD, accomplishment of the actions in paragraphs (h)(1) and (h)(2) of this AD, as applicable, terminates the requirements of this AD.

(1) For all airplanes: In the center fuel tank, replace the existing float switches with new, improved float switches, and install a conduit liner system; and in the wing fuel tanks, replace the existing float switches and conduit assemblies with new, improved float switches and conduit assemblies that include a liner system inside the conduit. Do these replacements in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1141, Revision 2, dated August 21, 2003.

(2) For airplanes subject to the repetitive inspections required by paragraph (b)(3)(ii)(A) of this AD, on which the electrical conduit in the center fuel tank has not been replaced as specified in paragraph (b)(3)(ii)(B) or (g) of this AD: Prior to or concurrently with the replacement of the float switch in the center fuel tank required by paragraph (h)(1) of this AD, replace, with new conduit, any section of the center fuel tank electrical conduit where arcing or a leak occurred, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1132, Revision 2, dated June 17, 1999. Such replacement constitutes terminating action for the repetitive inspection requirements of paragraph (b)(3)(ii)(A) of this AD.

Credit for Previously Accomplished Actions

(i) Replacement of float switches and conduit assemblies, and installations of conduit liner systems, as applicable, accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–28A1141, dated September 5, 2002; or Revision 1, dated December 19, 2002; are considered acceptable for compliance with the corresponding action specified in this AD, provided that the requirements of paragraphs (i)(1), (i)(2), and (i)(3) of this AD are met.

(1) The B-nuts on the float switch cable conduit must be torqued to the values specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1141, Revision 2, dated August 21, 2003.

(2) The float switch bonding strap must be installed and securely fastened to the float switch bracket or main structure, as specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1141, Revision 2, dated August 21, 2003.

(3) Lock wire must be installed in the boltheads on the front spar, as specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1141, Revision 2, dated August 21, 2003.

Parts Installation

(j) As of the effective date of this AD, no person may install a float switch having part number F8300–146 on any airplane.

Alternative Method of Compliance

(k)(1) 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 Aircraft Certification Office (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.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–05–12, amendment 39–11060, are approved as alternative methods of compliance with the corresponding requirements of this AD.

Note 5: 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

(l) Special flight permits may be issued in accordance with sections 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.

Incorporation by Reference

(m) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Boeing Alert Service Bulletin 737–28A1132, Revision 1, dated January 15, 1999; Boeing Alert Service Bulletin 737–28A1132, Revision 2, dated June 17, 1999; Boeing Alert Service Bulletin 737–28A1141, Revision 2, dated August 21, 2003; and Boeing Telex M–7200–98–04486, dated December 1, 1998; as applicable.

(1) The incorporation by reference of Boeing Alert Service Bulletin 737–28A1132, Revision 2, dated June 17, 1999; and Boeing Alert Service Bulletin 737–28A1141, Revision 2, dated August 21, 2003; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Alert Service Bulletin 737–28A1132, dated December 2, 1998; Boeing Alert Service Bulletin 737–28A1132, Revision 1, dated January 15, 1999; and Boeing Telex M–7200–98–04486, dated December 1, 1998; was approved previously by the Director of the Federal Register as of March 18, 1999 (64 FR 10213, March 3, 1999).

(3) Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(n) This amendment becomes effective on August 31, 2004.

Issued in Renton, Washington, on July 1, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16676 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–280–AD; Amendment 39–13742; AD 2004–15–08]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, that currently requires revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate life limits for certain items and inspections to detect fatigue cracking in certain structures. This amendment requires revising the Airworthiness Limitations section of the Instructions for Continued Airworthiness to incorporate updated Airworthiness Limitation Items, Safe Life Items, and Certification Maintenance Requirements. The actions specified by this AD are intended to ensure the structural integrity of the airplane by ensuring that fatigue cracking of certain structural elements is detected and corrected in a timely manner. This action is intended to address the identified unsafe condition.

DATES: Effective August 31, 2004.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of August 31, 2004.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 4, 2001 (66 FR 54656, October 30, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2001–21–04, amendment 39–12475 (66 FR 54656, October 30, 2001), which is applicable to all Fokker Model F.28 Mark 0070 and 0100 series airplanes, was published in the **Federal Register** on May 12, 2004 (69 FR 26329). The action proposed to require revising the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness to incorporate updated Airworthiness Limitation Items, Safe Life Items, and Certification Maintenance Requirements.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 74 airplanes of U.S. registry that will be affected by this AD.

The ALS revision that is currently required by AD 2001–21–04 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this currently required action on U.S. operators is estimated to be $4,810, or $65 per airplane.

The new actions that are required in this AD action will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $4,810, or $65 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact

figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–12475 (66 FR 54656, October 30, 2001), and by adding a new airworthiness directive (AD), amendment 39–13742, to read as follows:

2004–15–08 Fokker Services B.V.: Amendment 39–13742. Docket 2002–NM–280–AD. Supersedes AD 2001–21–04, Amendment 39–12475.

Applicability: All Model F.28 Mark 0070 and 0100 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that fatigue cracking of certain structural elements is detected and corrected, and to ensure the structural integrity of affected airplanes, accomplish the following:

Requirements of AD 2001–21–04

Airworthiness Limitations Revision

(a) Within 30 days after December 4, 2001 (the effective date of AD 2001–21–04, amendment 39–12475), revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness by incorporating Report SE–623, "Fokker 70/100 Airworthiness Limitations Items and Safe Life Items," of Appendix 1 of Fokker 70/100 Maintenance Review Board (MRB) document, dated June 1, 2000.

(b) Except as provided by paragraph (c) this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (a) of this AD.

New Requirements of This AD

New Airworthiness Limitations Revision

(c) Within 6 months after the effective date of this AD, revise the Airworthiness Limitations section (ALS) of the Instructions for Continued Airworthiness by incorporating Fokker Services B.V. Report SE–623, "Fokker 70/100 Airworthiness Limitations Items and Safe Life Items," Issue 2, dated September 1, 2001; and Fokker Services B.V. Report SE–473, "Fokker 70/100 Certification Maintenance Requirements," Issue 5, dated July 16, 2001; into Section 6 of the Fokker 70/100 MRB document. (These reports are already incorporated into Fokker 70/100 MRB document, Revision 10, dated October 1, 2001.) Once the actions required by this paragraph have been accomplished, the original issue of Fokker Services B.V. Report SE–623, "Fokker 70/100 Airworthiness Limitations Items and Safe Life Items," dated June 1, 2000, may be removed from the ALS of the Instructions for Continued Airworthiness.

(d) If the requirements of paragraph (c) of this AD are accomplished within the compliance time specified in paragraph (a) of this AD, it is not necessary to accomplish the requirements of paragraph (a) of this AD.

(e) After the actions specified in paragraph (c) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (c) of this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(g) The actions shall be done in accordance with Fokker Services B.V. Report SE–623, "Fokker 70/100 Airworthiness Limitation Items and Safe Life Items," dated June 1, 2000; Fokker Services B.V. Report SE–623, "Fokker 70/100 Airworthiness Limitation Items and Safe Life Items," Issue 2, dated September 1, 2001; and Fokker Services B.V. Report SE–473, "Fokker 70/100 Certification Maintenance Requirements," Issue 5, dated July 16, 2001.

(1) The incorporation by reference of Fokker Services B.V. Report SE–623, "Fokker 70/100 Airworthiness Limitation Items and Safe Life Items," Issue 2, dated September 1, 2001; and Fokker Services B.V. Report SE–473, "Fokker 70/100 Certification Maintenance Requirements," Issue 5, dated July 16, 2001; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Fokker Services B.V. Report SE–623, "Fokker 70/100 Airworthiness Limitation Items and Safe Life Items," dated June 1, 2000, was approved by the Director of the Federal Register as of December 4, 2001 (66 FR 54656, October 30, 2001).

(3) Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 1: The subject of this AD is addressed in Dutch airworthiness directive 2002–062, dated May 31, 2002.

Effective Date

(h) This amendment becomes effective on August 31, 2004.

Issued in Renton, Washington, on July 9, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16677 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–319–AD; Amendment 39–13744; AD 2004–15–10]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD),

applicable to certain Saab Model SAAB SF340A series airplanes, that requires replacing certain power wires with a modification harness; and testing the new harness installation. These actions are necessary to prevent a momentary loss of data on the left-hand electronic flight instrumentation system (LH EFIS) screens, which could lead to the pilot's loss of situational awareness during initial climb or approach/landing, and possibly result in reduced control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 31, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 31, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

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 Saab Model SAAB SF340A series airplanes was published in the **Federal Register** on April 1, 2004 (69 FR 17072). That action proposed to require replacing certain power wires with a modification harness; and testing the new harness installation.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 12 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $5,500 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $89,400, or $7,450 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–15–10 Saab Aircraft AB: Amendment 39–13744. Docket 2002–NM–319–AD.

Applicability: Model SAAB SF340A series airplanes, manufacturer serial number –004 through –028 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a momentary loss of data on the left-hand electronic flight instrumentation system (LH EFIS) screens, which could lead to the pilot's loss of situational awareness during initial climb or approach/landing, and possibly result in reduced control of the airplane, accomplish the following:

Replacement and Test

(a) Within 12 months after the effective date of this AD, replace certain power wires with a modification harness, and test the harness installation; by doing all of the actions in, and in accordance with, the Accomplishment Instructions of Saab Service Bulletin 340–29–021, Revision 02, dated October 2, 2002.

Alternative Methods of Compliance

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

Incorporation by Reference

(c) The actions shall be done in accordance with Saab Service Bulletin 340–29–021, Revision 02, dated October 2, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 1: The subject of this AD is addressed in Swedish airworthiness directive 1–179, dated October 2, 2002.

Effective Date

(d) This amendment becomes effective on August 31, 2004.

Issued in Renton, Washington, on July 9, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16678 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–270–AD; Amendment 39–13740; AD 2004–15–06]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes, that requires various inspections of the fuselage nose structure between stations 4 and 11, and corrective actions if necessary. This action is necessary to detect and correct fatigue cracking in the primary structure of the nose of the airplane at the forward avionics bay (fuselage stations 4 to 11), which could result in reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective August 31, 2004.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of August 31, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes was published in the **Federal Register** on October 1, 2003 (68 FR 56596). That action proposed to require various inspections of the fuselage nose structure between stations 4 and 11, and corrective actions if necessary.

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 from a single commenter.

Request To Withdraw Proposed AD

The commenter, an operator, states that the proposed AD is an unnecessary burden to operators. The commenter suggests that instead of the FAA issuing an AD, the maintenance review board (MRB) report should be revised to include the actions required by the proposed AD. The commenter states that it currently performs numerous inspections for cracking on its fleet of Jetstream Model 4101 airplanes using procedures specified in the commenter's maintenance programs. The commenter notes that BAE Systems (Operations) Limited Service Bulletin J41–53–047, Revision 1, dated July 19, 2002, specifies that when the inspections and procedures in the service bulletin are published in the MRB report and the maintenance planning document (MPD), the inspections and procedures will be deleted from the service bulletin and the MRB report will become the published source document. The commenter also notes that another operator, with a fleet of 27 Jetstream Model 4101 airplanes, did the inspections specified in the service bulletin and did not find any cracking. Compliance with the proposed AD would require the commenter to bring 25 airplanes "off-line" to access and inspect the areas specified in the proposed AD. The commenter states that if the inspection procedures were added to the MRB report through a revision, an operator could merge these inspections into its established maintenance program so the inspections coincide with the operator's heavy maintenance program, which would reduce the operational impact.

The FAA infers that the commenter is requesting that the AD be withdrawn. We do not agree. The procedures specified in operators' MRB reports are not mandatory. Therefore, we must issue an AD to ensure that the identified unsafe condition is properly addressed. We acknowledge that some operators may currently have maintenance programs that address the unsafe condition. If a program is adequate, an operator would be in a position to request approval for an alternative method of compliance with the AD (*i.e.*, to follow the operator's current program rather than revise it to comply with the AD). Our obligation to issue the AD and address an unsafe condition remains; the rule must apply to everyone to ensure that all affected airplanes are covered, regardless of who operates them. Furthermore, the airworthiness authority for the state of design issued an airworthiness directive mandating the same actions required by this AD. This AD has not been changed regarding this issue.

Request To Revise Cost Impact Section

The commenter notes that the figure in the Cost Impact section of the proposed AD does not include incidental costs, such as the time required to gain access and close up an airplane. The commenter states that these costs are not incidental, and that the majority of time required to perform the various inspections is spent accessing the areas to be inspected.

We infer that the commenter is requesting that the Cost Impact section of the proposed AD be revised. We do not agree. As stated in the proposed AD, "the figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD." The specific actions required by the AD are various inspections of the fuselage nose structure between stations 4 and 11. We expect that most operators will be able to do the actions required by this AD during scheduled maintenance. We attempt to set compliance times that generally coincide with operators' maintenance schedules. However, because operators' schedules vary substantially, we cannot accommodate every operator's optimal scheduling in each AD. The time necessary for gaining access to and closing the inspection area is incidental. This AD has not been changed regarding this issue.

The commenter also objects to the FAA's assumption that "no operator would accomplish those actions in the future if this AD were not adopted." The

commenter states that it performs numerous inspections for cracking in accordance with its maintenance program.

The commenter appears to have misunderstood the context of the quoted statement: "The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted." The purpose of the Cost Impact section of the NPRM is to estimate the costs of compliance with the proposed AD. As stated, for this purpose, the FAA assumes that all operators taking the required actions are doing so only because the AD requires it. We recognize that in most cases this assumption is incorrect, and that the resulting costs attributed to the AD are exaggerated. But we do not have access to data that would enable us to accurately determine on what percentage of affected airplanes the actions would be done in the absence of the AD. This AD has not been changed regarding this issue.

Explanation of Changes to This AD

We have included the headers "Inspections" and "Corrective Actions" in the body of this AD. These headers were inadvertently omitted from the proposed AD. We also changed the citations for the appropriate source of service information from Jetstream Service Bulletin J41–53–047, Revision 1, dated July 19, 2002, to BAE Systems (Operations) Limited Service Bulletin J41–53–047, Revision 1, dated July 19, 2002, to comply with the Office of the Federal Register's guidelines for material incorporated by reference. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes previously described.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry will be affected by this AD, that it will take approximately 50 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $185,250, or $3,250 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–15–06 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–13740. Docket 2001–NM–270–AD.

Applicability: All Model Jetstream 4101 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the primary structure of the nose of the airplane at the forward avionics bay (fuselage stations 4 to 11), which could result in reduced structural integrity of the airplane, accomplish the following:

Inspections

(a) Perform detailed, radiographic, and eddy current inspections of the fuselage nose structure between stations 4 and 11 for discrepancies (including cracking, corrosion, and exposed wiring), per the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–53–047, Revision 1, dated July 19, 2002, except that reporting results of inspection findings is not required by this AD. Do the inspections at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD. Repeat the inspections thereafter at intervals not to exceed 6,000 landings.

(1) Prior to the accumulation of 10,000 total landings, but not before the accumulation of 7,000 total landings.

(2) Within 3,000 landings after the effective date of this AD, or at the next 8-year environmental (corrosion) inspection, whichever occurs first.

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

(b) For the inspections of the surround structure for the avionics bay doors, operators may either remove the high intensity radiated field (HIRF) seal and do a detailed inspection, or do radiographic and eddy current inspections with the HIRF seal in place.

Corrective Actions

(c) If any discrepancy is found during any inspection required by this AD, before further flight, repair per BAE Systems (Operations) Limited Service Bulletin J41–53–047, Revision 1, dated July 19, 2002. Where the service bulletin specifies contacting the manufacturer for disposition of repairs, before further flight, repair per a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent).

Alternative Methods of Compliance

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

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with BAE Systems (Operations) Limited Service Bulletin J41–53–047, Revision 1, dated July 19, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 2: The subject of this AD is addressed in British airworthiness directive 001–06–2001.

Effective Date

(f) This amendment becomes effective on August 31, 2004.

Issued in Renton, Washington, on July 9, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16679 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–285–AD; Amendment 39–13743; AD 2004–15–09]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This amendment requires an inspection of the fuel tube assembly of the auxiliary power unit (APU) for clearance from adjacent components; and an inspection of the fuel tube assembly and the bleed air duct shroud for discrepancies (insufficient clearance, nicks, dents, chafing, or other damage); and related investigative and corrective actions if necessary. This amendment also requires relocation of certain support clamps on the APU fuel tube assembly. This action is necessary to prevent a fuel leak caused by chafing of the APU fuel tube assembly, which could result in fire in the center wing area. This action is intended to address the identified unsafe condition.

DATES: Effective August 31, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 31, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; 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: Mazdak Hobbi, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7330; fax (516) 794–5531.

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 Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes was published in the **Federal Register** on May 19, 2004 (69 FR 28863). That action proposed to require an inspection of the fuel tube assembly of the auxiliary power unit (APU) for clearance from adjacent components; an inspection of the fuel tube assembly and the bleed air duct shroud for discrepancies (insufficient clearance, nicks, dents, chafing, or other damage); and related investigative and corrective actions if necessary. That action also proposed to require relocation of certain support clamps on the APU fuel tube assembly.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 125 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $8,125, or $65 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–15–09 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–13743. Docket 2003–NM–285–AD.

Applicability: Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes, serial number 003 through 585 inclusive; certificated in any category; with auxiliary power unit (APU) installation per Standard Option Only (S.O.O.) 8155 or Change Request (CR) 849SO08155.

Compliance: Required as indicated, unless accomplished previously.

To prevent a fuel leak caused by chafing of the APU fuel tube assembly, which could result in fire in the center wing area, accomplish the following:

Inspection, Relocation and Related Investigative and Corrective Actions

(a) Within 6 months after the effective date of this AD: Do a general visual inspection of the APU fuel tube assembly for discrepancies. The inspection includes examining the routing of the fuel tube assembly to ensure that the tube has sufficient clearance between the shroud of the bleed air duct and the gust lock cable; and inspecting the fuel tube assembly and the bleed air duct shroud for other discrepancies such as nicks, dents, chafing, or other damage. If the inspection shows no discrepancies, before further flight, relocate the clamps on the fuel tube assembly. If the inspection shows discrepancies, before further flight, do the applicable related investigative and corrective actions, and relocate the clamps on the fuel tube assembly. Accomplish all actions per the Accomplishment Instructions of Bombardier Service Bulletin 8–49–19, Revision A, dated July 7, 2003.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Inspections Accomplished Per Previous Issue of Service Bulletin

(b) Actions accomplished before the effective date of this AD per Bombardier Service Bulletin 8–49–19, dated May 13, 2003, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with Bombardier Service Bulletin 8–49–19, Revision A, dated July 7, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; 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 Canadian airworthiness directive CF–2003–22, dated September 3, 2003.

Effective Date

(e) This amendment becomes effective on August 31, 2004.

Issued in Renton, Washington, on July 9, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16680 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–279–AD; Amendment 39–13741; AD 2004–15–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A310 series airplanes, that requires repetitive inspections for fatigue cracking of the area around the fasteners of the landing plate of the aileron access doors of the bottom skin panel of the wings, and related corrective action. This amendment also provides for an optional terminating action, which ends the repetitive inspections. This action is necessary to prevent fatigue cracking of the area around the fasteners of the landing plate of the aileron access doors and the bottom skin panel of the wings, which could result in reduced structural integrity of the wings. This action is intended to address the identified unsafe condition.

DATES: Effective August 31, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 31, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal

Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A310 series airplanes was published in the **Federal Register** on May 19, 2004 (69 FR 28867). That action proposed to require repetitive inspections for fatigue cracking of the area around the fasteners of the landing plate of the aileron access doors of the bottom skin panel of the wings, and related corrective action. That action also provided for an optional terminating action, which would end the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 46 airplanes of U.S. registry will be affected by this AD, that it will take about 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $5,980, or $130 per airplane, per inspection cycle.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–15–07 Airbus: Amendment 39–13741. Docket 2003–NM–279–AD.

Applicability: Model A310 series airplanes, certificated in any category; on which Airbus Modification 12525 has not been done during production.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the area around the fasteners of the landing plate of the aileron access doors and the bottom skin panel of the wings, which could result in reduced structural integrity of the wings, accomplish the following:

Repetitive Inspections

(a) For airplanes on which Airbus Modification 5106 (Airbus Service Bulletin A310–57–2004, Revision 2, dated March 5, 1990) has not been done as of the effective date of this AD: Within 2,000 flight cycles after the effective date of this AD, or within 3,000 flight cycles after the last inspection done per paragraph (k) of AD 98–26–01, amendment 39–10942 (63 FR 69179, December 16, 1998), whichever is first; do a high frequency eddy current (HFEC) inspection for cracking of the area around the fasteners of the landing plate of the wing bottom skin panel No. 2 of the left and right wings. Do the inspection per the Accomplishment Instructions of Airbus Service Bulletin A310–57–2082, dated June 11, 2002. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 1,900 flight cycles, until accomplishment of the terminating action specified in paragraph (d) of this AD.

(b) For airplanes on which Airbus Modification 5106 has been done as of the effective date of this AD: Do the HFEC inspection required by paragraph (a) of this AD at the applicable time specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD. If no cracking is found, repeat the inspection thereafter at intervals not to exceed 1,900 flight cycles, until accomplishment of the terminating action specified in paragraph (d) of this AD.

(1) For airplanes that have accumulated fewer than 17,000 total flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever is first, as of the effective date of this AD: Inspect prior to the accumulation of 18,000 total flight cycles.

(2) For airplanes that have accumulated 17,000 or more total flight cycles, but fewer than 19,001 total flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever is first, as of the effective date of this AD: Inspect within 2,000 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 19,001 or more total flight cycles, but fewer than 21,001 total flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever is first, as of the effective date of this AD: Inspect with 1,200 flight cycles after the effective date of this AD.

(4) For airplanes that have accumulated 21,001 or more total flight cycles since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever is first, as of the effective date of this AD: Inspect within 500 flight cycles after the effective date of this AD.

Corrective Action

(c) If any cracking is found during any inspection required by paragraph (a) or (b) of this AD: Before further flight, do the actions required by either paragraph (c)(1) or (c)(2) of this AD.

(1) Do a permanent repair of the area by doing the applicable corrective actions per the Accomplishment Instruction of Airbus Service Bulletin A310–57–2082, dated June 11, 2002. Accomplishment of the permanent repair terminates the repetitive inspections required by this AD for the repaired area only.

(2) Do the terminating action specified in paragraph (d) of this AD.

Optional Terminating Action

(d) Modification of the landing plate of the aileron access doors of the wing bottom skin panel No. 2 of the left and right wings by doing all the actions, per the

Accomplishment Instructions of Airbus Service Bulletin A310–57–2081, dated June 11, 2002, terminates the requirements of this AD. Where the service bulletin specifies contacting the manufacturer for disposition of certain repair conditions that may be associated with the modification procedure, this AD requires that the repair be done per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile, or its delegated agent.

Alternative Methods of Compliance

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

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus Service Bulletin A310–57–2082, dated June 11, 2002. The optional terminating action, if accomplished, shall be done in accordance with Airbus Service Bulletin A310–57–2081, dated June 11, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 1: The subject of this AD is addressed in French airworthiness directive 2003–242(B), dated June 25, 2003.

Effective Date

(g) This amendment becomes effective on August 31, 2004.

Issued in Renton, Washington, on July 9, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16675 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–172–AD; Amendment 39–13739; AD 2004–15–05]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146-RJ series airplanes, that requires replacing the existing bellows inlet duct of the auxiliary power unit (APU) system with a new, improved rectangular metallic bellows inlet duct. This action is necessary to prevent air from the APU bay being ingested into the flight deck and passenger cabin resulting in poor air quality and, if the air is contaminated, possible incapacitation of the flightcrew and passengers. This action is intended to address the identified unsafe condition.

DATES: Effective August 31, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 31, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes was published in the **Federal Register** on May 27, 2004 (69 FR 30244). That action proposed to require replacing the existing bellows inlet duct of the auxiliary power unit (APU) system with a new, improved rectangular metallic bellows inlet duct.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 54 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $4,500 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $250,020, or $4,630 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, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–15–05 BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Amendment 39–13739. Docket 2003–NM–172–AD.

Applicability: Model 146 series airplanes with Modification HCM30027A, HCM36019A, or HCM30373A installed; and Model Avro 146–RJ series airplanes with Modification HCM36019A or HCM30373A installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent air from the auxiliary power unit (APU) bay being ingested into the flight deck and passenger cabin resulting in poor air quality and, if the air is contaminated, possible incapacitation of the flightcrew and passengers, accomplish the following:

Replacement of Rubber Bellows Inlet Duct

(a) Within 24 months or 4,000 flight cycles after the effective date of this AD, whichever is first: Replace the existing rubber bellows inlet duct and sealing configuration of the APU system, with a new, improved rectangular metallic bellows inlet duct, which incorporates an improved seal and clamp configuration, per the Accomplishment Instructions of BAE Systems (Operations) Limited Modification Service Bulletin SB.49–036–36019E, Revision 4, dated April 30, 2003. Although the service bulletin specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance

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

Incorporation by Reference

(c) The action shall be done in accordance with BAE Systems (Operations) Limited Modification Service Bulletin SB.49–036–36019E, Revision 4, dated April 30, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Note 1: The subject of this AD is addressed in British airworthiness directive 007–04–2003.

Effective Date

(d) This amendment becomes effective on August 31, 2004.

Issued in Renton, Washington, on July 9, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–16673 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30419; Amdt. No. 3101]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

DATES: This rule is effective July 27, 2004. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 27, 2004.

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

For Examination—

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

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

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

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

For Purchase—Individual SIAP copies may be obtained from:

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

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

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach

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

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

The Rule

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

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

Conclusion

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

List of Subjects in 14 CFR Part 97

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

Issued in Washington, DC on July 16, 2004.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

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

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

Effective September 30, 2004

Milton, FL, Peter Prince Field, RADAR–1, Orig
St. Augustine, FL, St. Augustine, VOR RWY 31, Orig
St. Augustine, FL, St. Augustine, VOR RWY 13, Orig
St. Augustine, FL, St. Augustine, VOR RWY 13, Amdt 5A, CANCELLED
St. Augustine, FL, St. Augustine, VOR RWY 31, Orig-A, CANCELLED
Manhattan, KS, Manhattan Rgnl, RNAV (GPS) RWY 31, Orig, CANCELLED
Somerset, KY, Somerset-Pulaski County—J.T. Wilson Field, LOC RWY 5, Amdt 1
Portland, OR, Portland-Hillsboro, ILS OR LOC RWY 12, Amdt 8
Memphis, TN, General Dewitt Spain, VOR RWY 17, Orig-A
Memphis, TN, General Dewitt Spain, GPS RWY 17, Orig-A
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, CONVERGING ILS RWY 36R, Amdt 1F
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, ILS OR LOC RWY 36R, Amdt 3C
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, ILS OR LOC RWY 17R, Amdt 21A
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, CONVERGING ILS RWY 35L, Amdt 2C
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, ILS OR LOC RWY 35L, Amdt 3B
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, CONVERGING ILS Y RWY 18L, Orig-A
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, CONVERGING ILS Z RWY 18L, Orig-A
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, ILS OR LOC Y RWY 18L, Orig-A
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, ILS OR LOC Z RWY 18L, Orig-A
Dallas-Fort Worth, TX, Dallas-Fort Worth Intl, CONVERGING ILS RWY 17R, Amdt 7B
Higgins, TX, Higgins-Lipscomb County, VOR/DME–A, Orig
Higgins, TX, Higgins-Lipscomb County, VOR/DME OR GPS RWY 18, Amdt 3A, CANCELLED

[FR Doc. 04–17016 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8408]

RIN 1545–BH32

Economic Performance Requirement; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to TD 8408 which was published in the **Federal Register** on Friday, April 10, 1992 (57 FR 12411) relating to the requirement that economic performance occur in order for an amount to be incurred with respect to any item of a taxpayer using an accrual method of accounting.

DATES: This correction is effective April 10, 1992.

FOR FURTHER INFORMATION CONTACT: Robert M. Casey, (202) 622–4950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulation (TD 8408) that is the subject of this correction is under

section 461 of the Internal Revenue Code.

Need for Correction

As published, TD 8408, contains an error that may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendment:

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 * * *

§ 1.461–4 [Corrected]

■ **Par. 2.** Section 1.461–4(d)(4)(i) is amended by revising the first sentence to read as follows:

§ 1.461–4 Economic performance.

* * * * *

(d) * * *

(4) * * * (i) *In general.* Except as otherwise provided in paragraph (d)(5) of this section, if the liability of a taxpayer requires the taxpayer to provide services or property to another person, economic performance occurs as the taxpayer incurs costs (within the meaning of § 1.446–1(c)(1)(ii)) in connection with the satisfaction of the liability. * * *

* * * * *

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 04–17078 Filed 7–26–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9132]

RIN 1545–BB05

Changes in Use Under Section 168(i)(5); Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to temporary regulations.

SUMMARY: This document contains a correction to temporary regulations that were published in the **Federal Register** on June 17, 2004 (69 FR 33840) relating to the depreciation of property subject to section 168 of the Internal Revenue Code.

DATES: This correction is effective June 17, 2004.

FOR FURTHER INFORMATION CONTACT: Sara Logan or Kathleen Reed, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The correction notice that is the subject of this document is under section 168 of the Internal Revenue Code.

Need for Correction

As published, the correction notice (TD 9132), contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

■ Accordingly, the correction notice (TD 9132), which was the subject of FR Doc. 04–13723, is corrected as follows:

PART 1—INCOME TAXES

§ 1.168(i)–4 [Corrected]

■ On page 33843, column 2, amendatory paragraph 5, lines 2 and 3, the language "read as follows: § 1.168(i)–4 Changes in use." is corrected to read as follows: "reads as follows:

§ 1.168(i)–4 Changes in use."

Cynthia Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 04–17081 Filed 7–26–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 100 and 165

[USCG–2004–18677]

Quarterly Listings; Safety Zones, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between April 1, 2004 and June 30, 2004, that were not published in the **Federal Register**. This quarterly notice lists temporary special local regulations, security zones, and safety zones, all of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This document lists temporary Coast Guard rules that became effective and were terminated between April 1, 2004, and June 30, 2004.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice contact LT Jeff Bray, Office of Regulations and Administrative Law, telephone (202) 267–2830. For questions on viewing, or on submitting material to the docket, contact Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: Coast Guard District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to prevent injury or damage to vessels, ports, or waterfront facilities and may also describe a zone around a vessel in motion. Special local regulations are issued to enhance the safety of participants and spectators at regattas and other marine events. Timely publication of these rules in the **Federal Register** is often precluded when a rule responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these rules through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the rule. Because **Federal Register**

publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these special local regulations, security zones, or safety zones by Coast Guard officials' on-scene prior to any enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones and safety zones. Permanent rules are not included in this list because they are published in their entirety in the **Federal Register**. Temporary rules are also published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones, special local regulations and security zones listed in this notice have been exempted from review under Executive Order 12866, Regulatory Planning and Review, because of their emergency nature, or limited scope and temporary effectiveness.

The following rules were placed in effect temporarily during the period from April 1, 2004, through June 30, 2004, unless otherwise indicated.

Dated: July 20, 2004.

C.G. Green,

Acting Chief, Office of Regulations and Administrative Law.

DISTRICT QUARTERLY REPORT—2ND QUARTER 2004

District docket	Location	Type	Effective date
01–04–037	Wells, ME	Security Zone	4/22/2004
01–04–041	New London, CT	Security Zone	5/19/2004
01–04–050	Norwalk, CT	Safety Zone	4/11/2004
01–04–052	Jones Beach 75th Anniversary Air Show, NY	Safety Zone	5/30/2004
01–04–077	East River, NY	Safety Zone	6/24/2004
05–03–086	Chesapeake Bay, James River, Williamsburg, VA	Safety Zone	5/4/2004
05–04–051	Bogue Sound, NC	Safety Zone	4/6/2004
05–04–053	Atlantic Ocean, Delaware Bay, and Delaware	Security Zone	5/6/2004
05–04–058	Bogue Sound, NC	Safety Zone	4/20/2004
05–04–059	Washington, DC	Safety Zone	4/10/2004
05–04–062	Hampton Roads, VA	Security Zone	4/1/2004
05–04–063	Virginia Beach, VA	Safety Zone	4/5/2004
05–04–064	Chesapeake Bay, Sandy Point to Kent Island	Security Zone	5/2/2004
05–04–064	St. Mary's River, St. Mary's City, MD	Special Local Reg	4/24/2004
05–04–069	Hampton Roads, VA	Security Zone	4/8/2004
05–04–074	Willoughby Bay, Norfolk, VA	Special Local Reg	4/24/2004
05–04–075	Hampton Roads, Elizabeth River, VA	Security Zone	4/12/2004
05–04–076	Hampton Roads, VA	Security Zone	4/13/2004
05–04–077	Hampton Roads, VA	Security Zone	4/18/2004
05–04–078	Hampton Roads, VA	Security Zone	4/22/2004
05–04–079	Bogue Sound, NC	Safety Zone	4/14/2004
05–04–080	Hampton Roads, VA	Security Zone	4/27/2004
05–04–082	Chesapeake Bay, Hampton Roads, VA	Security Zone	4/27/2004
05–04–083	Baltimore, MD	Security Zone	4/27/2004
05–04–084	Chesapeake Bay, Hampton Roads, VA	Security Zone	5/3/2004
05–04–085	Atlantic Intracoastal Waterway, Sunset Beach	Safety Zone	4/27/2004
05–04–088	Chesapeake Bay, Hampton Roads, VA	Security Zone	5/17/2004
05–04–089	Chesapeake Bay, Hampton Roads, VA	Security Zone	5/12/2004
05–04–091	Atlantic Ocean, Virginia Beach, VA	Safety Zone	5/14/2004
05–04–092	M/V Sequoia G–8 Summit, Washington, DC	Security Zone	5/10/2004
05–04–093	G–8 Summit, Washington, DC	Security Zone	5/11/2004
05–04–094	American-Israeli Political Action Committee	Security Zone	5/17/2004
05–04–095	Chesapeake Bay, VA	Security Zone	5/17/2004
05–04–096	Chesapeake Bay, Hampton Roads, VA	Security Zone	5/27/2004
05–04–097	Chesapeake Bay, Hampton Roads, VA	Security Zone	5/22/2004
05–04–102	Chesapeake Bay, Hampton Roads, VA	Security Zone	6/1/2004
05–04–103	Chesapeake Bay, Hampton Roads, VA	Security Zone	5/29/2004
05–04–107	Manasquan River, Manasquan Inlet and Atlantic	Special Local Reg	6/27/2004
05–04–109	Big Timber Creek, Westville, NJ	Special Local Reg	6/26/2004
05–04–112	Chesapeake Bay, Hampton Roads, VA	Security Zone	6/10/2004
05–04–113	Chesapeake Bay, Hampton Roads, VA	Security Zone	6/14/2004
05–04–114	Chesapeake Bay, Hampton Roads, VA	Security Zone	6/27/2004
05–04–115	Chesapeake Bay, Hampton Roads, VA	Security Zone	6/21/2004
05–04–119	Potomac River, Alexandria, VA	Safety Zone	6/19/2004
05–04–124	Potomac River, Chery Hill, VA	Safety Zone	6/26/2004
07–04–029	Indian Creek, Miami	Special Local	5/1/2004
07–04–083	St. Petersburg, FL	Special Local Reg	6/25/2004
09–04–001	Staten Island Ferry, 2 Menominee River	Safety Zone	5/8/2004
09–04–010	Trenton Channel, MI	Safety Zone	4/7/2004
09–04–013	Lake Michigan	Safety Zone	6/11/2004
09–04–019	Rockets for Schools, Sheboygan, WI	Safety Zone	5/15/2004
09–04–022	Captain of the Port Detroit Zone, Detroit	Security Zone	5/20/2004
09–04–029	Ontario, NY	Safety Zone	5/31/2004
09–04–033	Sackets Harbor, NY	Safety Zone	6/12/2004
09–04–036	Lake Michigan	Safety Zone	6/19/2004
09–04–037	North Channel, St. Clair River, MI	Safety Zone	6/5/2004

DISTRICT QUARTERLY REPORT—2ND QUARTER 2004—Continued

District docket	Location	Type	Effective date
09–04–038	Lake Michigan	Security Zone	6/10/2004
09–04–039	Lake Huron, MI	Safety Zone	6/12/2004
09–04–040	Brownstown, Lake Erie, MI	Safety Zone	6/12/2004
09–04–041	St. Mary's River	Safety Zone	6/18/2004
09–04–042	Detroit River	Security Zone	6/17/2004
09–04–043	Detroit River	Security Zone	6/17/2004
09–04–045	Detroit River	Safety Zone	6/20/2004
09–04–046	Ottawa River	Safety Zone	6/26/2004
09–04–048	Saginaw River, Bay City, MI	Safety Zone	6/25/2004
13–04–021	Columbia River	Safety Zone	4/20/2004
13–04–024	Sitcum Waterway, Commencement Bay, Puget	Security Zone	5/1/2004
13–04–027	Budd Inlet	Security Zone	6/6/2004

COTP QUARTERLY REPORT—2ND QUARTER 2004

COTP Docket	Location	Type	Effective date
Jacksonville 04–042	Fernandina Beach, FL	Safety Zone	4/30/2004
Jacksonville 04–048	St. Johns River, Palatka, FL	Safety Zone	5/28/2004
Jacksonville 04–049	St. Johns River, Green Cove Springs, FL	Safety Zone	5/31/2004
Jacksonville 04–050	St. John's River	Safety Zone	6/11/2004
Jacksonville 04–060	St. Johns River, Jacksonville, FL	Security Zone	5/11/2004
Jacksonville 04–061	Indian River, FL	Safety Zone	6/26/2004
Jacksonville 04–087	Jacksonville, FL	Safety Zone	6/24/2004
Los Angeles 04–002	Point Mugu, CA	Security Zone	6/9/2004
Los Angeles 04–003	Long Beach, CA	Safety Zone	6/21/2004
Miami 04–027	Red Bull Flugtag, Miami, FL	Safety Zone	4/24/2004
Miami 04–032	Sun Fest Fireworks, West Palm Beach, FL	Safety Zone	4/30/2004
Miami 04–063	Million Dollar Rubber Duck Race, Miami River,	Safety Zone	6/13/2004
Mobile 04–009	Biloxi, MS	Safety Zone	4/24/2004
Morgan City 04–005	Atchafalaya River	Security Zone	4/12/2004
Pittsburg 04–002	Allegheny River	Safety Zone	4/7/2004
Pittsburg 04–005	Allegheny River	Safety Zone	4/24/2004
Pittsburg 04–006	Allegheny River	Safety Zone	5/7/2004
Port Arthur 04–005	Sabine River	Safety Zone	4/28/2004
San Diego 04–006	Oceanside Harbor, CA	Safety Zone	4/3/2004
San Diego 04–008	Parker, AZ	Safety Zone	4/17/2004
San Diego 04–009	Colorado River, Between Laughlin Bridge	Safety Zone	5/7/2004
San Diego 04–010	Crazy Horse Campground, Lake Havasu, AZ	Safety Zone	5/15/2004
San Diego 04–012	Lake Havasu	Safety Zone	6/5/2004
San Diego 04–013	Colorado River	Safety Zone	6/5/2004
San Diego 04–014	Crazy Horse Campground, Lake Havasu, AZ	Safety Zone	6/26/2004
Savannah 04–040	Savannah River, Savannah, GA	Security Zone	4/24/2004
Savannah 04–059	Savannah River	Security Zone	4/7/2004
Savannah 04–080	Brunswick River, Brunswick, GA	Security Zone	6/5/2004
SF Bay 04–005	San Francisco Bay	Safety Zone	4/13/2004
SF Bay 04–008	San Francisco Bay, CA	Safety Zone	5/19/2004
SF Bay 04–009	Solando County, CA	Safety Zone	4/29/2004
SF Bay 04–011	Suisin Bay	Security Zone	5/12/2004
SF Bay 04–013	Middle River	Safety Zone	6/3/2004
SF Bay 04–015	Suisin Bay	Safety Zone	6/25/2004
SF Bay 04–017	San Francisco Bay	Security Zone	6/27/2004

[FR Doc. 04–17015 Filed 7–26–04; 8:45 am]
BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 298–0459a; FRL–7784–3]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the South Coast Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent cleaning operations. We are approving a local rule that regulates these emission sources under the Clean

Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on September 27, 2004, without further notice, unless EPA receives adverse comments by August 26, 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 document (TSD), 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.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

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

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

Table of Contents

I. The State's Submittal
A. What rule did the State Submit?
B. Are there other versions of this rule?
C. What is the purpose of the submitted rule revisions?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rule?
B. Does the rule meet the evaluation criteria?
C. Public comment and final action
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What Rule Did the State submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
SCAQMD	1171	Solvent Cleaning Operations	11/7/03	1/15/04

On March 1, 2004, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 1171 into the SIP on June 3, 2003 (68 FR 33005). The SCAQMD adopted revisions to the SIP-approved version on November 7, 2003 and CARB submitted them to us on January 15, 2004.

C. What Is the Purpose of the Submitted Rule Revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. The purposes of the changes to SCAQMD 1171 are as follows.

- Section (h)(2)(H) adds a sunset date of June 30, 2005 to the exemption for the cleaning of architectural coating application equipment, and establishes a VOC content limit of 25 grams per liter of material effective July 1, 2005.
- The exemption language in Section (h)(1), pertaining to solvents with no more than 25 grams of VOC per liter of material, has been updated and clarified.
- The table of VOC limits in Section (c)(1) has been revised to eliminate outdated information and to reflect the most current limits for each solvent cleaning activity.
- Minor clarifications to the rule language have been added, including a definition for "architectural coating" in Section (b)(4).

The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SCAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 1171 must fulfill RACT.

Guidance and policy documents that we use to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).

3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has 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 rule because we believe it fulfills 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 rule. If we receive adverse comments by August 26, 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 September 27, 2004. This will incorporate this rule 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 (Public Law 104–4).

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

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

The Congressional Review Act, 5 U.S.C. 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 September 27, 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 17, 2004.

Nancy Lindsay,

Acting Regional Administrator, Region IX.

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

PART 52—[AMENDED]

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(328)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(328) * * *

(i) * * *

(B) South Coast Air Quality Management District.

(*1*) Rule 1171, adopted on November 7, 2003.

* * * * *

[FR Doc. 04–16710 Filed 7–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket #: AK–04–002a; FRL–7792–3]

Approval and Promulgation of State Implementation Plans: State of Alaska; Fairbanks Carbon Monoxide Nonattainment Area; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On June 21, 2004, the State of Alaska submitted a carbon monoxide (C) maintenance plan for the Fairbanks nonattainment area to EPA for approval. The State concurrently requested that EPA redesignate the Fairbanks CO nonattainment area to attainment for the National Ambient Air Quality Standard (NAAQS) for CO. In this action, EPA is approving the maintenance plan and redesignating the Fairbanks CO nonattainment area to attainment.

DATES: This direct final rule will be effective on September 27, 2004, without further notice, unless EPA receives comments by August 26, 2004. If comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. AK–04–002, by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

- *E-mail: R10aircom@epa.gov.*
- *Fax:* (206) 553–0110.
- *Mail:* Office of Air, Waste, and Toxics, Environmental Protection Agency, Mail code: OAQ–107, 1200 Sixth Ave., Seattle, Washington 98101.
- *Hand Delivery:* Environmental Protection Agency, Office of Air, Waste, and Toxics, OAQ–107, 9th Floor, 1200 Sixth Ave., Seattle, Washington 98101. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. AK–04–002. 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 I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: Publicly available docket materials are available in hard copy at the Office of Air, Waste, and Toxics, EPA Region 10, Mail code: OAQ–107, 1200 Sixth Ave., Seattle, Washington 98101; open from 8 a.m.–4:30 p.m. Monday through Friday, excluding legal holidays. The telephone number is (206) 553–1086. Copies of the submittal, and other information relevant to this proposal are available for public inspection during normal business hours at the Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 303, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Connie L. Robinson, Office of Air, Waste and Toxics, EPA Region 10, Mail code: OAQ–107 1200 Sixth Avenue, Seattle WA 98101, telephone number: (206) 553–1086, or e-mail address: *robinson.connie@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, wherever "we," "us," or "our" is used, we mean the EPA. Information is organized as follows:

I. General Information
II. What Action Is EPA Taking?
III. What Is the Background for This Action?
IV. What Evaluation Criteria Were Used for the Maintenance Plan and Redesignation Request Review?
V. EPA's Evaluation of the Fairbanks Maintenance Plan and Redesignation Request
A. How Does the State Show That the Area Has Attained the CO NAAQS?
B. Does the Area Have a Fully Approved SIP Under Section 110(k) of the Act and Has the Area Met All the Relevant Requirements Under Section 110 and Part D of the Act?
C. Are the Improvements in Air Quality Permanent and Enforceable?
D. Has the State Submitted a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?
E. Did the State Provide Adequate Attainment Year and Maintenance Year Emissions Inventories?
Table 1 Fairbanks 2002 Attainment Year Actual Emissions, and 2015 Projected Emissions (Tons CO/Winter Day)
F. How Will the State Continue To Verify Attainment?
G. What Contingency Measures Does the State Provide?
H. How Will the State Provide for Subsequent Maintenance Plan Revisions?
I. Are the Motor Vehicle Emission Budgets Approvable as Required by Section 176(c)(2)(A) of the Act and Outlined in the Conformity Rules, 40 CFR 93.118(e)(4)?
Table 2 Fairbanks Emissions Budgets (Tons CO/Winter Day)
VI. Final Action
VII. Statutory and Executive Order Reviews

I. General Information

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

1. *Submitting Confidential Business Information (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 Code of Federal Regulations (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. Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a CFR part or section number.

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

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

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

VI. Provide specific examples to illustrate your concerns, and suggest alternatives.

VII. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

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

II. What Action Is EPA Taking?

EPA is approving the Fairbanks CO maintenance Plan and redesignating the Fairbanks Nonattainment Area from nonattainment to attainment for CO as requested by the State of Alaska on June 21, 2004. The maintenance plan demonstrates that Fairbanks will be able to remain in attainment for the next 10 years. The Fairbanks, Alaska CO nonattainment area is eligible for redesignation to attainment because air quality data shows that it has not recorded a violation of the primary or secondary CO air quality standards since 1999.

III. What Is the Background for This Action?

Upon enactment of the 1990 Clean Air Act Amendments (the Act), areas meeting the requirements of section 107(d) of the Act were designated nonattainment for CO by operation of law. Under section 186(a) of the Act, each CO nonattainment area was also

classified by operation of law as either moderate or serious depending on the severity of the area's air quality problems. Fairbanks was classified as a moderate CO nonattainment area. Moderate CO nonattainment areas were expected to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995. If a moderate CO nonattainment area was unable to attain the CO NAAQS by December 31, 1995, the area was reclassified as a serious CO nonattainment area by operation of law. Fairbanks was unable to meet the CO NAAQS by December 31, 1995, and was reclassified as a serious nonattainment area effective March 30, 1998.

Fairbanks did not have the two years of clean data required to attain the standard by December 31, 2000, the required attainment date for CO serious areas, and under section 186(a)(4) of the Act, Alaska requested and EPA granted a one year extension of the attainment date deadline to December 31, 2001 (66 FR 28836, May 25, 2001). EPA made a determination based on air quality data that the Fairbanks CO nonattainment area in Alaska attained the NAAQS for CO of attainment for CO effective August 5, 2002 (67 FR 44769, July 5, 2002).

On August 30, 2001, the Alaska Department of Environmental Conservation (ADEC) submitted the Fairbanks CO attainment plan as a revision to the Alaska SIP. We reviewed and subsequently approved the revision effective April 5, 2002. (*See* 67 FR 5064, February 4, 2002.)

IV. What Evaluation Criteria Was Used for the Maintenance Plan and Redesignation Request Review?

Section 107(d)(3)(E) of the Act states that EPA can redesignate an area to attainment if the following conditions are met:

1. The State must attain the applicable NAAQS.
2. The area must have a fully approved SIP under section 110(k) of the Act and the area must meet all the relevant requirements under section 110 and part D of the Act.
3. The air quality improvement must be permanent and enforceable.
4. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

V. EPA's Evaluation of the Fairbanks Maintenance Plan and Redesignation Request

EPA has reviewed the State's maintenance plan and redesignation request. EPA believes the ADEC submittal meets the requirements of section 107(d)(3)(E). The following is a summary of EPA's evaluation and a description of how each of the above requirements is met.

A. How Does the State Show That the Area Has Attained the CO NAAQS?

To attain the CO NAAQS, an area must have complete quality-assured data showing no more than one exceedance of the standard per year at any monitoring site in the nonattainment area for at least two consecutive years. The redesignation of Fairbanks is based on air quality data that shows that the CO standard was not violated from 2000 through 2003, or since. These data were collected by ADEC in accordance with 40 CFR 50.8, and entered in the EPA Air Quality System database following EPA guidance on quality assurance and quality control. Since the Fairbanks, Alaska area has complete quality-assured monitoring data showing attainment with no violations after 1999, the area has met the statutory criterion for attainment of the CO NAAQS and EPA has already found that the Fairbanks area attained the NAAQS (67 FR 44769, July 5, 2002).

B. Does the Area Have a Fully Approved SIP Under Section 110(k) of the Act and Has the Area Met All the Relevant Requirements Under Section 110 and Part D of the Act?

Yes. Fairbanks was classified as a moderate nonattainment area upon enactment of the Act in 1990. Fairbanks was unable to meet the CO NAAQS by December 31, 1995, and was reclassified a serious nonattainment area effective March 30, 1998. Therefore, the requirements applicable to the Fairbanks nonattainment area for inclusion in the Alaska SIP included an attainment demonstration, 1995 base year emission inventory with periodic updates, basic motor vehicle inspection/maintenance (I/M) program, contingency measures, conformity procedures, and a permit program for new or modified major stationary sources. EPA has previously approved all of these required elements into the Alaska SIP (67 FR 5064, February 4, 2002).

C. Are the Improvements in Air Quality Permanent and Enforceable?

Yes. Emissions reductions were achieved through a number of permanent and enforceable control measures including the Federal Motor Vehicle Control Program establishing emission standards for new motor vehicles; a basic I/M program, a technician training and certification program, and an engine-block heater program.

ADEC has demonstrated that permanent and enforceable emission reductions are responsible for the air quality improvement and that the CO emissions in the base year are not artificially low due to a local economic downturn or unusual or extreme weather patterns. We believe the combination of certain existing EPA-approved SIP and Federal measures result in permanent and enforceable reductions in ambient CO levels that have allowed the area to attain the NAAQS.

D. Has the State Submitted a Fully Approved Maintenance Plan Pursuant to Section 175A of the Act?

Probabilistic rollback modeling conducted by Fairbanks indicated that additional emission reductions must be achieved to ensure attainment of the NAAQS for the maintenance period. Therefore, Fairbanks has committed to implementing additional CO control measures for the maintenance period. The Fairbanks North Star Borough Assembly has adopted an ordinance that implements an episodic woodstove burning ban whenever the Borough declares an air quality alert, and a consumer-based oxygen sensor replacement program will begin in 2004. Today's action by EPA approves the additional control measures and the Fairbanks CO maintenance plan.

Section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period. The maintenance plan must contain contingency measures to be implemented if future NAAQS violations occur. The Fairbanks CO maintenance plan meets the requirements of 175A.

E. Did the State Provide Adequate Attainment Year and Maintenance Year Emissions Inventories?

Yes. ADEC submitted comprehensive inventories of CO emissions from point, area and mobile sources using 2002 as the attainment year. Since air monitoring recorded attainment of CO in 2002, this is an acceptable year for the attainment year inventory. This data was then used in calculations to demonstrate that the CO standard will

be maintained in future years. ADEC calculated inventories for 2003–2015. Future emission estimates are based on forecast assumptions of reductions due to control measures, growth of the regional economy and vehicle miles traveled.

Mobile sources are the greatest source of CO. Although vehicle use is expected to increase in the future, more stringent Federal automobile standards and removal of older, less efficient cars over time will still result in an overall decline in CO emissions. The projections in the maintenance plan demonstrate that future emissions are not expected to exceed attainment year levels.

Total CO emissions were projected from the 2002 attainment year out to 2015. These projected inventories were prepared according to EPA guidance. Because compliance with the 8-hour CO standard is linked to average daily emissions, emission estimates reflecting a typical winter season day (tons of CO per day) were used for the maintenance demonstration. The following table summarizes the 2002 attainment year actual emissions and the 2015 projected emissions. The on-road mobile emissions were modeled for 2003 and 2015 using MOBILE6 (version 6.2). Emissions for intervening years were calculated on the basis of a straight line interpolation between 2002 and 2015.

TABLE 1.—2002 ATTAINMENT YEAR ACTUAL EMISSIONS, AND 2015 PROJECTED EMISSIONS

(Tons CO/Winter day)

Year	Mobile	Area	Non-road	Point	Total
2002 Attainment Year (Actuals)	29.18	1.03	3.66	4.36	38.23
2015 Maintenance Year (Projected)	15.78	1.10	4.18	4.77	25.83

Detailed inventory data for this action is contained in the docket maintained by EPA.

F. How Will the State Continue to Verify Attainment?

In accordance with 40 CFR part 58 and EPA's Redesignation Guidance, the Fairbanks North Star Borough has committed to continue monitoring in this area in accordance with 40 CFR part 58. ADEC will also conduct a comprehensive review of plan implementation and air quality status eight years after redesignation. The State will then submit a SIP revision that includes a full emissions inventory update and provides for the continued maintenance of the standard ten years beyond the initial ten-year period.

G. What Contingency Measures Does the State Provide?

Contingency strategies include but are not limited to additional plug-ins, bus fleet replacement, paratransit vehicle replacement, road system improvements, and I/M program improvements. These measures are included in the Statewide Transportation Improvement Program and are scheduled for implementation.

H. How Will the State Provide for Subsequent Maintenance Plan Revisions?

In accordance with section 175A(b) of the Act, the State has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. That revised SIP must provide for maintenance of the standard for an additional ten years. It will include a full emissions inventory update and projected emissions demonstrating continued attainment for ten additional years.

I. Are the Motor Vehicle Emission Budgets Approvable as Required by Section 176(c)(2)(A) of the Act and Outlined in the Conformity Rules, 40 CFR 93.118(e)(4)?

Section 176(c)(2)(A) of the Act requires regional transportation plans to be consistent with the motor vehicle emissions budget contained in the applicable air quality plan for the Fairbanks area. The motor vehicle emissions budgets that are established for the 2002 attainment year and for 2010 and 2015 are approved for Fairbanks. They are as follows:

TABLE 2.—FAIRBANKS MOTOR VEHICLE EMISSIONS BUDGETS

[Tons CO/Winter Day]

Year	2004	2010	2015
CO emissions	26.77	22.95	22.57

The TSD summarizes how the CO motor vehicle emissions budget meets the criteria contained in the conformity rule.

VI. Final Action

EPA is approving the Fairbanks CO Maintenance Plan and redesignating the Fairbanks CO nonattainment area to attainment. This redesignation is based on validated monitoring data and projections made in the maintenance demonstration. EPA believes the area will continue to meet the NAAQS for CO for at least ten years beyond this redesignation, as required by the Act. Alaska has demonstrated compliance with the requirements of section 107(d)(3)(E) based on information provided by ADEC and contained in the Alaska SIP and Fairbanks, Alaska CO maintenance plan. A Technical Support Document on file at the EPA Region 10 office contains a detailed analysis and rationale in support of the redesignation of Fairbank's CO nonattainment area to attainment.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements

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

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

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

The Congressional Review Act, 5 U.S.C. 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 September 27, 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

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 19, 2004.

L. John Iani,

Regional Administrator, Region 10.

■ Parts 52 and 81, chapter I, title 40 of the Code of Federal Regulations are 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 C—Alaska

■ 2. Section 52.70 is amended by adding paragraph (c)(35) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(35) On June 21, 2004, the Alaska Department of Environmental Conservation submitted a carbon monoxide maintenance plan and requested the redesignation of Fairbanks to attainment for carbon monoxide. The State's maintenance plan and the redesignation request meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) 18AAC50.015, Air quality designations, classifications, and control regions, as in effect June 24, 2004.

(B) Assembly Ordinance No. 2003–71—An Ordinance amending the Carbon Monoxide Emergency Episode Prevention Plan including implementing a Woodstove Control Ordinance, adopted October 30, 2003.

■ 3. Paragraph (a)(2) of § 52.73 is revised to read as follows:

§ 52.73 Approval of plans.

(a) * * *

(2) Fairbanks.

(i) EPA approves as a revision to the Alaska State Implementation Plan, the Fairbanks Carbon Monoxide Maintenance Plan (Volume II.C of the State Air Quality Control Plan, adopted April 27, 2004 and Volume III.C of the Appendices adopted April 27, 2004, effective June 24, 2004) submitted by the Alaska Department of Environmental Conservation on June 21, 2004.

(ii) Reserved.

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.302, the table entitled "Alaska—Carbon Monoxide" is amended by revising the entries for "Anchorage Area Anchorage Election District (part)" and "Fairbanks Area Fairbanks Election District (part)" to read as follows:

* * * * *

§ 81.302 Alaska.

ALASKA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date [1]	Type	Date [1]	Type
Anchorage Area—Anchorage Election District (part), Anchorage nonattainment area boundary: The Anchorage Nonattainment Area is contained within the boundary described as follows: Beginning at a point on the centerline of the New Seward Highway five hundred (500) feet of the centerline of O'Malley Road; thence, Westerly along a line five hundred (500) feet south of and parallel to the centerline of O'Malley Road and its westerly extension thereof to a point on the mean high tide line of the Turnagain Arm; thence, Northeasterly along the mean high tide line to a point five hundred (500) feet west of the southerly extension of the centerline of Sand Lake Road; thence, Northerly along a line five hundred (500) feet west of and parallel to the southerly extension of the centerline of Sand Lake Road to a point on the southerly boundary of the International Airport property; thence, Westerly along said property line of the International Airport to an angle point in said property line; thence, Easterly, along said property line and its easterly extension thereof to a point five hundred (500) feet west of the southerly extension of the centerline of Wisconsin Street; thence, Northerly along said line to a point on the mean high tide line of the Knik Arm; thence, Northeasterly along the mean high tide line to a point on a line parallel and five hundred (500) feet north of the centerline of Thompson Street and the westerly extension thereof; thence, Easterly along said line to a point five hundred (500) feet east of Boniface Parkway; thence, Southerly along a line five hundred (500) feet east of and parallel to the centerline of Boniface Parkway to a point five hundred (500) feet north of the Glenn Highway; thence, Easterly and northeasterly along a line five hundred (500) feet north of and parallel to the centerline of the Glenn Highway to a point five hundred (500) feet east of the northerly extension of the centerline of Muldoon Road; thence, Southerly along a line five hundred (500) feet east of and parallel to the centerline of Muldoon Road and continuing southwesterly on a line of curvature five hundred (500) feet southeasterly of the centerline of curvature where Muldoon Road becomes Tudor Road to a point five hundred (500) feet south off the centerline of Tudor Road; thence, Westerly along a line five hundred (500) feet south of the centerline of Tudor Road to a point five hundred (500) feet east of the centerline to Lake Otis Parkway; thence, Westerly along a line five hundred (500) feet south of the centerline of O'Malley Road, ending at the centerline of the New Seward Highway, which is the point of the beginning.	July 23, 2004	Attainment.		
Fairbanks Area—Fairbanks Election District (part), Fairbanks nonattainment area boundary: (1) Township 1 South, Range 1 West, Sections 2 through 23, the portion of Section 1 west of the Fort Wainwright military reservation boundary and the portions of Section 24 north of the Old Richardson Highway and west of the military reservation boundary, also, Township 1 South, Range 2 West, Sections 13 and 24, the portion of Section 12 southwest of Chena Pump Road and the portions of Sections 7, 8, and 18 and the portion of Section 19 north of the Richardson Highway. (Fairbanks and Ft. Wainwright). (2) Township 2 South, Range 2 East, the portions of Sections 9 and 10 southwest of the Richardson Highway. (North Pole).	September 27, 2004.	Attainment.		

[1] This date is November 15, 1990 unless otherwise noted.

* * * * *

[FR Doc. 04–17062 Filed 7–26–04; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 32

[CC Docket Nos. 00–199, 97–212, 80–286, 99–301, WC Docket No. 02–269]

Uniform System of Accounts for Telecommunications Companies; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations (CC Docket No. 00–199) that were published in the **Federal Register** of Wednesday, February 6, 2002 (67 FR 5670, Feb. 6, 2002), the **Federal Register** of Wednesday, April 24, 2002 (67 FR 20052, Apr. 24, 2002), the **Federal Register** of Wednesday, December 18, 2002 (67 FR 77432, Dec. 18, 2002), the **Federal Register** of Monday, June 30, 2003 (68 FR 38641, June 30, 2003), and the **Federal Register** of Wednesday, December 31, 2003 (68 FR 75455, Dec. 31, 2003). This document corrects the regulations regarding instructions for directory revenue (47 CFR 32.5230), depreciation and amortization expenses (47 CFR 32.6560), depreciation expense—telecommunications plant in service (47 CFR 32.6561), amortization expense—tangible (47 CFR 32.6563), amortization expense—intangible (47 CFR 32.6564), amortization expense—other (47 CFR 32.6565), call completion services (47 CFR 32.6621), number services (47 CFR 32.6622), and customer services (47 CFR 32.6623).

DATES: Effective July 27, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 2002, the **Federal Register** published a summary of a Commission order that made changes to the Part 32 rules regarding uniform system of accounts for telecommunications companies (67 FR 5670, Feb. 6, 2002). With regard to the rules at issue in this correction, the Commission deleted rule 47 CFR 32.5230 and merged it into rule 47 CFR 32.5200, deleted rules 47 CFR 32.6561 through 32.6565 and merged them into rule 47 CFR 32.6560, and deleted rules 47 CFR 32.6621 through 32.6623 and merged them into rule 47 CFR 32.6620. These deletions were to take effect on August 6, 2002, however, the Commission suspended the implementation of the rule deletions before that date, in an order published in the **Federal Register** on April 24, 2002 (67 FR 20052, Apr. 24, 2002). This order suspended the implementation of the rule deletions until January 1, 2003. The Commission further suspended the implementation of these rule deletions in orders published in the **Federal Register** on December 18, 2002 (67 FR 77432, Dec. 18, 2002) (suspending the implementation of the rule deletions until July 1, 2003), on June 30, 2003 (68 FR 38641, June 30, 2003) (suspending implementation of the rule deletions until January 1, 2004), and on December 31, 2003 (68 FR 75455, Dec. 31, 2003) (suspending implementation of the rule deletions until June 30, 2004). Although the deletion of the rules has been suspended, they have been removed from 47 CFR part 32.

Need for Correction

This correction reinstates the rules as described above.

List of Subjects in 47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform System of Accounts.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

■ Accordingly, 47 CFR Part 32 is corrected by making the following correcting amendments:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 47 U.S.C. 154(i), 154(j) and 220 as amended, unless otherwise noted.

■ 2. Add § 32.5230 to read as follows:

§ 32.5230 Directory revenue.

This account shall include revenue derived from alphabetical and classified sections of directories and shall also include fees paid by other entities for the right to publish the company's directories. Items to be included are:

(a) All revenue derived from the classified section of the directories;

(b) Revenue from the sale of new telephone directories whether they are the company's own directories or directories purchased from others. This shall also include revenue from the sale of specially bound telephone directories and special telephone directory covers;

(c) Amounts charged for additional and boldface listings, marginal displays, inserts, and other advertisements in the alphabetical section of the company's telephone directories; and

(d) Charges for unlisted and non-published telephone numbers.

■ 3. Revise § 32.6560 to read as follows:

§ 32.6560 Depreciation and amortization expenses.

This account shall be used by Class A telephone companies to summarize for reporting purposes the contents of Accounts 6561 through 6565. Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in accounts 6561 through 6565.

■ 4. Add § 32.6561 to read as follows:

§ 32.6561 Depreciation expense—telecommunications plant in service.

This account shall include the depreciation expense of capitalized costs in Accounts 2112 through 2441, inclusive.

■ 5. Add § 32.6563 to read as follows:

§ 32.6563 Amortization expense—tangible.

This account shall include only the amortization of costs included in Accounts 2681, Capital leases, and 2682, Leasehold improvements.

■ 6. Add § 32.6564 to read as follows:

§ 32.6564 Amortization expense—intangible.

This account shall include the amortization of costs included in Account 2690, Intangibles.

■ 7. Add § 32.6565 to read as follows:

§ 32.6565 Amortization expense—other.

(a) This account shall include only the amortization of costs included in Account 2005, Telecommunications plant adjustment.

(b) This account shall also include lump-sum write offs of amounts of plant acquisition adjustment as provided for in § 32.2005(b)(3) of subpart C.

(c) Subsidiary records shall be maintained so as to show the character of the amounts contained in this account.

■ 8. Add § 32.6621 to read as follows:

§ 32.6621 Call completion services.

This account shall include costs incurred in helping customers place and complete calls, except directory assistance. This includes handling and recording; intercept; quoting rates, time and charges; and all other activities involved in the manual handling of calls.

■ 9. Add § 32.6623 to read as follows:

§ 32.6623 Customer services.

(a) This account shall include costs incurred in establishing and servicing customer accounts. This includes:

(1) Initiating customer service orders and records;

(2) Maintaining and billing customer accounts;

(3) Collecting and investigating customer accounts, including collecting revenues, reporting receipts, administering collection treatment, and handling contacts with customers regarding adjustments of bills;

(4) Collecting and reporting pay station receipts; and

(5) Instructing customers in the use of products and services.

(b) This account shall also include amounts paid by interexchange carriers or other exchange carriers to another exchange carrier for billing and collection services. Subsidiary record categories shall be maintained in order that the entity may separately report interstate and intrastate amounts. Such subsidiary record categories shall be reported as required by part 43 of this Commission's rules and regulations.

[FR Doc. 04–17077 Filed 7–26–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 101

[DA 04–1588; WT Docket No. 99–327; FCC 00–272]

Amendment of the Commission's Rules To License Fixed Services at 24 GHz

AGENCY: Federal Communications Commission.

ACTION: Final rule; correcting amendment.

SUMMARY: In a rule published October 5, 2000, the Commission added and amended regulations governing the licensing and operation of the 24.25–24.45 GHz and 25.05–25.25 GHz bands to promote the effective use of the 24 GHz band and to accommodate deployment of point-to-point, point-to-multipoint fixed wireless technology at 24 GHz. In addition, the Commission adopted competitive bidding rules to select among mutually exclusive applicants for licenses in these bands. The FCC determined that the 24.25–24.45 GHz and 25.05–25.25 GHz bands (24 GHz band) would be made available for licensing throughout the United States by Economic Areas (EAs). In this connection, the Commission decided to use a total of 176 service areas—the 172 EAs specified by the Department of Commerce and four Commission-created EA-like areas for Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico. This document contains editorial corrections to the final rules document.

DATES: Effective on July 27, 2004.

FOR FURTHER INFORMATION CONTACT: Nancy Zaczek at (202) 418–2487.

SUPPLEMENTARY INFORMATION: On October 5, 2000, (65 FR 59350), the **Federal Register** published a final rule in the above captioned proceeding. The Commission reached this decision in paragraph 18 of the *Report and Order*, which did not include a reference to the perimeter of the FCC-created EA-like area, Gulf of Mexico (EA 176). This document corrects paragraph 18 of the *Report and Order*, published on October 5, 2000, (FR 65 59350).

18. For these reasons, we determine that EAs constitute the most appropriate geographic area licensing for the 24 GHz band. EAs will provide ample population coverage and allow 24 GHz band licensees the flexibility to provide a multitude of service offerings. Thus, we determine to use a total of 176 service areas—the 172 EAs specified by the Department of Commerce and four EA-like areas for Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico. In defining the perimeter of the Gulf of Mexico (EA 176), the Commission has stated that:

> land-based license regions abutting the Gulf of Mexico will extend to the limit of the territorial waters of the United States in the Gulf, which is the maritime zone that extends approximately twelve nautical miles from the U.S. baseline.
>
> Beyond that line of demarcation, we will create the Gulf of Mexico [service area], which will extend from that line outward to the broadest geographic limits consistent with international agreements.*

Appendix C of the *Report and Order* contained Final Rules including 47 CFR 101.523, which establishes the service areas for the 24 GHz band. As adopted, the rule states that there are "three EA-like areas"; however, four EA-like areas are listed by name. Additionally, as adopted, the rule states that a "total of 176 authorizations will be issued for the 24 GHz Service by the FCC," which is inaccurate given that, for the 24 GHz band, each EA has five channel pairs (each of which is licensed separately) for a total of 880 authorizations. *See* 47 CFR 101.505 *citing* 47 CFR 101.147(m), (n), and (r)(9). This correction is issued pursuant to § 0.331 of the Commission's rules on delegated authority, 47 CFR 0.331.

* Amendment of the Commission's Rules to Establish part 27, The Wireless Communications Service, GN Docket No. 96–228, *Report and Order*, 12 FCC Rcd 10,785, 10,816 paragraph 59 (1997) (internal cross-reference omitted).

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 47 CFR Part 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Joel Taubenblatt,

Chief, Broadband Division.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 101 as follows:

PART 101—FIXED MICROWAVE SERVICES

■ 1. The authority for part 101 continues to read as follows:

Authority: 47 U.S.C. 154 and 303.

■ 2. Section 101.523 is amended by revising paragraph (a) to read as follows:

§ 101.523 Service areas.

(a) The service areas for 24 GHz are Economic Areas (EAs) as defined in this paragraph (a). The Bureau of Economic Analysis, U.S. Department of Commerce, organized the 50 States and the District of Columbia into 172 EAs. *See* 60 FR 13114 (March 10, 1995). Additionally, there are four FCC-created EA-like areas:

(1) Guam and Northern Mariana Islands;

(2) Puerto Rico and the U.S. Virgin Islands;

(3) American Samoa, and

(4) the Gulf of Mexico. The Gulf of Mexico EA extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf. *See* 62 FR 9636 (March 3, 1997), in which the Commission created an additional four economic area-like areas for a total of 176 EA service areas. Maps of the EAs and the **Federal Register** Notice that established the 172 Economic Areas (EAs) are available for public inspection and copying at the FCC Reference Center, Room CY A–257, 445 12th St., SW., Washington, DC 20554. These maps and data are also

available on the FCC Web site at *www.fcc.gov/oet/info/maps/areas/*.

* * * * *

[FR Doc. 04–16956 Filed 7–26–04; 8:45 am]
BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1842, 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850 and 1851

RIN 2700–AC87

Re-Issuance of NASA FAR Supplement Subchapter G

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This rule adopts as final without change, the proposed rule published in the **Federal Register** on April 22, 2004. This final rule amends the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This change is consistent with the guidance and policy in FAR Part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This change will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

DATES: *Effective Date:* July 27, 2004.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358–1645; e-mail: *Celeste.M.Dalton@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Currently the NASA FAR Supplement (NFS) contains information to implement or supplement the FAR. This information contains NASA's policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between NASA and contractors or prospective contractors. The NFS also contains information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. Regardless of the nature of the information, as a policy, NASA has submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) and published in the **Federal Register** all changes to the NFS. FAR 1.101 states in part that the "Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2)." FAR 1.301(a)(2) states in part "an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.*, designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements)." Further, FAR 1.303 states that issuances under FAR 1.301(a)(2) need not be published in the **Federal Register**. Based on the foregoing, NASA is not required to publish and codify internal Agency guidance.

This final rule modifies the existing practice by only publishing those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors.

The NFS will continue to integrate into a single document both regulations subject to public comments and internal Agency guidance and procedures that do not require public comment. Those portions of the NFS that require public comment will continue to be amended by publishing changes in the **Federal Register**. NFS regulations that require public comment are issued as chapter 18 of title 48, CFR. Changes to portions of the regulations contained in the CFR, along with changes to internal guidance and procedures, will be incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). The single official NASA-maintained version of the NFS will remain available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

This change will result in savings in terms of the number of rules subject to publication in the **Federal Register** and provide greater responsiveness to internal administrative changes.

NASA published a proposed rule in the **Federal Register** on April 22, 2004 (69 FR 21804). No comments were received in response to the proposed rule. Therefore, the proposed rule is being converted to a final rule without change.

B. Regulatory Flexibility Act

NASA certifies that this final rule does not have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601. *et seq.*, because this rule would only remove from the CFR information that is considered internal Agency administrative procedures and guidance. The information removed from the CFR will continue to be made available to the public via the Internet.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR 1842 through 1851

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 48 CFR parts 1842 through 1851 are amended as follows:

■ 1. The authority citation for 48 CFR parts 1842 through 1851 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1842—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 2. Amend part 1842 by—

■ (a) Removing subpart 1842.1, sections 1842.202, 1842.202–70, 1842.270, subparts 1842.3, 1842.5, 1842.7, 1842.8, 1842.12, 1842.13, 1842.14, and 1842.15;

■ (b) In section 1842.7201 removing and reserving paragraph (a) and removing paragraphs (b)(3) through (b)(5) and paragraph (c); and

■ (c) Removing subpart 1842.73 and section 1842.7401.

PART 1843—CONTRACT ADMINISTRATION

■ 3. Amend part 1843 by removing subpart 1843.70.

PART 1844—SUBCONTRACTING POLICIES AND PROCEDURES

■ 4. Amend part 1844 by removing sections 1844.201, 1844.201–1, 1844.202, 1844.202–1, and subpart 1844.3.

PART 1845—GOVERNMENT PROPERTY

■ 5. Amend part 1845 by—
■ (a) Removing sections 1845.102, 1845.102–70, 1845.102–71, 1845.104, and 1845.106;
■ (b) In section 1845.106–70(e), removing "Office of the Headquarters Office of Management Systems and Facilities (Code JLG)" and adding "Division of the Headquarters Office of Infrastructure and Management (Code OJG)" in its place;
■ (c) Removing section 1845.106–71, subpart 1845.3, and sections 1845.402, and 1845.403;
■ (d) In section 1845.405–70, removing and reserving paragraphs (b), (c), and (d);
■ (e) Removing sections 1845.406, and 1845.406–70;
■ (f) In section 1845.407, removing paragraph (a);
■ (g) Removing sections 1845.606 and 1845.606–1;
■ (h) In section 1845.607–170, removing and reserving paragraphs (b) and (c);
■ (i) Removing sections 1845.608, 1845.608–1, 1845.608–6, and 1845.610–3;
■ (j) In section 1845.610–4, removing "NPG 4300.1" and adding "NPR 4300.1, NASA Personal Property Disposal Procedures and Guidelines" in its place;
■ (k) Removing sections 1845.613, 1845.615, and subpart 1845.70;
■ (l) Removing and reserving sections 1845.7201, 1845.7202, 1845.7203, 1845.7204, 1845.7205, 1845.7206, 1845.7206–1, 1845.7206–2, 1845.7207, 1845.7208, 1845.7208–1, 1845.7208–2, 1845.7209–1, and 1845.7209–2;
■ (m) In section 1845.7210–1, removing and reserving paragraphs (a), (b), and (d); and
■ (n) Removing section 1845.7210–2.

PART 1846—QUALITY ASSURANCE

■ 6. Amend part 1846 by—
■ (a) Removing sections 1846.000, and 1846.401;
■ (b) In section 1846.670–1,
■ (i) Deleting "assurance (CQA)" at the end of paragraph (a); and
■ (ii) In the introductory text of paragraph (b), removing "CQA" and adding "contract quality assurance (CQA)" in its place;
■ (c) In the first sentence of the introductory text of section 1846.672–4, removing "or" and adding "of" in its place; and
■ (d) Removing subpart 1846.7.

PART 1847—TRANSPORTATION

■ 7. Amend part 1847 by removing subpart 1847.2, sections 1847.304, 1847.304–3, 1847.304–370, 1847.305–10, 1847.305–13, and subpart 1847.5.

PART 1848—VALUE ENGINEERING

■ 8. Remove part 1848.

PART 1849—TERMINATION OF CONTRACTS

■ 9. Amend Part 1849 by removing Subpart 1849.1.

PART 1850—EXTRAORDINARY CONTRACTUAL ACTIONS

■ 10. Amend part 1850 by—
■ (a) Removing subparts 1850.2 and 1850.3;
■ (b) In section 1850.403–1, redesignating paragraph (a) as paragraph (b) and adding a new paragraph (a); and
■ (c) Removing sections 1850.403–2 and 1850.470.

The new paragraph (a) to section 1850.403–1 reads as follows:

1850.403–1 Indemnification requests.

(a) Contractor indemnification requests must be submitted to the cognizant contracting officer for the contract for which the indemnification clause is requested. Contractors shall submit a single request and shall ensure that duplicate requests are not submitted by associate divisions, subsidiaries, or central offices of the contractor.

* * * * *

PART 1851—USE OF GOVERNMENT SOURCES BY CONTRACTORS

■ 11. Amend part 1851 by removing section 1851.102, paragraph (c) of section 1851.102–70, and section 1851.202.

[FR Doc. 04–17063 Filed 7–26–04; 8:45 am]
BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1852

RIN 2700–AC97

Representations and Certifications—Other Than Commercial Items

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This rule adopts as final with change the interim rule published in the **Federal Register** on March 22, 2004 (69 FR 13260). The interim rule revised the NASA Federal Acquisition Regulation (FAR) Supplement (NFS) by amending the Offeror Representations and Certifications—Other Than Commercial Items provision used in solicitations for non-commercial simplified acquisitions to conform with changes made to the FAR by Federal Acquisition Circulars (FAC) 2001–14 and 2001–19. This final rule adopts the interim rule with a change to conform to changes made to the FAR by FAC 2001–23.

DATES: *Effective Date:* July 27, 2004.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358–1645; e-mail: *Celeste.M.Dalton@nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

NASA FAR Supplement (NFS) provision 1852.213–70, Offeror Representations and Certifications—Other Than Commercial Items, provides a consolidated set of representations and certifications for use under non-commercial simplified acquisitions. The interim rule published in the **Federal Register** on March 22, 2004 (69 FR 13260) amended NFS section 1852.213–70 to conform to changes made to FAR provisions 52.225–4 and 52.225–6 by FACs 01–14 and 01–19, and changes made to 52.225–2 by FAC 01–14. These FAR provisions are included as paragraphs (e) and (f) of 1852.213–70. Specifically, FAC 01–14 clarified the use of the term "United States," when used in a geographic sense and provided a definition of "outlying areas" of the United States, a term that encompasses the named outlying commonwealths, territories, and minor outlying islands. In addition to changes required in paragraphs (e) and (f) of 1852.213–70, a change is required in the introductory text of paragraph (c) as a result of the definition of "outlying areas". FAC 01–19 made changes to implement the new Free Trade Agreements with Chile and Singapore, as approved by Congress (Pub. L. 108–77 and 108–78). These changes included removing references to "North American Free Trade Agreement" and incorporating the new concept of "Free Trade Agreements" in FAR provisions 52.225–4 and 52.225–6. In addition to the changes resulting from FACs 01–14 and 01–19, the interim rule revised 1852.213–70 to incorporate the definition of "service-disabled veteran" into the definition of "service-disabled veteran-owned small business concern" consistent with FAR 2.101(b). The interim rule also updated

and corrected references and made minor editorial changes. No comments were received in response to the interim rule.

The interim rule is being adopted as final with a change to correct an ambiguity in the definition of a service-disabled veteran-owned small business (SDVOSB) concern at 1852.213–70 consistent with change in the definition of a SDVOSB concern in FAC 2001–23. Including this clarification is not considered a significant change and is therefore appropriate for inclusion in this final rule.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* because acquisitions under $100,000 that are set aside for small businesses are exempt from trade agreements and these representations and certifications only apply to non-commercial acquisitions less than $100,000; and the change to the definition of service-disabled veteran-owned small business concern is merely a clarification of the definition.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose and new recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, NASA adopts the interim rule amending 48 CFR part 1852, which was published in the **Federal Register** on March 22, 2004 (69 FR 13260) as a final rule amended as follows:

■ 1. The authority citation for 48 CFR part 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. Amend section 1852.213–70 by revising the date of the provision; and in paragraph (a), revising paragraph (1)(ii) of the definition of "Service-disabled veteran-owned small business concern" to read as follows:

1852.213–70 Offeror Representations and Certifications—Other Than Commercial Items.

* * * * *

Offeror Representations and Certifications—Other Than Commercial Items (July 2004)

(a) * * *

"Service-disabled veteran-owned small business concern"—

(1) * * *

(ii) The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran.

* * * * *

[FR Doc. 04–17064 Filed 7–26–04; 8:45 am]
BILLING CODE 7510–01–P

Proposed Rules

Federal Register
Vol. 69, No. 143
Tuesday, July 27, 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.

NATIONAL LABOR RELATIONS BOARD

29 CFR Parts 101 and 102

Proposed Rules Governing Consent-Election Agreements

July 22, 2004

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: As part of its ongoing efforts to address the needs of employers, individuals and labor organizations and to further the fundamental purposes of the Act, the National Labor Relations Board (NLRB) is proposing to revise its rules to provide a mechanism to have preelection disputes decided with finality by the Regional Director.

DATES: All comments must be received on or before August 26, 2004.

ADDRESSES: All written comments should be sent to the Office of the Executive Secretary, National Labor Relations Board, 1099 14th Street, NW, Room 11600, Washington, DC 20570. The comments should be filed in eight copies, double spaced, on 8½-by-11 inch paper and shall be printed or otherwise legibly duplicated.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, Telephone: (202) 273–1067.

SUPPLEMENTARY INFORMATION: Section 102.62 of the Board's Rules and Regulations currently provides two kinds of "consent" election procedures. Under both procedures, the parties must stipulate with respect to jurisdictional facts, labor organization status, appropriate unit description, and classifications of employees included and excluded. The parties must also agree to the time, place and other election details. Under § 102.62(a), the parties agree that postelection disputes will be resolved with finality by the Regional Director. Under § 102.62(b), postelection disputes are resolved pursuant to § 102.69, with the parties retaining the right to file exceptions or requests for review with the Board. The current proposal for revision of the Board's Rules and Regulations would create a new, voluntary procedure whereby the parties could agree to the conduct of an election with disputed preelection and postelection matters to be resolved with finality by the Regional Director.

The proposal would also amend § 102.62(a) to provide that the decision of the Regional Director in a postelection proceeding would have the same force and effect as that of the Board "in that case." The addition of this language would make it clear that the Regional Director's decision will not be regarded as Board precedent in future cases. Identical language is present in the proposed § 102.62(c).

In addition to revisions to § 102.62 of the Board's Rules and Regulations, also proposed are revisions to the Statements of Procedures, §§ 101.19 and 101.28, to reflect the revisions to § 102.62 in the description of Board processing of union deauthorization elections (§ 101.28) and all other elections (§ 101.19).

Under the proposed new procedures, after the filing of a petition supported by the requisite showing of interest, an employer and individual or labor organization can voluntarily enter into an agreement under which the Regional Director will resolve with finality disputed pre- and postelection issues and issue a certification of representative or results. If the parties voluntarily agree to utilize this new procedure they will be assured of a more expeditious and final resolution of their question concerning representation by a Regional Director, who will act in a neutral, expert, and conclusive fashion.

Although the Agency has decided to give notice of proposed rulemaking with respect to these rule changes, the changes involve rules of agency organization, procedure or practice and thus no notice of proposed rulemaking is required under section 553 of the Administrative Procedure Act (5 U.S.C. 553). Accordingly, the Regulatory Flexibility Act (5 U.S.C. 601), does not apply to these rule changes.

List of Subjects in 29 CFR Parts 101 and 102

Administrative practice and procedure, Labor management relations.

For the reasons set forth above, the NLRB proposes to amend 29 CFR Parts 101 and 102 as follows:

PART 101—STATEMENTS OF PROCEDURES

1. The authority citation for 29 CFR part 101 continues to read as follows:

Authority: Section 6 National Labor Relations Act, as amended (29 U.S.C. 151, 156), and sec. 55(a) of the Administrative Procedure Act (5 U.S.C. 552(a)). Section 101.14 also issued under sec. 2112(a)(1) of Pub. L. 100–236, 28 U.S.C. 2112(a)(1).

2. Section 101.19 is amended by revising the introductory text and adding paragraph (c) to read as follows:

§ 101.19 Consent adjustments before formal hearing.

The Board has devised and makes available to the parties three types of informal consent procedures through which representation issues can be resolved without recourse to formal procedures. These informal arrangements are commonly referred to as consent-election agreement followed by Regional Director's determination, stipulated election agreement followed by Board certification, and full consent agreement, in which the parties agree that all pre- and postelection disputes will be resolved with finality by the Regional Director. Forms for use in these informal procedures are available in the Regional Offices.

* * * * *

(c) The full consent-election agreement followed by the Regional Director's determination of representatives is another method of informal adjustment of representation cases.

(1) Under these terms the parties agree that if they are unable to informally resolve disputes arising with respect to the appropriate unit and other issues pertaining to the resolution of the question concerning representation; the payroll period to be used as the basis of eligibility to vote in an election, the place, date, and hours of balloting, or other details of the election, those issues will be presented to, and decided with finality by the Regional Director after a hearing conducted in a manner consistent with the procedures set forth in § 101.20.

(2) Upon the close of the hearing, the entire record in the case is forwarded to the Regional Director. The hearing

officer also transmits an analysis of the issues and the evidence, but makes no recommendations as to resolution of the issues. All parties may file briefs with the Regional Director within 7 days after the close of the hearing. The parties may also request to be heard orally. After review of the entire case, the Regional Director issues a final decision, either dismissing the petition or directing that an election be held. In the latter event, the election is conducted under the supervision of the Regional Director in the manner already described in this section.

(3) All matters arising after the election, including determinative challenged ballots and objections to the conduct of the election shall be processed in a manner consistent with paragraphs (a)(4), (5), and (6) of this section.

3. Section 101.28 is revised to read as follows:

§ 101.28 Consent agreements providing for election.

(a) The Board makes available to the parties three types of informal consent procedures through which authorization issues can be resolved without resort to formal procedures. These informal agreements are commonly referred to as consent-election agreement followed by Regional Director's determination, stipulated election agreement followed by Board certification, and full consent-election agreement providing for the Regional Director's determination of both pre- and postelection matters. Forms for use in these informal procedures are available in the Regional Offices.

(b) The procedures to be used in connection with a consent-election agreement providing for the Regional Director's determination, a stipulated election agreement providing for Board certification, and the full consent-election agreement providing for the Regional Director's determination of both pre- and postelection matters are the same as those already described in subpart C of this part in connection with similar agreements in representation cases under section 9(c) of the Act, except that no provision is made for runoff elections.

PART 102—RULES AND REGULATIONS, SERIES 8

4. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)), and section 552a(j) and (k) of the Privacy Act (5 U.S.C. 552a(j) and (k). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

5. Section 102.62 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 102.62 Consent-election agreements.

(a) Where a petition has been duly filed, the employer and any individual or labor organizations representing a substantial number of employees involved may, with the approval of the Regional Director, enter into a consent-election agreement leading to a determination by the Regional Director of the facts ascertained after such consent election. Such agreement shall include a description of the appropriate unit, the time and place of holding the election, and the payroll period to be used in determining what employees within the appropriate unit shall be eligible to vote. Such consent election shall be conducted under the direction and supervision of the Regional Director. The method of conducting such consent election shall be consistent with the method followed by the Regional Director in conducting elections pursuant to §§ 102.69 and 102.70 except that the rulings and determinations by the Regional Director of the results thereof shall be final, and the Regional Director shall issue to the parties a certification of the results of the election, including certifications of representative where appropriate, with the same force and effect, in that case, as if issued by the Board, provided further that rulings or determinations by the Regional Director in respect to any amendment of such certification shall also be final.

* * * * *

(c) Where a petition has been duly filed, the employer and any individual or labor organizations representing a substantial number of the employees involved may, with the approval of the Regional Director, enter into an agreement providing for a hearing pursuant to §§ 102.63, 102.64, 102.65, 102.66 and 102.67 to resolve any issue necessary to resolve the question concerning representation. Upon the conclusion of such a hearing, the Regional Director shall issue a Decision. The rulings and determinations by the Regional Director thereunder shall be final, with the same force and effect, in that case, as if issued by the Board. Any election ordered by the Regional Director shall be conducted under the direction and supervision of the Regional Director. The method of conducting such consent election shall be consistent with the method followed by the Regional Director in conducting elections pursuant to §§ 102.69 and 102.70, except that the rulings and determinations by the Regional Director of the results thereof shall be final, and the Regional Director shall issue to the parties a certification of the results of the election, including certifications of representative where appropriate, with the same force and effect, in that case, as if issued by the Board, provided further that rulings or determinations by the Regional Director in respect to any amendment of such certification shall also be final.

Dated in Washington, DC, on July 22, 2004.

By direction of the Board.

Lester A. Heltzer,

Executive Secretary.

[FR Doc. 04–17095 Filed 7–26–04; 8:45 am]

BILLING CODE 7545–01–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

RIN 0710–AA58

United States Army Danger Zone; Salt River, Rolling Fork River, and Otter Creek; U.S. Army Garrison, Fort Knox Military Reservation; Fort Knox, Kentucky

AGENCY: United States Army Corps of Engineers, Department of Defense.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers is proposing regulations to establish a danger zone on navigable portions of the Salt River and the Rolling Fork River and the non-navigable portions of Otter Creek, within the installation boundaries of the Fort Knox Military Reservation. These regulations will enable the Army to prohibit public access to the area and enhance safety and security within active military impact and training areas. The Salt River passes through an active military area. Unexploded ordnance (UXO) from military weapons firing is located within the area along the river and a multi-purpose digital training range is under construction in this area. The Salt River is also used for river training activities. Training and military weapons firing activities occur approximately 320 days per year in this area. The Rolling Fork River passes through the center of theYano Multi-purpose Training Range. Weapons firing

from artillery, M1A2 Abrams Tanks, Bradley Fighting Vehicles, helicopters, and other weapons systems occur approximately 320 days of each year. Otter Creek runs through the installation. Otter Creek travels through Training Areas 8, 9 and 10. These areas are used to train soldiers for combat operation training on M1A2 Abrams Tanks and Bradley Fighting Vehicles. Artillery simulators and other explosive devices are used for these training activities, presenting a risk to civilians entering the area. These regulations are necessary to protect the public from potentially hazardous conditions that may exist as a result of Army use and security of the area. The regulations will also safeguard government personnel and property from sabotage and other subversive acts, accidents, or incidents of similar nature.

DATES: Written comments must be submitted on or before August 26, 2004.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: CECW–CO, 441 G Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Miller, Headquarters Regulatory Branch, Washington, DC at (202) 761–7763, or Ms. Amy S. Babey, Corps of Engineers, Louisville District, at (502) 315–6691.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps proposes to amend the danger zone regulations in 33 CFR part 334 by adding § 334.855 which establishes a danger zone in the navigable portions of Salt River and Rolling Fork River, and non-navigable portions of Otter Creek within the Ft. Knox Military Reservation installation boundaries. To better protect the Army personnel stationed at the facility and the general public, the Army has requested the Corps of Engineers establish a Danger Zone. This would enable the Army to keep persons and vessels out of the area at all times, except with the permission of the *Commanding General*, U.S. Army Garrison, Ft. Knox Military Reservation, Fort Knox, Kentucky, or his/her authorized representative.

Procedural Requirements

a. Review under Executive Order 12866.

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act.

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small Governments). The Corps expects that the economic impact of the establishment of this danger zone would have minimal impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, would have no significant economic impact on small entities.

c. Review under the National Environmental Policy Act.

A preliminary environmental assessment has been prepared for this action. The District expects, due to the minor nature of the proposed additional restricted area regulations, that this action, if adopted, would not have a significant impact on the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act.

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments would not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Danger zones, Marine safety, Restricted areas, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334, as follows:

PART 334–DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3)

2. Section 334.855 would be added to read as follows:

§ 334.855 Salt River, Rolling Fork River, Otter Creek; U.S. Army Garrison, Fort Knox Military Reservation; Fort Knox, Kentucky; Danger Zone.

(a) *The area.* Salt River from Point A (37°59′31.72″N; 85°55′32.98″W) located approximately 1.2 miles southeast of West Point, Kentucky; southward to its confluence with the Rolling Fork River. Salt River from Point B (37°57′51.32″N; 85°45′37.14″W) located approximately 2.8 miles southwest of Shepherdsville, Kentucky; southward to its confluence with the Rolling Fork River. Rolling Fork River from Point C (37°49′59.27″N; 85°45′37.74″W) located approximately 1.6 miles southwest of Lebanon Junction, Kentucky northward to its confluence with the Salt River. Otter Creek from Point D (37°51′31.77″N; 86°00′03.79″W) located approximately 3.4 miles north of Vine Grove, Kentucky to Point E (37°55′21.95″N; 86°01′47.38″W) located approximately 2.3 miles southwest of Muldraugh.

(b) *The regulation.* All persons, swimmers, vessels and other craft, except those vessels under the supervision or contract to local military or Army authority, vessels of the United States Coast Guard, and federal, local or state law enforcement vessels, are prohibited from entering the danger zones without permission from the Commanding General, U.S. Army Garrison, Fort Knox Military Reservation, Fort Knox, Kentucky or his/her authorized representative.

(c) *Enforcement.* The regulation in this section, promulgated by the United States Army Corps of Engineers, shall be enforced by the Commanding General, U.S. Army Garrison, Fort Knox Military Reservation, Fort Knox, Kentucky and/or other persons or agencies as he/she may designate.

Dated: July 19, 2004.

Michael B. White,

Chief, Operations, Directorate of Civil Works.

[FR Doc. 04–16922 Filed 7–26–04; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 3 and 5

RIN 2900–AL70

Presumptions of Service Connection for Certain Disabilities, and Related Matters

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to reorganize and

rewrite in plain language its regulations on presumptions of service connection for certain disabilities, and related matters. These revisions are proposed as part of VA's rewrite and reorganization of all of its adjudication regulations in a logical, claimant-focused, and user-friendly format. The intended effect of the proposed revisions is to assist claimants and VA personnel in locating and understanding these general provisions.

DATES: Comments must be received by VA on or before September 27, 2004.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail to *VAregulations@mail.va.gov;* or, through *http://www.Regulations.gov.* Comments should indicate that they are submitted in response to "RIN 2900-AL70." All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Bill Russo, Chief, Regulations Rewrite Project (00REG2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9515.

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has established an Office of Regulation Policy and Management (ORPM) to provide centralized management and coordination of VA's rulemaking process. One of the major functions of this office is to oversee a Regulation Rewrite Project (the Project) to improve the clarity and consistency of existing VA regulations. The Project responds to a recommendation made in the October 2001 Report to the Secretary of Veterans Affairs by the VA Claims Processing Task Force. The Task Force recommended that the Compensation and Pension regulations be rewritten and reorganized in order to improve VA's claims adjudication process. Therefore, the Project began its efforts by reviewing, reorganizing and redrafting the regulations in 38 CFR part 3 governing the Compensation and Pension (C&P) program of the Veterans Benefits Administration (VBA). These regulations are among the most difficult VA regulations for readers to understand and apply.

Once rewritten, the proposed regulations will be published in several portions for public review and comment. This is one such portion. It includes proposed rules regarding presumptions of service connection and related matters.

Outline

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5.261 Certain chronic diseases VA presumes are service connected
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5.263 Presumption of service connection for non-Hodgkin's lymphoma based on service in Vietnam
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5.267 Presumption of service connection for conditions associated with full-body exposure to nitrogen mustard, sulfur mustard, or Lewisite

Service Connection for Diseases Due To Exposure to Ionizing Radiation

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Overview of New Part 5 Organization

We plan to remove the compensation and pension benefit regulations from 38 CFR part 3 and relocate them in new part 5. We also plan to reorganize the regulations so that all provisions governing a specific benefit are located in the same subpart, with general provisions pertaining to all compensation and pension benefits also grouped together. We believe this reorganization will allow claimants and their representatives, as well as VA personnel, to find information relating to a specific benefit more quickly.

The first major subdivision would be "Subpart A—General Provisions." It would include information regarding the scope of the regulations in new part 5, delegations of authority, general definitions, and general policy provisions for this part.

Subpart B—Service Requirements for Veterans" would include information regarding a veteran's military service, including the minimum service requirement, types of service, periods of war, and service evidence requirements. This subpart was published as proposed on January 30, 2004. *See* 69 FR 4820.

Subpart C—Adjudicative Process, General" would inform readers about types of claims and filing procedures, VA's duties, rights and responsibilities of claimants, general evidence requirements, and general effective dates for new awards, as well as revision of decisions and protection of VA ratings.

"Subpart D—Dependents of Veterans" would provide information about how VA determines whether an individual is a dependent and the evidence requirements for such determinations.

"Subpart E—Claims for Service Connection and Disability Compensation" would define service-connected compensation, including direct and secondary service connection. This proposed subpart would inform readers how VA determines entitlement to service connection. The subpart would also contain those provisions governing presumptions related to service connection, rating principles, and effective dates, as well as several special ratings. Because of its size, proposed regulations in subpart E will be published in three separate NPRMs. This NPRM, which includes provisions governing presumptions related to service connection, is one such NPRM.

"Subpart F—Nonservice-Connected Disability Pensions and Death Pensions" would include information regarding the three types of nonservice-connected pension: Improved pension, Old-Law pension, and Section 306 pension. This subpart would also include those provisions that state how to establish entitlement to each pension, and the effective dates governing each pension.

"Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary" would contain regulations governing claims for dependency and indemnity compensation (DIC); death compensation; accrued benefits; benefits awarded, but unpaid, at death; and various special rules that apply to the disposition of VA benefits, or proceeds of VA benefits, when a beneficiary dies.

This subpart would also include related definitions, effective date rules, and rate of payment rules.

"Subpart H—Special Benefits for Veterans, Dependents, and Survivors" would pertain to ancillary and special benefits available, including benefits for children with various birth defects.

"Subpart I—Benefits For Certain Filipino Veterans and Survivors" would pertain to the various benefits available to Filipino veterans.

"Subpart J—Burial Benefits" would pertain to burial allowances.

"Subpart K—Matters Affecting Receipt of Benefits" would contain those provisions regarding determinations of willful misconduct, competency, and insanity, which may affect claimants' entitlement to benefits. This subpart would also contain information about forfeiture and renouncement of benefits.

"Subpart L—Payments and Adjustments to Payments" would include general rate-setting rules, several adjustment and resumption regulations, and election-of-benefit rules.

The final subpart, "Subpart M—Apportionments and Payments to Fiduciaries or Incarcerated Beneficiaries" would include regulations governing apportionments, benefits for incarcerated beneficiaries, and guardianship.

Some of the regulations in this NPRM cross-reference other compensation and pension regulations. If those regulations have been published in this or earlier NPRMs, we cite the proposed part 5 section. We also cite the **Federal Register** page where a proposed part 5 section published in an earlier NPRM may be found. However, where a regulation proposed in this NPRM would cross-reference a proposed part 5 regulation that has not yet been published, we cite to the current part 3 regulation that deals with the same subject matter. The current part 3 section we cite may differ from its eventual part 5 replacement in some respects, but we believe this method will assist readers in understanding these proposed regulations where no part 5 replacement has yet been published. If there is no part 3 counterpart to a proposed part 5 regulation that has not yet been published, we have inserted "[regulation that will be published in a future Notice of Proposed Rulemaking]" where the part 5 regulation citation would be placed.

In connection with this rulemaking, VA will accept comments relating to a prior rulemaking issued as a part of the Project, if the matter being commented on relates to both NPRMs. VA will provide a separate opportunity for public comment on each segment of the proposed part 5 regulations before adopting a final version of part 5.

Overview of Proposed Subpart E Organization

This NPRM pertains to those regulations governing presumptions of service connection for certain disabilities, and related matters or conditions. These regulations would be contained in proposed subpart E of new 38 CFR part 5. While these regulations have been substantially restructured and rewritten for greater clarity and ease of use, most of the basic concepts contained in these proposed regulations are the same as in their existing counterparts in 38 CFR part 3. However, a few substantive changes are proposed.

In 38 U.S.C. 1112, 1116, 1117, 1118, and 1133, Congress established presumptions that certain diseases or disabilities are service connected under the circumstances described in those statutes. The diseases fall into the following categories: Chronic diseases; diseases associated with exposure to certain herbicide agents; diseases specific to former prisoners of war; tropical diseases; diseases associated with exposure to ionizing radiation; and certain disabilities or undiagnosed illnesses associated with service during the Gulf War. Although Congress has established other statutory presumptions, such as the presumption of sound condition stated in 38 U.S.C. 1111, this notice does not affect the regulations implementing those other statutory presumptions. When we refer to presumptions in this notice we are referring to the presumptions of service connection for specific types of diseases or illnesses stated in 38 U.S.C. 1112, 1116, 1117, 1118, and 1133. We are also referring to the presumption of service connection associated with full-body exposure to nitrogen mustard, sulfur mustard, or Lewisite, in 38 CFR 3.316.

In most situations, Congress limited the applicability of the presumptions by the provisions of 38 U.S.C. 1113, which states that the presumptions are rebuttable "[w]here there is affirmative evidence to the contrary, or evidence to establish that an intercurrent injury or disease which is a recognized cause of any of the diseases or disabilities * * * has been suffered between the date of separation from service and the onset of any such diseases or disabilities, or the disability is due to the veteran's own willful misconduct * * *"

The regulations implementing the statutory presumptions and the limitations presented by 38 U.S.C. 1113 are scattered throughout part 3 of title 38, United States Code of Federal Regulations. All of the paragraphs of the initial implementing regulation, 38 CFR 3.307, contain general principles that apply to all of the presumptions of service connection, as well as specific rules that apply only to particular presumptions. For example, current § 3.307(a) sets forth general rules but its subparagraphs contain specific rules that apply only to particular presumptions, such as the rules in § 3.307(a)(3)–(6) that each apply, in turn, to the presumption of service connection for chronic, tropical, and prisoner-of-war-related diseases or disabilities, and diseases or disabilities associated with exposure to certain herbicide agents. There are also presumption-specific rules included in other parts of § 3.307. For example, § 3.307(b) states the conditions under which VA considers certain diseases to be chronic diseases. On the other hand, current § 3.309 consists of five paragraphs, each of which articulates specific rules that govern grants of service connection based on a specific presumption.

Other rules that apply to grants of presumptive service connection are contained in §§ 3.303 (principles relating to service connection), 3.308 (presumptive service connection; peacetime service before January 1, 1947), 3.316 (claims based on exposure to mustard gas and other agents), 3.317 (compensation for certain disabilities due to undiagnosed illness), and 3.379 (anterior poliomyelitis).

We propose to establish a general rule, which would include the rules that are applicable to all presumptions, followed by several rules that would each contain the current rules specific to certain presumptions. We propose to codify these regulations in part 5 of title 38, Code of Federal Regulations, at §§ 5.260 through 5.269. Most of the basic concepts contained in these proposed regulations are the same as in their existing counterparts in 38 CFR part 3.

Table Comparing Current Part 3 Rules With Proposed Part 5 Rules

The following table shows the correspondence between the current regulations in part 3 and those proposed or redesignated regulations contained in this NPRM:

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph (or, if not based on any current provision, then "New")
5.260(a)	New.
5.260(b)	3.307(b)–(c).
5.260(c)	3.307(d); 3.309(a)–(e); 3.316(b); 3.317(c).
5.261(a)	3.307(a), (a)(3).
5.261(b)	3.307(a)(1), (2).
5.261(c)	3.307(a)(2).
5.261(d)	3.303(b); 3.307(a)(3), (b), (c).
5.261(d) (table)	3.309(a).
5.261(e)	3.309(a).
5.261(f)	New.
5.262(a)(1)	3.307(a)(6)(iii).
5.262(a)(2)	3.307(a)(6)(ii).
5.262(b)	3.307(a)(6)(i).
5.262(c)	3.307(a)(1).
5.262(d)	3.307(a)(6)(iii).
5.262(e)	3.307(a)(6)(ii); 3.309(e).
5.262(e) Note 1	3.309(e) Note 2.
5.262(e) Note 2	3.309(e) Note 1.
5.263	3.313.
5.264(a)	3.307(a)(1) (third sentence).
5.264(a)	3.1(y); 3.307(a)(5); 3.309(c).
5.264(c)	3.309(c).
5.265(a)	3.307(a)(4), 3.308(b), 3.309(b).
5.265(b)	3.307(a)(1).
5.265(c)	3.307(a)(2).
5.265(d)	3.309(b).
5.265(e)	3.307(d)(1).
5.265(f)	3.308(b).
5.266	3.317 (redesignated as described at the end of this rulemaking).
5.267	3.316 (redesignated as described at the end of this rulemaking).
5.268(a)	3.309 (d)(3)(i).
5.268(b)	3.309(d)(1)–(2).
5.268(c)	3.309(d)(3)(ii), (iv), (vi), (vii).
5.268(d)	3.309(d)(3)(iii).
5.268(e)	3.309(d)(3)(v).
5.268 Note	New (cross reference).
5.269(a)	3.311(a)(1)(b)(1).
5.269(b) (introductory text)	3.311(b)(2).
5.269(b)(1)	3.311(b)(2), (5).
5.269(b)(2)	3.311(b)(3).
5.269(b)(3)	3.311(b)(4).
5.269(c)(1)	3.311(a)(1), (2).
5.269(c)(2)	3.311(a)(1) (last sentence).
5.269(c)(3)	3.311(a)(4)(ii).
5.269(c)(4)	3.311(a)(4)(i).
5.269(c)(5)	3.311(b)(1).
5.269(d)(1)	3.311(a)(2)(iii), (c).
5.269(d)(2)	3.311(a)(3).
5.269(e)(1)–(3)	3.311(c).
5.269(e)(4)	3.311(c)(2), (d).
5.269(e)(5)–(6)	3.311(d)(3).
5.269(f)	3.311(f).
5.269(g)	3.311(g).

Readers who use this table to compare existing regulatory provisions with the proposed provisions, and who observe a substantive difference between them, should consult the text that appears later in this document for an explanation of significant changes in each regulation. Not every paragraph of every current part 3 section affected by these proposed regulations is accounted for in the table. In some instances other portions of the part 3 sections that are contained in these proposed regulations appear in subparts of part 5 that will be published for public comment at a later time. For example, a reader might find a reference to paragraph (a) of a part 3 section in the table, but no reference to paragraph (b) of that section because paragraph (b) will be addressed in a future NPRM. The table also does not include material from the current sections that will be removed from part 3 and not carried forward to part 5. A listing of material VA proposes to remove from part 3 appears later in this document.

Content of Proposed Rules

Presumptions of Service Connection for Certain Disabilities, and Related Matters

Section 5.260 General Rules and Definitions

Current 38 CFR 3.307 sets forth general rules that govern most adjudications of service connection based on presumptions established by 38 U.S.C. 1112 and 1116. Proposed § 5.260 contains those general rules, as described in the paragraphs that follow. We propose to move rules in current § 3.307 that are specific to particular

presumptions to the proposed rules that govern those particular presumptions.

Proposed paragraph (a) of § 5.260 would define how a "presumption of service connection" operates for the purposes of the rules contained in this notice, as follows:

> A presumption of service connection establishes a material fact (or facts) necessary to establish service connection, even when there is no evidence that directly establishes that material fact (or facts). Examples of material facts include whether a disease or disability had its onset during a veteran's military service, or whether a veteran was exposed to certain herbicide agents during such service. The evidence must prove that the presumption applies to the claimant, but after such a showing there is no need for additional evidence of the material fact(s) established by the presumption.

We believe that the proposed language reflects the intent of Congress and the historical application of presumptions in VA regulations and case law. For example, 38 U.S.C. 1112(a) states that a presumption establishes that a particular disease "shall be considered to have been incurred in or aggravated by * * * service, notwithstanding that there is no record of evidence of such disease during the period of service." Our current rule, § 3.303(a), recognizes that proof of the "factors" of service connection described by the regulation "may be accomplished * * * through the application of statutory presumptions." Both of these descriptions discuss presumptions in terms of their effect on the burden of producing evidence. These descriptions are in accord with the seminal decision by the United States Court of Appeals for the Federal Circuit on the subject, which defined a presumption as follows: "The presumption affords a party, for whose benefit the presumption runs, the luxury of not having to produce specific evidence to establish the point at issue. When the predicate evidence is established that triggers the presumption, the further evidentiary gap is filled by the presumption." *Routen* v. *West*, 142 F.3d 1434, 1440 (Fed. Cir. 1998).

Proposed paragraph (b) clarifies the current requirement that certain presumptive diseases that must become manifest within a specific period need not be diagnosed within that period. We propose to clarify the following language from current § 3.307(c), which states: "This will not be interpreted as requiring that the disease be diagnosed in the presumptive period, but only that there be then shown by acceptable medical or lay evidence characteristic manifestations of the disease to the required degree, *followed without unreasonable time lapse by definite diagnosis.*" 38 CFR 3.307(c) (emphasis added). The emphasized language must be considered in connection with the rule in current § 3.307(b) that requires VA to consider "[t]he chronicity and continuity factors outlined in § 3.303(b)" as evidence in support of a claim for presumptive service connection for a disease. In the context of presumptions, evidence of continuity of symptoms may be used to relate symptoms that manifested during a presumptive period to a current diagnosis made after that presumptive period ended. Section 3.307(b) is helpful to veterans who had symptoms that manifested during a presumptive period but did not obtain a diagnosis within that presumptive period.

A presumption relieves the party benefiting from the presumption of the obligation to prove the presumed facts. *See Routen* v. *West*, 142 F.3d 1434, 1439 (Fed. Cir. 1998). For example, 38 CFR 3.309, "Diseases subject to presumptive service connection," contains a list of diseases and disabilities for which incurrence or aggravation during service is presumed, so long as certain conditions are met. *See also* 38 CFR 3.307, "Presumptive service connection for chronic, tropical or prisoner-of-war related disease, or disease associated with exposure to certain herbicide agents; wartime and service on or after January 1, 1947." Some regulations include presumptions that benefit the claimant, such as §§ 3.307 and 3.309. Other regulations include presumptions that may have an adverse impact on a claimant such as 38 CFR 3.23(d)(6), which presumes that a child's income is "reasonably available" to a veteran or a surviving spouse if certain other facts are shown. In such cases, the child's income would be included for purposes of determining whether a veteran or surviving spouse met the income limits for entitlement to Improved pension.

In 38 U.S.C. 1113, "Presumptions rebuttable," Congress has established that presumptions of service connection for certain disabilities may be rebutted by "affirmative evidence" to the contrary or evidence of an intercurrent disease or injury capable of causing the veteran's disability. The phrase "affirmative evidence" does not correspond to any of the three generally recognized standards of proof—*i.e.*, the "preponderance of the evidence" standard, the "clear and convincing evidence" standard, or the "beyond a reasonable doubt" standard. See *Addington* v. *Texas*, 441 U.S. 418, 423–24 (1979), *Gilbert* v. *Derwinski*, 1 Vet. App. 49, 53–54 (1990). The term "affirmative" is commonly defined to mean "asserting the truth or validity of a statement" or "declaratory of what exists." Webster's Third New Int'l Dictionary 36 (1979). Accordingly, the term "affirmative evidence" clearly requires evidence supporting the facts to be proven, but implies no particular standard of proof to specify how convincing the evidence must be.

Neither the statutes nor current VA regulations state what the standard of proof for rebuttal will be in such cases. Pursuant to his general authority under 38 U.S.C. 501(a), to establish regulations "necessary or appropriate to carry out the laws administered by the Department," the Secretary will, as part of this rewrite project, propose a regulation to establish and explain a general standard of proof for rebutting presumptions of service connection. This new provision will be published in a separate NPRM. We believe that the addition of this new provision to fill this gap will provide helpful guidance to claimants and VA adjudicators.

Additionally, section 1113 is implemented in current §§ 3.307(d), 3.309(a)–(c), (e), 3.316(b), which describe what evidence may be used to rebut presumptions related to incurrence or aggravation, *i.e.*, (1) affirmative evidence to the contrary; (2) evidence of intercurrent (intervening) injury or disease which is a recognized cause of the disease or disability; and (3) evidence the disability is due to the veteran's own willful misconduct. We believe it is not helpful to have the criteria stated in multiple rules, especially because the criteria are stated slightly differently in each rule, which may lead users of the rules to conclude, mistakenly, that a different substantive rule applies in each situation. In order to clarify that one set of general rules on rebutting presumptions applies in all cases (except where specifically provided otherwise), we propose to place all of the generally applicable rebuttal rules in § 5.260(c), and therefore not to republish the general language in current §§ 3.307(d), 3.309(a)–(c), (e), or 3.316(b).

The presumption that a cancer was caused by exposure to ionizing radiation or herbicide agents (*see* 38 U.S.C. 1112(c) and 1116) may be rebutted by evidence that the cancer developed as a result of metastasis of a cancer which is not associated with exposure to ionizing radiation or herbicide agents. (*See* VA General Counsel Opinion VAOPGCPREC 18–97). We have therefore added Language to explain that if evidence establishes that a cancer (for which service connection is claimed under § 5.262 or § 5.268) originated in

another area of the body and then spread to one of the specific areas listed in § 5.262(e) or § 5.268(b), then the presumption of service connection will be rebutted.

The proposed rules would not use the phrase "affirmative evidence," which appears in 38 U.S.C. 1113 and current regulations. As stated above, we intend to adopt a generally applicable rebuttal standard of proof in a separate NPRM, which will apply to matters governed by section 1113. We believe that retaining the term "affirmative evidence" may cause unnecessary confusion as to whether it implies a different standard that may be less favorable to claimants. Further, inasmuch as the term "affirmative evidence" does not clearly impose any requirement other than that the evidence tend to prove a fact, we believe it is unnecessary to use the term. We believe that evidence sufficient to meet the generally applicable rebuttal standard we intend to propose will necessarily be affirmative of the relevant fact.

We propose not to include in § 5.260 the current regulatory requirement of 38 CFR 3.307(d) that "medical judgment will be exercised in making determinations relative to the effect of intercurrent injury or disease." We believe that this language could be read to imply that a VA employee making an adjudicative decision in such a case would use his or her own medical judgment. This would be a violation of the holding by the U.S. Court of Appeals for Veterans Claims in *Colvin* v. *Derwinski*, 1 Vet. App. 171, 172 (Vet. App. 1991), *overruled in part on other grounds*, *Hodge* v. *West*, 155 F3d 1356, 1360 (Fed. Cir. 1998), that in making decisions, VA must consider only "medical evidence to support [its] findings rather than provide [its] own medical judgment." Moreover, we believe the language in § 3.307(d) quoted above is now unnecessary in light of the fact that cases described by § 5.260(c) are subject to VA's duty to assist requirements. These are reflected in 38 U.S.C. 5103A(d) and 38 CFR 3.159(c)(4), which states, in pertinent part, "In a claim for disability compensation, VA will provide a medical examination or obtain a medical opinion based upon a review of the evidence of record if VA determines it is necessary to decide the claim."

The proposed regulation pertaining to presumptions of service connection for certain tropical diseases, § 5.265, incorporates the material in current § 3.307(d) on rebutting these presumptions. The material is not in the proposed general regulation, § 5.260, because the material is specific to the tropical-disease presumptions.

The statutory authority for the current 38 CFR 3.307(a), (c), and (d), as well as the proposed rule, is 38 U.S.C. 501(a), 1112, and 1113. We propose to add 38 U.S.C. 1137 as the statutory authority enabling VA to extend the presumptions to persons with peacetime service after December 31, 1946.

Section 5.261 Certain Chronic Diseases VA Presumes Are Service Connected

Currently, §§ 3.303(b), 3.307(a), 3.308(a), and 3.309(a) all contain rules that are specific to service connection for chronic diseases on a presumptive basis. VA proposes to consolidate these provisions into one new regulation, designated as § 5.261. The proposed regulation would neither enlarge nor diminish the existing rules.

Proposed § 5.261(a) restates the presumption of service connection for chronic diseases set forth in current §§ 3.307(a) and (a)(3). Proposed § 5.261(a) states that VA will presume service connection for a disease listed in paragraph (d) of this section, although not otherwise established as incurred or aggravated in service, if it first became manifest to a degree of 10 percent or more within a year of separation from a qualifying period of service or within such other time as provided in paragraph (d) of this section, called the presumptive period.

Proposed paragraphs (b) and (c) restate the identification of qualifying periods of service and the presumptive period set forth in current § 3.307(a)(1) and (a)(2). Current § 3.307(a)(2) states that for certain veterans, their date of separation will be the end of the wartime period in which they served. We believe it is important to note that this provision only applies to veterans who had a combination of wartime and peacetime service prior to World War II. We have therefore proposed to clarify that this rule applies only to "claims based on service ending before December 7, 1941."

Proposed § 5.261(d) lists what diseases are chronic for the purposes of the presumption of service connection. Although there is no statutory or regulatory definition of a chronic disease, section 1101(3) of title 38, U.S. Code, provides a list of diseases that Congress has determined to be chronic for the purposes of granting presumptive service connection. Current § 3.307(b) states "The diseases listed in § 3.309(a) will be accepted as chronic, even though diagnosed as acute because of insidious inception and chronic development * * * unless the clinical picture is clear otherwise, consideration will be given as to whether an acute condition is an exacerbation of a chronic disease." Proposed paragraph (d) restates this concept, but substitutes the phrase "slow onset and persistent progress" for the phrase "insidious inception and chronic development." We believe these words better explain the nature and character of the diseases listed in 38 U.S.C. 1101(3) and 1112(a)(1). We also propose to delete the examples of disabilities which might result from "intercurrent causes" because we believe they are not very helpful to the understanding of the concept.

The introductory text to proposed paragraph (d) states that "VA will not apply the presumption of service connection where there is evidence that the disease preceded service to a degree of 10 percent or more. However, VA will apply the presumption where there is evidence that the disease preceded service to a degree of less than 10 percent." This language is new and conforms to section 1112(a) of title 38, U.S. Code, and codifies the holding of the U.S. Court of Appeals for the Federal Circuit in *Splane* v. *West*, 216 F.3d 1058, 1069 (Fed. Cir. 2000).

Proposed paragraph (d) lists the diseases that currently appear in § 3.309(a), with the changes described below. We propose to alphabetize the listed diseases in a chart designating the appropriate presumptive period for each disease. Some additional explanatory material concerning cardiovascular-renal disease has been moved to a separate paragraph designated (e). We propose to add the terms "acute or chronic" in a parenthetical to modify "Leukemia." In doing so, we are able to remove the sixth sentence of current § 3.307(b), which is redundant of the parenthetical language.

Current § 3.309(a) contains the following parenthetical explanation regarding "Ulcers, peptic (gastric or duodenal"):

> (A proper diagnosis of gastric or duodenal ulcer (peptic ulcer) is to be considered established if it represents a medically sound interpretation of sufficient clinical findings warranting such diagnosis and provides an adequate basis for a differential diagnosis from other conditions with like symptomatology; in short, where the preponderance of evidence indicates gastric or duodenal ulcer (peptic ulcer). Whenever possible, of course, laboratory findings should be used in corroboration of the clinical data.

We believe that the principles stated in this parenthetical apply equally to any evidence of a diagnosis, not just a diagnosis of an ulcer. The current parenthetical might cause confusion by

leading readers to believe that these principles apply only regarding ulcers, and we therefore propose to remove this language.

Proposed paragraph (f) restates the holding of VA General Counsel Precedent Opinion 1–90 (Mar. 16, 1990), that service connection is available for hereditary or familial diseases listed in proposed paragraph (b) if the disease first manifested to a degree of 10 percent or more within the applicable presumptive period following discharge or release from service, subject to the rebuttable presumption provisions of § 3.307(d).

The statutory authority for this section is 38 U.S.C. 501 and 1101(3), which lists chronic diseases; 38 U.S.C. 1112(a)(1), which establishes the presumption of service connection for chronic diseases; and 38 U.S.C. 1137, which governs presumptions for peacetime veterans.

Section 5.262 Presumption of Service Connection for Diseases Associated With Exposure to Certain Herbicide Agents

Proposed § 5.262 contains the rules established by 38 U.S.C. 1116 and subject to 38 U.S.C. 1113 relating to the presumption of service connection for certain diseases associated with exposure to certain herbicide agents.

Current § 3.307(a)(6)(iii) states, in pertinent part: "Service in the Republic of Vietnam" includes service in the waters offshore and service in other locations if the conditions of service involved duty or visitation in the Republic of Vietnam." The current rule is based on 38 U.S.C. 1116(f), which requires that a veteran have served "in the Republic of Vietnam" to be eligible for the presumption of exposure to herbicides. As stated in the preamble to the final rule on Type 2 diabetes (66 FR 23166, May 8, 2001) in interpreting similar language in 38 U.S.C. 101(29)(A), VA's General Counsel has concluded that service aboard a deep-water vessel in waters offshore the Republic of Vietnam does not constitute service "in the Republic of Vietnam." (*See* VAOPGCPREC 27–97). VA's regulatory definition of "Service in the Republic of Vietnam" predates the enactment of what is now section 1116(f) (*see* former 38 CFR 3.311a(a)(1) (1990)), and we find no basis to conclude that Congress intended to broaden that definition.

We are not aware of any valid scientific evidence showing that individuals who served in the waters offshore of the Republic of Vietnam or in other locations were subject to the same risk of herbicide exposure as those who served within the geographic land boundaries of the Republic of Vietnam. Furthermore, we are not aware of any legislative history suggesting that offshore service or service in other locations are within the meaning of the statutory phrase, "Service in the Republic of Vietnam."

Based on the foregoing, proposed § 5.262(a)(1) would more clearly state the limits of the presumption of exposure and the presumption of service connection based on exposure to certain herbicide agents. We propose to revise this language to make it clear that veterans who served in waters offshore but did not enter Vietnam, either on its land mass or in its inland waterways cannot benefit from this presumption. It would state: "For purposes of this section, 'Service in the Republic of Vietnam' does not include service in the waters offshore or service in other locations, but does include any service in which the veteran had duty in or visited in the Republic of Vietnam."

It has previously been suggested that VA should define "Service in the Republic of Vietnam" to include service in inland waterways, because veterans who served there were sometimes exposed to herbicides. (*See* Disease Associated With Exposure to Certain Herbicide Agents: Type 2 Diabetes (final rule at 66 FR 23166, May 8, 2001)). We agree that veterans who served in the inland waterways may have been exposed to herbicides (*see* "Characterizing Exposure of Veterans to Agent Orange and Other Herbicides Used in Vietnam: Final Report", page 1 (2003, National Academies Press)). Further, we believe that service on inland waterways constitutes service in the Republic of Vietnam within the meaning of 38 U.S.C. 1116(f), and believe it would be helpful to clarify that in our regulations. We therefore propose to include such a provision in proposed paragraph (a)(1) that would state: "* * * which includes service on the inland waterways."

Proposed paragraph (b) is derived from current § 3.307(a)(6)(i), except that we propose not to include the following phrase from that rule: "* * * in support of the United States and allied military operations in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7, 1975." We believe that that language is unnecessary, because the regulation specifies which agents are considered herbicide agents.

We have also added text to implement *Splane* v. *West*, 216 F.3d 1058 (Fed. Cir. 2000), in which the Federal Circuit interpreted the following language from 38 U.S.C. 1112(a):

> [M]ultiple sclerosis developing a 10 percent degree of disability or more within seven years from the date of separation from such service * * * shall be considered to have been incurred in or aggravated by such service, notwithstanding there is no record of evidence of such disease during the period of service.

The Federal Circuit held that the words "or aggravated by" indicate that Congress meant section 1112(a) to apply to those situations where multiple sclerosis predated entry into the service and became disabling to a compensable degree within the presumptive period following service. The "or aggravated by" language also appears in 38 U.S.C. 1116(a)(1)(B), which provides the authority for the presumptions based on herbicide exposure. Therefore, we propose to add language to clarify that presumptions may apply to a listed disease that preexisted service but first became manifest to a degree of 10 percent or more within the presumptive period following service. We note that if the condition preexisted service to a degree of 10 percent, for example, and after service the condition was 20 percent disabling, the veteran may be able to establish service connection using the presumption of aggravation in 38 U.S.C. 1153.

Section 5.263 Presumption of Service Connection for Non-Hodgkin's Lymphoma Based on Service in Vietnam

Proposed § 5.263 is based on current § 3.313, "Claims based on service in Vietnam." The only change we propose is the addition of the phrase, "For purposes of this section," at the beginning of paragraph (a). We believe this change will help clarify to readers that the definition of *service in Vietnam* in this rule is distinct from the definition of *service in the Republic of Vietnam* in current § 3.307(a)(6)(iii) and proposed § 5.262(a)(1).

Section 5.264 Diseases VA Presumes Are Service Connected in Former Prisoners of War

Proposed § 5.264 restates current §§ 3.307(a)(5) and 3.309(c) pertaining to presumptive service connection for diseases specific to former prisoners of war.

Prior to December 16, 2003, 38 U.S.C. 1112(b) provided that "a veteran who is a former prisoner of war and who was detained or interned for not less than thirty days" was entitled to a rebuttable presumption of service connection for certain diseases that became manifest to a degree of 10 percent or more after service. The statute listed 15 disabilities that qualified for that presumption.

VA's current implementing regulation, 38 CFR 3.309(c), incorporates the requirement for 30 days of detention or internment in order to qualify for the presumption of service connection for any of the listed diseases.

Section 201 of the Veterans Benefits Act of 2003, Pub. L. 108–183, 117 Stat. 2651 (Dec. 16, 2003), amended 38 U.S.C. 1112(b) to eliminate the 30-day requirement for psychosis, any anxiety states, dysthymic disorders, organic residuals of frostbite and post-traumatic arthritis. Section 201 of the Act also codifies cirrhosis of the liver as a disability which is presumptively service connected for a former POW who was interned for at least 30 days. (On July 18, 2003, VA published a final regulation adding cirrhosis of the liver to the list of conditions presumptively service connected for former POWs. (68 FR 42602)) We propose to incorporate these statutory amendments in § 5.264.

In addition, we propose to amend the phrase "any of the anxiety states" on the list of diseases presumed to be service connected under this section to specify that any mental disorder classified as an anxiety disorder by 38 CFR 4.130, the rating schedule for mental disorders, including post-traumatic stress disorder, will be presumed service connected. As amended, proposed paragraph (b) would include "[a]ny of the anxiety disorders, as listed in § 4.130, including post-traumatic stress disorder."

5.265 Tropical Diseases VA Presumes Are Service Connected

Proposed § 5.265 restates current §§ 3.307(a)(2), (a)(4), (d)(1), 3.308(b), and 3.309(b) pertaining to presumptive service connection for tropical diseases. Current § 3.307(a)(2) states that for certain veterans, their date of separation will be the end of the wartime period in which they served. We believe it is important to note that this provision only applies to veterans who had a combination of wartime and peacetime service prior to World War II. We have therefore proposed to clarify that this rule applies only to "claims based on service ending before December 7, 1941."

Proposed paragraph (e) would include the material in the last two sentences of current § 3.307(d)(1) specifically regarding the rebuttal of the tropical-disease presumption.

We propose to insert the word "presumptive" before the word "period" in the first of these sentences, to clarify the period to which the regulation refers. The statutory authority for paragraphs (a)-(d) is 38 U.S.C. 1101(4), which lists tropical diseases, and 38 U.S.C. 1112(a)(2), which establishes the presumption of service connection for a tropical disease.

Section 5.266 Compensation for Certain Disabilities Due to Undiagnosed Illnesses

We propose to redesignate without substantive change current § 3.317 relating to compensation for certain disabilities due to undiagnosed illnesses as § 5.266.

We propose to make the following nonsubstantive changes to the provisions redesignated as § 5.266. First, we propose to replace the term "active military, naval, and air service," as used throughout the regulation, with the shorter term "active military service." As part of the Regulations Rewrite Project, we have proposed regulations defining "active military service" to include qualifying duty in any of the Armed Forces. *See* 69 FR 4820. This will eliminate the need to repeat the cumbersome phrase "active military, naval, or air service" throughout the regulations in part 5 of title 38 of the CFR. Second, we propose to remove the adjective "affirmative" as used in the provisions of current § 3.317(c)(1)–(3) to describe the evidence that may defeat a claim for benefits for certain undiagnosed illnesses. As explained in the portion of this notice discussing proposed § 5.260(c), we believe that term is unnecessary and may improperly imply that evidence need only be "affirmative" in order to bar a claim for benefits under this section. As stated in this notice, VA will propose separate regulations specifying the standard of proof evidence must meet in order to justify the denial of a claim for benefits. Third, we propose to rearrange alphabetically the list of signs or symptoms in current § 3.317(b), to make it easier to locate each item.

Currently, § 3.500(y) specifies the effective date for a reduction or discontinuance of compensation for certain disabilities due to undiagnosed illnesses. Because this provision is simply a restatement of the general effective date rule for reductions and discontinuances (as found in 38 U.S.C. 5112 and 38 CFR 3.500(a)), this might cause a reader to mistakenly believe that the rule in § 3.500(y) somehow differs from the general rule. To avoid this confusion, we propose to remove § 3.500(y).

Section 5.267 Presumption of Service Connection for Conditions Associated With Full-Body Exposure to Nitrogen Mustard, Sulfur Mustard, or Lewisite

Proposed § 5.267 would reorganize and clarify the current presumption of service connection for conditions associated with full-body exposure to nitrogen mustard, sulfur mustard, or Lewisite. We propose to change the title of the regulation to specify the mustard agents to which it is applicable.

The general rules on rebuttal of the presumption of service connection contained in § 3.316(b), would not be contained in § 5.267 because such rules are set forth in proposed § 5.260, as discussed above.

Currently, there is no statutory authority listed for § 3.316. The Secretary determined in 1992, when this regulation was first proposed by VA, that special circumstances surrounding the World War II programs in which these mustard agents were tested placed veterans who participated in the tests at a disadvantage when attempting to establish service connection based on exposure to these agents. 57 FR 1699 (1992). Consistent with the authority of 38 U.S.C. 501(a), the Secretary of Veterans Affairs created a presumption of service connection for veterans exposed to certain mustard agents who contracted specified diseases. We therefore propose to add 38 U.S.C. 501(a), establishing VA's general authority to establish rules and regulations to implement the law, as the authority citation for this regulation.

Service Connection for Diseases Due to Exposure to Ionizing Radiation

Current §§ 3.309(d) and 3.311 contain the rules for adjudicating claims based on exposure to ionizing radiation in service. We propose in §§ 5.268 and 5.269 to rewrite and reorganize those existing rules in order to improve their clarity and to organize them in a way that will make them easier for claimants to understand and for VA to implement.

Under the provisions of current § 3.309(d), a presumption of service connection arises when the evidence establishes that a veteran participated in a radiation-risk activity, as defined in the regulation, and either has one of the diseases listed in that regulation, or died as a result of one of them. If these criteria are not met in a particular case, VA then considers the claim under the alternate provisions in current § 3.311 to determine if service connection can be granted.

The alternative method in current § 3.311 consists of an extensive evidentiary-development process, including reviews by the Under Secretary for Benefits (USB) and the Under Secretary for Health (USH), or their representatives. Furthermore, § 3.311(b)(2) contains a list of radiogenic diseases applicable to adjudications under that provision, and § 3.311(b)(5) contains specific time-frames in which

those diseases must have manifested. Some of the diseases on this list are also on the list in § 3.309(d). However, the manifestation periods and rules for claims development contained within § 3.311 are applied only when service connection cannot be presumed under § 3.309(d).

Additionally, under current § 3.311(b)(4), VA will consider any disease to be a radiogenic disease—regardless of whether it is listed in § 3.311—if the claimant has cited or submitted competent medical or scientific evidence that the disease is radiogenic. Again, this provision is independent of § 3.309(d) and applies only in claims that do not meet the requirements for the presumption of service connection under that rule.

In our view, the current regulatory framework—consisting of two regulations with three distinct sets of criteria for establishing service connection for a disease claimed to be caused by exposure to ionizing radiation "is difficult for the reader to understand, particularly in light of the multiple cross references in the regulations. We propose a regulatory framework that clearly differentiates between the different methods available for establishing service connection.

Section 5.268 Service Connection for Diseases Presumed To Be Due to Exposure to Ionizing Radiation

We propose in § 5.268 to state the rules applicable to the presumption of service connection for diseases associated with ionizing radiation exposure established under 38 U.S.C. 1112(c).

Proposed paragraph (a) states the service requirements that are unique to claims for service connection for diseases presumptively associated with ionizing radiation exposure under this section.

Proposed paragraphs (c) through (e) contain definitions of terms used in this section. We recognize that it is unusual to provide separate paragraphs for definitions; however, in this case, the definitions do more than simply clarify the meaning of a particular term. For example, the definition of "operational period" essentially sets forth a list of operations to which the presumption applies. Currently, these key terms are listed without headings. We believe that providing the definitions in separate paragraphs will make it easier to locate the definitions of these terms.

We propose to add guidance in a "Note" at the end of § 5.268 that states: "If this section does not apply in a particular case, VA will consider service connection under § 5.269 of this part." We believe this guidance will assist readers in determining which rule and criteria apply in select circumstances.

Section 5.269 Direct Service Connection for Diseases Associated With Exposure to Ionizing Radiation

Proposed § 5.269 is based on current § 3.311, containing the rules for establishing service connection for diseases caused by ionizing radiation when the presumption of service connection does not apply. Although these regulatory provisions do not pertain to establishing a presumption of service connection, we believe that it is helpful to place them directly after proposed § 5.268 because VA considers the claim under these provisions when it cannot establish service connection on a presumptive basis. In order to clarify that proposed § 5.269 does not describe a presumption of service connection, we propose to have the title of the rule read, "Direct service connection for diseases associated with exposure to ionizing radiation."

Proposed § 5.269(a) states that this section does not establish a presumption of service connection and in paragraphs (a)(1) through (3), states the basic elements of a claim adjudicated under current § 3.311. If the provisions of paragraphs (a)(1) through (3) are not met, then the claim cannot be granted under this section.

Proposed paragraph (b) lists the diseases recognized as associated with exposure to ionizing radiation, and would include the provision in current § 3.311(b)(4) permitting claimants to show that a disease not listed is nevertheless associated with such exposure based on competent scientific or medical evidence that the claimed condition is a radiogenic disease.

Proposed paragraph (c)(1)(iii), based on current § 3.311(a)(2), states the types and sources of records which VA will attempt to obtain concerning a veteran's exposure to ionizing radiation. We also propose to add the following new sentence: "If neither the Department of Defense nor any other source provides VA with records adequate to permit the Under Secretary to prepare a dose estimate, then VA will ask the Department of Defense to provide a dose estimate." This would reflect the fact that it is impossible to estimate the likelihood that ionizing radiation exposure caused a claimed condition in the absence of a numerical ionizing radiation dose estimate and that VA would be unable to prepare a dose estimate if it has not received any records on which to base such an estimate. Proposed paragraph (c)(1) also clarifies, consistent with existing statutes and regulations regarding delegations of authority, that as used in this section, "the Under Secretary for Health" includes his or her designees.

Proposed paragraph (c)(4) restates current § 3.311(a)(4)(i), which states that VA will concede a veteran's presence at a site at which exposure to ionizing radiation is claimed to have occurred when military records neither confirm presence at nor absence from the claimed site. This concession is for the purposes of proposed § 5.269 only and does not confer entitlement to the presumptive provisions of proposed § 5.268.

Proposed paragraph (c)(5), based on 3.311(b)(1), describes the circumstances for forwarding dose data and any other evidence, along with the claims folder, to the Under Secretary for Benefits for review. The U.S. Court of Appeals for Veterans Claims held in *Wandel* v. *West,* 11 Vet. App. 200, 205 (1998), that referral to the Under Secretary for Benefits is not required absent competent evidence that a veteran was exposed to radiation. In *Wandel,* the dose estimate was reported as "zero." Therefore, we propose to add to the regulation a provision that states that the claims file will not be referred by the agency of original jurisdiction to the Under Secretary for Benefits for review if VA determines that the claimed disability or disease is not radiogenic, that the veteran was not exposed to ionizing radiation in service as claimed, or if the actual or estimated dose is reported to be zero rem gamma.

Proposed paragraph (d) states the procedures for review by the Under Secretary for Benefits. Proposed paragraph (d)(1) states that "[t]he Under Secretary for Benefits will review all the evidence of record and may request an advisory medical opinion from the appropriate office of the Under Secretary for Health as to whether the veteran's disease resulted from exposure to ionizing radiation in service."

Proposed paragraph (e) restates the process, described in current § 3.311(c) and (d), for the Under Secretary for Benefits to review ionizing radiation claims and, if necessary, refer the case to an outside consultant for an expert opinion on whether veteran's radiation exposure caused his disability. Current § 3.311(d)(3) states that, "The consultant shall evaluate the claim under the factors specified in paragraph (e) of this section and respond in writing, stating whether it is either likely, unlikely, or approximately as likely as not the veteran's disease resulted from exposure to ionizing radiation in service." We propose to change this to require the consultant to opine whether it is "likely,

unlikely, or at least as likely as not * * *" This will make the provision consistent with the terminology in current § 3.311(c)(1) and (c)(2) and proposed § 5.269(e)(1) and (e)(4).

Proposed paragraph (f) restates the content of current § 3.311(f), which states that decisions under that section will be made based on standard principles of adjudication. Because current § 3.311(f) does not clearly state what entity within VA actually makes the determination of service connection under this section, proposed paragraph (f) clarifies that the "agency of original jurisdiction will adjudicate the claim."

Proposed paragraph (g) restates current § 3.311(g), which provides that service connection will not be established if a disease is due to the veteran's own willful misconduct, or if evidence establishes that a supervening, nonservice-related condition or event is more likely the cause of the disease. We propose to also state that service connection is barred if the disease is due to the veteran's "abuse of alcohol or drugs." This information may be relevant to readers and makes the regulation consistent with § 5.266.

The statutory authority for this rule continues to be Pub. L. 98–542 and 38 U.S.C. 501, the authority for current § 3.311.

Summary and Explanation for Removals

38 CFR 3.379

Current § 3.379 concerns service connection of the disease anterior poliomyelitis. It states:

> If the first manifestations of acute anterior poliomyelitis present themselves in a veteran within 35 days of termination of active military service, it is probable that the infection occurred during service. If they first appear after this period, it is probable that the infection was incurred after service.

We believe the need for § 3.379 is eliminated by the operation of proposed § 5.261 relating to the presumption of service connection for chronic diseases. Congress identified "myelitis" as a category of chronic diseases in 38 U.S.C. 1101(3). "Myelitis" is part of the presumptive service connection provisions under 38 CFR 3.309(a). Anterior poliomyelitis, is a subcategory of "Myelitis".

Pursuant to 38 U.S.C. 1112(a)(1), 38 CFR 3.307(a) and § 3.309(a) provide a presumption of service connection for chronic diseases (including myelitis) manifested to a compensable degree within one year of separation from service. According to 38 CFR 4.124a, the schedule of ratings for neurological conditions and convulsive disorders, anterior poliomyelitis manifested as active febrile disease warrants a 100 percent rating under Diagnostic Code 8011. Moreover, minimum residuals of anterior poliomyelitis warrant a 10 percent rating under Diagnostic Code 8011. There is no zero percent rating under Diagnostic Code 8011. Therefore, a veteran with any manifestations of acute anterior poliomyelitis within the one-year presumptive period (whether or not within 35 days of termination of active military service), would qualify for the presumption under § 3.309(a). Based on the above provisions, we believe that any veteran who would benefit from the requirements of current § 3.379 would also meet the requirements of current § 3.309(a). Therefore, we propose to remove § 3.379.

38 CFR 3.813

Currently, 38 CFR 3.813 provides for interim benefits for disability/death due to chloracne or porphyria cutanea tarda. These provisions were established pending a determination as to whether or not the conditions were related to herbicide exposure in the Republic of Vietnam. Subsequently, these conditions were recognized as related to such herbicide exposure and the Secretary revised the list of presumptive conditions listed in current § 3.309 to include these two conditions. However, as noted in § 3.813(e), interim disability benefits were payable only for the period October 1, 1984 through September 30, 1986. Because this regulation is no longer pertinent to the adjudication of claims, we propose to remove it from part 3.

Endnote Regarding Removals From Part 3

For the reasons shown in the preceding supplementary information, the amendments proposed in this document would, if adopted, result in removal of current §§ 3.307, 3.308, 3.309, 3.311, 3.316, 3.317, 3.379, and 3.813. This would be the case because those part 3 sections, or portions of sections, would be replaced by new part 5 sections or they would be removed entirely. Readers are invited to comment both on these part 3 removals and on the proposed new part 5 rules at this time.

NPRMs frequently include formal "amendatory language" listing the sections, or portions of sections, that would be removed if the proposed amendments are adopted. However, we have not included such "amendatory language" in this NPRM because of the nature of this Project. Because of the very large scope of the Project, we are publishing proposed amendments in several NPRMs. In the last NPRM, VA will propose to remove all of part 3, concurrent with the implementation of part 5.

Endnote Regarding Redesignation From Part 3

We propose to redesignate current § 3.313 "Claims based on service in Vietnam" as new § 5.263 "Presumption of service connection for non-Hodgkin's lymphoma based on service in Vietnam."

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed amendment would not affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This proposed amendment would have no such effect on State, local, or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers for this proposal are 64.100–102, 64.104–110, 64.115, and 64.127.

List of Subjects in 38 CFR Parts 3 and 5

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

Approved: April 20, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR chapter I as set forth below:

PART 5—COMPENSATION, PENSION, BURIAL, AND RELATED BENEFITS

1. Part 5, as proposed to be added at 69 FR 4820, January 30, 2004, is further amended by adding subpart E to read as follows:

Subpart E—Claims for Service Connection and Disability Compensation

Presumptions of Service Connection for Certain Disabilities, and Related Matters

Sec.

5.260 General rules and definitions.
5.261 Certain chronic diseases VA presumes are service connected.
5.262 Presumption of service connection for diseases associated with exposure to certain herbicide agents.
5.263 [*Reserved*]
5.264 Diseases VA presumes are service connected in former prisoners of war.
5.265 Tropical diseases VA presumes are service connected.
5.266 [Reserved]
5.267 Presumption of service connection for conditions associated with full-body exposure to nitrogen mustard, sulfur mustard, or Lewisite.

Service Connection for Diseases Due to Exposure to Ionizing Radiation

5.268 Service connection for diseases presumed to be due to exposure to ionizing radiation.
5.269 Direct service connection for diseases associated with exposure to ionizing radiation.

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

Subpart E—Claims for Service Connection and Disability Compensation

Presumptions of Service Connection for Certain Disabilities, and Related Matters

§ 5.260 General rules and definitions.

(a) *The purpose of presumptions of service connection.* A presumption of service connection establishes a material fact (or facts) necessary to establish service connection, even when there is no evidence that directly establishes that material fact (or facts). Examples of material facts include whether a disease or disability had its onset during a veteran's military service, or whether a veteran was exposed to certain herbicide agents during such service. The evidence must prove that the presumption applies to the claimant, but after such a showing there is no need for additional evidence of the material fact(s) established by the presumption. Presumptions of service connection are set forth in §§ 5.261 through 5.268, and the general rules in this section apply to those sections, except as otherwise provided.

(b) *Diseases that must manifest within a specified period need not be diagnosed within that period.* (1) Certain presumptions apply only when a disease becomes manifest to a degree of 10 percent or more (as defined by the rating criteria in 38 CFR part 4, Schedule for Rating Disabilities) within a prescribed time period, called the "presumptive period." This does not mean that the disease must have actually been diagnosed during that period. Symptoms shown during the presumptive period may reflect the existence of a disease during that period. Therefore, a presumption of service connection applies when the evidence shows symptoms during the presumptive period sufficient to support a finding that a later-diagnosed disease or disability was actually present to the required degree during the presumptive period. This includes instances where the principles of continuity of symptomatology in § 3.303(b) establish a link between symptoms during the presumptive period and a subsequent diagnosis. It also includes instances where manifestations during the presumptive period are followed by a medical diagnosis within a reasonable time. What constitutes a reasonable time depends on the nature and course of the disease and any other relevant factors. (Simply because a disease is far advanced when diagnosed does not mean that it was at least 10 percent disabling during the presumptive period).

(2) Whether a disease became manifest during a presumptive period may be established by medical evidence, competent lay evidence or both. Medical evidence should set forth the physical findings and symptomatology shown by examination within the presumptive period. Lay evidence should describe the material and relevant facts as to the veteran's disability observed within such period, not merely conclusions based upon opinion.

(c) *Rebutting a presumption of service connection for a disease.* VA cannot grant service connection under this section when the presumption has been rebutted by the evidence of record.

(1) Except as otherwise provided, the presumption of service connection for a disease will be rebutted when any one or more of the following conditions occurs:

(i) Evidence establishes that the disease or disability was caused by an intervening or nonservice-related injury or disease; or

(ii) Evidence establishes that the disease or injury was caused by the veteran's own willful misconduct (*see* §§ 3.1(n) and 3.301(b)); or

(iii) Evidence establishes that the disease or disability was not incurred in service or, in the case of a preexisting disease, was not aggravated in service; or

(iv) Evidence establishes that a cancer (for which service connection is claimed under § 5.262 or § 5.268) originated in another area of the body and then spread to one of the specific areas listed in § 5.262(e) or § 5.268(b).

(2) Any evidence competent to indicate the time a disease existed or started may rebut a presumption of service connection that would otherwise apply. For a discussion of the standards of proof for rebutting a presumption, *see* § 5.4(e).

(Authority: 38 U.S.C. 501(a), 1112, 1113, 1137)

§ 5.261 Certain chronic diseases VA presumes are service connected.

(a) *Eligibility.* VA will presume service connection for a disease listed in paragraph (d) of this section, although not otherwise established as incurred or aggravated in service, if it first became manifest to a degree of 10 percent or more:

(1) Within a year of separation from a qualifying period of service; or

(2) Within such other time as provided in paragraph (d) of this section.

(b) *Qualifying period of service.* A qualifying period of service is:

(1) A period of 90 days or more of active, continuous service that began before December 31, 1946 and included service during a period of war; or

(2) Any period of 90 days or more of active, continuous service after December 31, 1946.

(c) *Service ending before December 7, 1941.* In claims based on service ending before December 7, 1941, for the purpose of determining whether a chronic disease manifested within a presumptive period under this section, the date of separation from wartime service will be the date of discharge or release during a war period, or if service continued after the war, the end of the war period.

(d) *Diseases presumed service connected.* VA will grant service connection on a presumptive basis for any chronic disease listed in this paragraph where a symptom becomes manifest to a degree of disability of 10

percent or more within the applicable presumptive period for the disease. For the purposes of this section, VA will consider the diseases listed in the table at the end of this paragraph to be chronic because of slow onset and persistent progress, even if they are initially diagnosed as acute. Unless the clinical picture clearly shows the condition was only acute, VA will consider whether an acute condition was an exacerbation of a chronic disease. VA cannot apply the presumption of service connection when the evidence shows that the disease existed prior to military service to a degree of 10 percent or more disabling (as defined by the rating criteria in 38 CFR part 4, Schedule for Rating Disabilities). However, VA will apply the presumption where there is evidence that the disease existed prior to entry into service to a degree of less than 10 percent disabling.

Disease	Disease must manifest to a degree of 10 percent or more within this period following either discharge or release from service under paragraph (a) or end of the war period under paragraph (c) of this section
Anemia, primary	Within 1 year.
Arteriosclerosis	Within 1 year.
Arthritis	Within 1 year.
Atrophy, progressive muscular	Within 1 year.
Brain hemorrhage	Within 1 year.
Brain thrombosis	Within 1 year.
Bronchiectasis	Within 1 year.
Calculi of the kidney, bladder, or gallbladder	Within 1 year.
Cardiovascular-renal disease, including hypertension. See paragraph (e) of this section	Within 1 year.
Cirrhosis of the liver	Within 1 year.
Coccidioidomycosis	Within 1 year.
Diabetes mellitus	Within 1 year.
Encephalitis lethargica residuals	Within 1 year.
Endocarditis (this term covers all forms of valvular heart disease)	Within 1 year.
Endocrinopathies	Within 1 year.
Epilepsies	Within 1 year.
Hansen's disease	Within 3 years.
Hodgkin's disease	Within 1 year.
Leukemia (acute or chronic)	Within 1 year.
Lupus erythematosus, systemic	Within 1 year.
Multiple sclerosis	Within 7 years.
Myasthenia gravis	Within 1 year.
Myelitis	Within 1 year.
Myocarditis	Within 1 year.
Nephritis	Within 1 year.
Organic diseases of the nervous system	Within 1 year.
Osteitis deformans (Paget's disease)	Within 1 year.
Osteomalacia	Within 1 year.
Palsy, bulbar	Within 1 year.
Paralysis agitans	Within 1 year.
Psychoses (see § 3.384 of this part)	Within 1 year.
Purpura idiopathic, hemorrhagic	Within 1 year.
Raynaud's disease	Within 1 year.
Sarcoidosis	Within 1 year.
Scleroderma	Within 1 year.
Sclerosis, amyotrophic lateral	Within 1 year.
Syringomyelia	Within 1 year.
Thromboangiitis obliterans (Buerger's disease)	Within 1 year.
Tuberculosis, active (see § 3.371 of this part)	Within 3 years.
Tumors, malignant	Within 1 year.
Tumors, of the brain or spinal cord or peripheral nerves	Within 1 year.
Ulcers, peptic (gastric or duodenal)	Within 1 year.

(e) *Cardiovascular-renal disease, including hypertension.* The term "cardiovascular-renal disease" applies to combination involvement of arteriosclerosis, nephritis, and organic heart disease. VA will consider hypertension which was 10 percent or more disabling within the 1-year presumptive period as a chronic disease.

(f) *Hereditary disease.* For the purposes of granting service connection of a chronic disease on a presumptive basis, VA will presume that an inherited or familial disease listed in paragraph (d) of this section was incurred in or aggravated by service, if the disease first became manifest to a degree of 10 percent or more within the applicable presumptive period following discharge or release from active military service.

(Authority: 38 U.S.C. 501, 1101(3), 1112(a), 1137)

§ 5.262 Presumption of service connection for diseases associated with exposure to certain herbicide agents.

(a) *General*—(1) *Presumption of exposure.* VA will presume that a veteran who served in the Republic of Vietnam during the period beginning on January 9, 1962, and ending on May 7,

1975, was exposed to an herbicide agent. VA will presume that the last date on which such a veteran was exposed to an herbicide agent is the last date on which that veteran served in the Republic of Vietnam during that period. For purposes of this section, "Service in the Republic of Vietnam" does not include active military service in the waters offshore and service in other locations, but does include any such service in which the veteran had duty in or visited in the Republic of Vietnam, which includes service on the inland waterways.

(2) *Presumption of service connection.* VA will presume service connection where a veteran who was exposed to an herbicide agent during active military service is diagnosed with a disease listed in paragraph (e) of this section that becomes manifest to a degree of 10 percent or more within the time period described in paragraph (e) of this section.

(b) *Definition of herbicide agent.* For the purposes of this section, the term "herbicide agent" means 2,4-D; 2,4,5-T and its contaminant TCDD; cacodylic acid; or picloram.

(c) *No minimum period of service required.* Any period of active military service involving presumed or established exposure to an herbicide agent is sufficient for the purpose of establishing presumptive service connection of a specified disease under this section.

(d) *Rebutting the presumption of exposure.* Unlike the presumption of service connection described in paragraph (a)(2) of this section, the presumption of exposure under paragraph (a)(1) is not subject to rebuttal under § 5.260(c) (general rule describing rebuttal of presumptions of service connection). The presumption of exposure applies unless evidence establishes that the veteran was not exposed to an herbicide agent during active military service.

(e) *Diseases presumed service connected.* The following table lists the diseases that VA will presume to be service connected based on this section. VA will not apply the presumption of service connection where the evidence shows that the disease existed prior to active military service to a degree of 10 percent or more disabling (as defined by the rating criteria in 38 CFR part 4, Schedule of Rating Disabilities). VA will apply the presumption where there is evidence that the disease existed prior to entry into such service to a degree of less than 10 percent disabling.

Disease	Disease must manifest to a degree of 10 percent or more
Chloracne or other acneform disease consistent with chloracne	Within one year after the last day of exposure.
Chronic lymphocytic leukemia	Any time after exposure.
Hodgkin's disease	Any time after exposure.
Multiple myeloma	Any time after exposure.
Non-Hodgkin's lymphoma	Any time after exposure.
Peripheral neuropathy, acute and subacute.[1]	Within 1 year after the last day of exposure.
Porphyria cutanea tarda	Within 1 year after the last day of exposure.
Prostate cancer	Any time after exposure.
Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea)	Any time after exposure.
Soft-tissue sarcoma (other than osteosarcoma, chondrosarcoma, Kaposi's sarcoma, or mesothelioma).[2]	Any time after exposure.
Type 2 diabetes (also known as Type II diabetes mellitus or adult-onset diabetes)	Any time after exposure.

[1] For purposes of this section, the term "acute and subacute peripheral neuropathy" means transient peripheral neuropathy that appears within weeks or months of exposure to an herbicide agent and resolves within two years of the date of onset.

[2] The term "soft-tissue sarcoma" includes the following:
Adult fibrosarcoma.
Alveolar soft part sarcoma.
Angiosarcoma (hemangiosarcoma and lymphangiosarcoma).
Clear cell sarcoma of tendons and aponeuroses.
Congenital and infantile fibrosarcoma.
Dermatofibrosarcoma protuberans.
Ectomesenchymoma.
Epithelioid leiomyosarcoma (malignant leiomyoblastoma).
Epithelioid sarcoma.
Extraskeletal Ewing's sarcoma.
Leiomyosarcoma.
Liposarcoma.
Malignant fibrous histiocytoma.
Malignant ganglioneuroma.
Malignant giant cell tumor of tendon sheath.
Malignant glomus tumor.
Malignant granular cell tumor.
Malignant hemangiopericytoma.
Malignant mesenchymoma.
Malignant schwannoma, including malignant schwannoma with rhabdomyoblastic differentiation (malignant Triton tumor), glandular and epithelioid malignant schwannomas.
Proliferating (systemic) angioendotheliomatosis.
Rhabdomyosarcoma.
Synovial sarcoma (malignant synovioma).

(Authority: 38 U.S.C. 501(a), 1116)

§ 5.263 [Reserved]

§ 5.264 Diseases VA presumes are service connected in former prisoners of war.

(a) *Eligibility.* Any period of active military service is sufficient for establishing presumptive service connection for a specified disease under this section. There are certain requirements for the length of internment as a prisoner of war (POW). A veteran is eligible for the presumption if the veteran:

(1) Is a former POW under § 3.1(y); and

(2) Is diagnosed as having a disease listed in paragraph (b) or (c) of this section that first became manifest to a degree of 10 percent or more at any time after discharge or release from active military service, even if there is no

record of such disease during such service.

(b) *Diseases presumed service connected following any period of internment.* VA will presume service connection for the following diseases if the criteria of paragraph (a) of this section are met:

Any of the anxiety disorders as listed in § 4.130, including post-traumatic stress disorder.

Dysthymic disorder (or depressive neurosis).

Organic residuals of frostbite, if the Secretary determines that the veteran was detained or interned in climatic conditions consistent with the occurrence of frostbite.

Post-traumatic osteoarthritis.

Psychosis.

(c) *Presumption of service connection following not less than 30 days of internment.* VA will presume service connection for the following diseases if the veteran was interned for 30 days or more and the criteria of paragraph (a) of this section are met:

Beriberi.

Beriberi heart disease, including ischemic heart disease if localized edema experienced during captivity.

Chronic dysentery.

Cirrhosis of the liver.

Helminthiasis.

Irritable bowel syndrome.

Nutritional deficiency, including avitaminosis and malnutrition.

Optic atrophy associated with malnutrition.

Pellagra.

Peptic ulcer disease.

Peripheral neuropathy except where directly related to infectious causes.

(Authority: 38 U.S.C. 1112)

§ 5.265 Tropical diseases VA presumes are service connected.

(a) *Eligibility.* VA will presume service connection for any disease listed in paragraph (d) of this section, although not otherwise established as incurred in or aggravated by service, if it first became manifest to a degree of 10 percent or more:

(1) Within 1 year from separation from a qualifying period of service; or

(2) Within a period that indicates (based on accepted medical treatises) that the incubation period began during such service.

(b) *Qualifying period of service.* A qualifying period of service is:

(1) A period of 90 days or more of active, continuous service that began before December 31, 1946 and included service during a period of war; or

(2) Any period of 90 days or more of active, continuous service after December 31, 1946.

(c) *Claims based on service ending before December 7, 1941.* In claims based on service ending before December 7, 1941, for the purpose of determining whether a tropical disease manifested within a presumptive period under this section, the date of separation from wartime service will be the date of discharge or release during a war period, or if service continued after the war, the end of the war period.

(d) *Tropical diseases presumed service connected.* VA will presume service connection for the following diseases if the criteria of paragraphs (a) through (c) of this section are met. For any disease service connected under this section, VA will also service connect the resultant disorders or diseases originating because of therapy administered in connection with such a disease or as a preventative measure against such a disease.

Amebiasis.
Blackwater fever.
Cholera.
Dracontiasis.
Dysentery.
Filariasis.
Leishmaniasis, including kala-azar.
Loiasis.
Malaria.
Onchocerciasis.
Oroya fever.
Pinta.
Plague.
Schistosomiasis.
Yaws.
Yellow fever.

(e) *Rebuttal of presumption.* The fact that the veteran had no active military service in a locality having a high incidence of the disease may be considered evidence to rebut the presumption. Residence during the applicable presumptive period in a region where the particular disease is endemic may also be considered evidence to rebut the presumption. VA will consider the known incubation periods of tropical diseases in determining whether the presumption of service connection has been rebutted.

(Authority: 38 U.S.C. 1101(4), 1112(a)(2), 1137).

(f) *Claims for service connection of tropical diseases based on peacetime service before January 1, 1947.* This paragraph applies to veterans with peacetime service before January 1, 1947, who served 6 months or more. The requirement of 6 months or more of service means active, continuous service, during one or more enlistment periods. Any such veteran who develops a tropical disease listed in paragraph (d) of this section, or a disorder or disease resulting from therapy administered in connection with a tropical disease or as a preventative, will be considered to have incurred such disability in active military service if it is shown to exist to the degree of 10 percent or more:

(1) Within 1 year after discharge or release from active military service; or

(2) At a time when accepted medical treatises indicate that the incubation period commenced during active military service unless shown by clear and unmistakable evidence that the tropical disease was not contracted as the result of active military service.

(Authority: 38 U.S.C. 1133)

§ 5.266 [Reserved]

§ 5.267 Presumption of service connection for conditions associated with full-body exposure to nitrogen mustard, sulfur mustard, or Lewisite.

(a) VA will presume service connection for a disease or disability when the evidence of record establishes that the veteran:

(1) Underwent full-body exposure to nitrogen mustard, sulfur mustard, or Lewisite during active military service; and

(2) Subsequently developed a condition associated with that specific agent, as shown in paragraph (b) of this section.

(b) *List of conditions associated with full-body exposure to nitrogen mustard, sulfur mustard, or Lewisite.*

Disease or disability	Associated with nitrogen mustard?	Associated with sulfur mustard?	Associated with Lewisite?
Acute nonlymphocytic leukemia	Yes	No	No.
Asthma	Yes	Yes	Yes.
Chronic bronchitis	Yes	Yes	Yes.
Chronic conjunctivitis	Yes	Yes	No.
Chronic laryngitis	Yes	Yes	Yes.
Chronic obstructive pulmonary disease	Yes	Yes	Yes.
Corneal opacities	Yes	Yes	No.

Disease or disability	Associated with nitrogen mustard?	Associated with sulfur mustard?	Associated with Lewisite?
Emphysema	Yes	Yes	Yes.
Keratitis	Yes	Yes	No.
Laryngeal cancer	Yes	Yes	No.
Lung cancer (except mesothelioma)	Yes	Yes	No.
Nasopharyngeal cancer	Yes	Yes	No.
Scar formation	Yes	Yes	No.
Squamous cell carcinoma of the skin	Yes	Yes.	No.

(Authority: 38 U.S.C. 501(a))

Service Connection for Diseases Due to Exposure to Ionizing Radiation

§ 5.268 Service connection for diseases presumed to be due to exposure to ionizing radiation.

(a) *Eligibility.* This section applies to a "radiation-exposed veteran," who is any individual who, while serving on active duty or as a member of a reserve component of the Armed Forces during a period of active duty for training or inactive duty training, participated in a radiation-risk activity.

(b) Diseases presumed service connected. VA will presume service connection under this section for the following diseases becoming manifest in a radiation-exposed veteran at any time after service.

Bronchiolo-alveolar carcinoma.
Cancer of the bile ducts.
Cancer of the bone.
Cancer of the brain.
Cancer of the breast.
Cancer of the colon.
Cancer of the esophagus.
Cancer of the gall bladder.
Cancer of the lung.
Cancer of the ovary.
Cancer of the pancreas.
Cancer of the pharynx.
Cancer of the salivary gland.
Cancer of the small intestine.
Cancer of the stomach.
Cancer of the thyroid.
Cancer of the urinary tract (for the purposes of this section, the term "urinary tract" means the kidneys, renal pelves, ureters, urinary bladder, and urethra).
Leukemia (other than chronic lymphocytic leukemia).
Lymphomas (except Hodgkin's disease).
Multiple myeloma.
Primary liver cancer (except if cirrhosis or hepatitis B is indicated).

(c) *Radiation-risk activity.* For the purposes of this section, "radiation-risk activity" means:

(1) Onsite participation in a test involving the atmospheric detonation of a nuclear device. For purposes of this section, "onsite participation" means:

(i) During the official operational period of a nuclear test, (defined in paragraph (e) of this section), presence at the test site, or performance of official military duties in connection with ships, aircraft or other equipment used in direct support of the nuclear test.

(ii) During the six month period following the official operational period of a nuclear test, presence at the test site or other test staging area to perform official military duties in connection with completion of projects related to the nuclear test including decontamination of equipment used during the nuclear test.

(iii) Service as a member of the garrison or maintenance forces on Eniwetok during the periods June 21, 1951 through July 1, 1952; August 7, 1956 through August 7, 1957; or November 1, 1958 through April 30, 1959.

(iv) Assignment to official military duties at Naval Shipyards involving the decontamination of ships that participated in Operation Crossroads.

(2) Service during the occupation of Hiroshima or Nagasaki, Japan, by United States forces during the period beginning on August 6, 1945, and ending on July 1, 1946. This includes official military duties within 10 miles of the city limits of either Hiroshima or Nagasaki, Japan, which were required to perform or support military occupation functions such as occupation of territory, control of the population, stabilization of the government, demilitarization of the Japanese military, rehabilitation of the infrastructure or deactivation and conversion of war plants or materials.

(3) Internment as a prisoner of war in Japan (or service on active duty in Japan immediately following such internment) during World War II that resulted in an opportunity for exposure to ionizing radiation comparable to that of the United States occupation forces in Hiroshima or Nagasaki, Japan, during the period beginning on August 6, 1945, and ending on July 1, 1946. This includes former prisoners of war who at any time during the period August 6, 1945, through July 1, 1946:

(i) Were interned within 75 miles of the city limits of Hiroshima or within 150 miles of the city limits of Nagasaki; or

(ii) Can affirmatively show that they worked within the areas set forth in paragraph (c)(3)(i) of this section although not interned within those areas; or

(iii) Immediately following internment, performed official military duties described in paragraph (c)(2) of this section; or

(iv) Were repatriated through the port of Nagasaki.

(4) Service in which the veteran was, as part of his or her official military duties, present during a total of at least 250 days before February 1, 1992, on the grounds of a gaseous diffusion plant located in Paducah, Kentucky, Portsmouth, Ohio, or the area identified as K25 at Oak Ridge, Tennessee, if, during such service the veteran:

(i) Was monitored for each of the 250 days of such service through the use of dosimetry badges for radiation exposure at the plant to the external parts of the veteran's body; or

(ii) Served for each of the 250 days of such service in a position that had exposures comparable to a job that is or was monitored through the use of dosimetry badges.

Note to paragraph (c)(4): For the purposes of this paragraph (paragraph (c)(4)), the term "day" refers to all or any portion of a calendar day.

(5) Service before January 1, 1974, on Amchitka Island, Alaska, if, during such service, the veteran was exposed to ionizing radiation in the performance of duty related to the Long Shot, Milrow, or Cannikin underground nuclear tests.

(d) *Atmospheric detonation.* For the purposes of this section, the term "atmospheric detonation" includes underwater nuclear detonations.

(e) *Operational period.* For the purposes of this section, for tests conducted by the United States, the term "operational period" means:

(1) For Operation *TRINITY* the period July 16, 1945 through August 6, 1945.

(2) For Operation *CROSSROADS* the period July 1, 1946 through August 31, 1946.

(3) For Operation *SANDSTONE* the period April 15, 1948 through May 20, 1948.

(4) For Operation *RANGER* the period January 27, 1951 through February 6, 1951.

(5) For Operation *GREENHOUSE* the period April 8, 1951 through June 20, 1951.

(6) For Operation *BUSTER–JANGLE* the period October 22, 1951 through December 20, 1951.

(7) For Operation *TUMBLER–SNAPPER* the period April 1, 1952 through June 20, 1952.

(8) For Operation *IVY* the period November 1, 1952 through December 31, 1952.

(9) For Operation *UPSHOT–KNOTHOLE* the period March 17, 1953 through June 20, 1953.

(10) For Operation *CASTLE* the period March 1, 1954 through May 31, 1954.

(11) For Operation *TEAPOT* the period February 18, 1955 through June 10, 1955.

(12) For Operation *WIGWAM* the period May 14, 1955 through May 15, 1955.

(13) For Operation *REDWING* the period May 5, 1956 through August 6, 1956.

(14) For Operation *PLUMBBOB* the period May 28, 1957 through October 22, 1957.

(15) For Operation *HARDTACK I* the period April 28, 1958 through October 31, 1958.

(16) For Operation *ARGUS* the period August 27, 1958 through September 10, 1958.

(17) For Operation *HARDTACK II* the period September 19, 1958 through October 31, 1958.

(18) For Operation *DOMINIC I* the period April 25, 1962 through December 31, 1962.

(19) For Operation *DOMINIC II/PLOWSHARE* the period July 6, 1962 through August 15, 1962.

Note to § 5.268: If this section does not apply in a particular case, VA will consider service connection under § 5.269.

(Authority: 38 U.S.C. 1112(c), 1137)

§ 5.269 Direct service connection for diseases associated with exposure to ionizing radiation.

(a) *General.* This section does not establish a presumption of service connection. It establishes standards and procedures VA will apply when a claim for service connection for a disease based on in-service exposure to ionizing radiation cannot be granted using the presumption of service connection under § 5.268. Under this section, if:

(1) The veteran was exposed to ionizing radiation as a result of participation in the atmospheric testing of nuclear weapons, the occupation of Hiroshima or Nagasaki, Japan, from September 1945 until July 1946 or any other claimed in-service event;

(2) The veteran subsequently developed a radiogenic disease; and

(3) Such disease first became manifest within the period specified in paragraph (b) of this section, then the VA agency of original jurisdiction will refer the claim, before adjudication, to the Under Secretary for Benefits for further consideration in accordance with paragraph (d) of this section. If any of the requirements of this paragraph have not been met, service connection will not be granted under this section.

(b) *Radiogenic disease.* For the purposes of this section, "radiogenic disease" means a disease that may be induced by ionizing radiation.

(1) *Listed diseases.* The following table lists diseases that VA will consider radiogenic when they manifest within the associated manifestation period.

Disease	Manifestation period
Bone cancer	Within 30 years after exposure.
Cancer (any other not listed)	5 years or more after last exposure.
Leukemia (all forms except chronic lymphatic (lymphocytic))	At any time after exposure.
Lymphomas other than Hodgkin's disease	5 years or more after last exposure.
Non-malignant thyroid nodular disease	5 years or more after last exposure.
Parathyroid adenoma	5 years or more after last exposure.
Posterior subcapsular cataracts	6 months or more after exposure.
Tumors of the brain and central nervous system	5 years or more after last exposure.

(2) *Polycythemia vera.* Public Law 98–542 requires VA to determine whether sound medical and scientific evidence supports establishing a rule identifying polycythemia vera as a radiogenic disease. VA has determined that sound medical and scientific evidence does not establish that polycythemia vera is a radiogenic diseases under this regulation. Even so, VA will consider a claim based on the assertion that polycythemia vera is a radiogenic disease under the provisions of paragraph (b)(3) of this section.

(3) *Other diseases.* If a claimant claims compensation for a disease based on ionizing radiation exposure and that disease is other than one of those listed in paragraph (b)(1) of this section, VA will consider the claim under the provisions of this section provided that the claimant has cited or submitted competent scientific or medical evidence that the claimed condition is a radiogenic disease.

(c) *Development of dose data by a VA agency of original jurisdiction.* (1) In all claims for service connection based on a radiogenic disease under this section, VA will request dose data to determine the likelihood that in-service ionizing radiation exposure caused the veteran's disease. The agency of original jurisdiction will request dose data as follows:

(i) *Atmospheric nuclear weapons test participation claims.* In all claims based upon participation in atmospheric nuclear testing, dose data will be requested from the appropriate office of the Department of Defense.

(ii) *Hiroshima and Nagasaki occupation claims.* In all claims based on participation in the American occupation of Hiroshima or Nagasaki, Japan, prior to July 1, 1946, dose data will be requested from the appropriate office of the Department of Defense.

(iii) *Other exposure claims.* In all other claims involving ionizing radiation exposure, a request will be made for any available records concerning the veteran's exposure to ionizing radiation. These records normally include, but are not limited to, the veteran's Record of Occupational Exposure to Ionizing Radiation (DD Form 1141), if maintained; service medical records; dose records from the radiation dosimetry office of the specific military service; and other records which may contain information pertaining to the veteran's ionizing radiation dose in service. All such records will be forwarded to the Under Secretary for Health, who will be responsible for preparation of a dose estimate, to the extent feasible, based on available methodologies. As used in this section, "the Under Secretary for

Health" includes his or her designees. If neither the Department of Defense nor any other source provides VA with records adequate to permit the Under Secretary to prepare a dose estimate, then VA will ask the Department of Defense to provide a dose estimate.

(2) When dose estimates obtained under paragraph (c)(1) of this section are reported as a range of doses to which a veteran may have been exposed, VA will presume exposure at the highest level of the range reported.

(3) Neither the veteran nor the veteran's survivors may be required to produce evidence substantiating exposure if the information in the veteran's service records or other records maintained by the Department of Defense is consistent with the claim that the veteran was present where and when the claimed exposure occurred.

(4) Presence at a nuclear site. For purposes of paragraph (c)(1)(i) (Atmospheric nuclear weapons test participation) and paragraph (c)(1)(ii) (Hiroshima and Nagasaki occupation), if military records do not establish presence at or absence from a site at which exposure to ionizing radiation is claimed to have occurred, VA will concede the veteran's presence at the site. Conceding presence under this section does not confer entitlement to the presumptive provisions of § 5.268.

(5) Submission to the Under Secretary for Benefits. After the development in paragraphs (c)(1) through (c)(4) has been completed, the agency of original jurisdiction will forward dose data and any other evidence, along with the veteran's claims file, to the Under Secretary for Benefits for review. The claims file will not be submitted for review when development establishes that the claimed disability or disease is not radiogenic (as provided in paragraphs (b)(1) through (b)(3) of this part), that the disease did not become manifest during the time period specified in paragraph (b)(1), or that the veteran was either not exposed to ionizing radiation in active military service as claimed or that the actual or estimated dose exposure was reported to be zero rem gamma. In such cases, the agency of original jurisdiction will decide the claim based on general principles of service connection.

(d) *Review and action by the Under Secretary for Benefits.* (1) The Under Secretary for Benefits will review all the evidence of record and may request an advisory medical opinion from the appropriate office of the Under Secretary for Health as to whether the veteran's disease resulted from exposure to ionizing radiation in service. In claims subject to paragraph (c)(1)(iii) of this section, the Under Secretary for Health will also be responsible for reviewing any records obtained as a result of the development procedures in that paragraph and preparing a dose estimate, to the extent feasible, based on available methodologies.

(2) Prior to referral to the Under Secretary for Health, the Under Secretary for Benefits will reconcile any material difference between dose data obtained through the development process in paragraph (c)(1) of this section and dose data submitted by or on behalf of the claimant.

(i) The Under Secretary for Benefits will request an opinion from an independent expert when it is necessary to reconcile a material difference between dose data from a credible source submitted by or on behalf of a claimant and dose data derived from official military records. The Director of the National Institutes of Health is responsible for selecting the independent expert. The estimates and supporting documentation of record will be forwarded to the independent expert who will prepare a separate radiation dose estimate for consideration in adjudicating the claim. For purposes of this paragraph:

(A) The difference between the claimant's estimate and dose data derived from official military records shall ordinarily be considered material if one estimate is at least double the other estimate.

(B) A dose estimate shall be considered from a "credible source" if prepared by a person or persons certified by an appropriate professional body in the field of health physics, nuclear medicine or radiology and if based on analysis of the facts and circumstances of the particular claim.

(ii) [*Reserved*]

(e) *Opinion of the Under Secretary for Benefits.* (1) Upon receipt of a medical opinion by the Under Secretary for Health, the Under Secretary for Benefits will review it, along with all the evidence of record. If the Under Secretary for Benefits is convinced that sound scientific and medical evidence supports the determination that it is at least as likely as not that the veteran's disease resulted from ionizing radiation in service, the agency of original jurisdiction will be informed of this determination in writing. The Under Secretary for Benefits will set forth the rationale for the determination, including an evaluation of the claim based on the following factors:

(i) The probable dose, in terms of dose type, rate, and duration as a factor in inducing the disease, taking into account any known limitations in the dosimetry devices employed in its measurement or the methodologies employed in its estimation;

(ii) The relative sensitivity of the involved tissue to induction, by ionizing radiation, of the specific pathology;

(iii) The veteran's gender and pertinent family history;

(iv) The veteran's age at time of exposure;

(v) The time-lapse between exposure and onset of the disease; and

(vi) The extent to which exposure to ionizing radiation, or other carcinogens, outside of service may have contributed to development of the disease.

(2) For purposes of paragraph (e)(1) of this section, the term "sound scientific evidence" means observations, findings, or conclusions that are statistically and epidemiologically valid, are statistically significant, are capable of replication, and are capable of withstanding peer review. The term "sound medical evidence" means observations, findings, or conclusions that are consistent with current medical knowledge and are so reasonable and logical as to serve as the basis of management of a medical condition.

(3) If the Under Secretary for Benefits determines there is no reasonable possibility that the veteran's disease resulted from ionizing radiation exposure in service, the agency of original jurisdiction will be informed in writing, setting forth the rationale for this conclusion.

(4) The Under Secretary for Benefits will request an opinion from an outside consultant when, after review of all the evidence, including the opinion of the Under Secretary for Health, the Under Secretary for Benefits is unable to determine whether it is at least as likely as not, or whether there is no reasonable possibility, that the veteran's disease resulted from ionizing radiation exposure in service. The consultant will be selected by the Under Secretary for Health from outside the VA, upon recommendation of the Director of the National Cancer Institute. The written request to the consultant will include copies of pertinent medical records and, where available, dose assessments from official sources, credible sources, and independent experts. The request will identify the following:

(i) The disease, including the specific cell type and stage, if known, and when the disease first became manifest;

(ii) The circumstances, including date, of the veteran's exposure;

(iii) The veteran's age, gender, and pertinent family history;

(iv) The veteran's history of exposure to known carcinogens, occupationally or otherwise;

(v) Evidence of any other effects ionizing radiation exposure may have had on the veteran; and

(vi) Any other information relevant to determination of causation of the veteran's disease.

(5) The consultant will evaluate the claim based on the factors specified in paragraph (e)(1) of this section. The consultant will provide his or her opinion in writing and state whether it is either likely, unlikely, or at least as likely as not that the veteran's disease resulted from exposure to ionizing radiation in service. The rationale supporting the opinion is required.

(6) The consultant will send the opinion to the Under Secretary for Benefits who will review it and transmit it with any comments to the agency of original jurisdiction for use in adjudication of the claim.

(f) *Adjudication of claim.* The agency of original jurisdiction will adjudicate the claim under the generally applicable provisions of this part, giving due consideration to all evidence of record, including any opinions provided by the Under Secretary for Benefits, the Under Secretary for Health, or any outside consultants, and the evaluations published pursuant to 38 CFR 1.17, "Evaluation of studies relating to health effects of dioxin and radiation exposure." With regard to any issue material to consideration of a claim, the provisions of § 3.102 of this title apply (any reasonable doubt on any issue will be resolved in favor of the claimant).

(g) *Willful misconduct and supervening cause in claims based on exposure to ionizing radiation.* In no case will service connection be established if the disease is due to the veteran's own willful misconduct or the abuse of alcohol or drugs, or if evidence establishes that a supervening, nonservice-related condition or event is more likely the cause of the disease.

(Authority: 38 U.S.C. 501; Pub. L. 98–542)

PART 3—ADJUDICATION

2. The authority citation of part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

3. Section 3.313 is redesignated as § 5.263.

4. Newly designated § 5.263 is amended by:

a. Revising the section heading; and

b. In paragraph (a), removing "*Service in* Vietnam includes" and adding, in its place, "For purposes of this section, *service in Vietnam* includes".

The revision reads as follows:

§ 5.263 Presumption of service connection for non-Hodgkin's lymphoma based on service in Vietnam.

* * * * *

5. Section 3.317 is redesignated as § 5.266.

6. Newly designated § 5.266 is amended by:

a. In paragraph (a)(1)(i), removing "military, naval, or air service" and adding, in its place "military service";

b. In paragraph (a)(5), removing "part 4 of this chapter" and adding, in its place, "38 CFR part 4, Schedule for Rating Disabilities";

c. Revising paragraph (b);

d. In paragraph (c), removing "affirmative" each time it appears; and by removing "military, naval, or air service" and adding, in its place "military service"; and

e. In paragraph (d)(1), removing "military, naval, or air service" and adding, in its place "military service".

The revision reads as follows:

§ 5.266 Compensation for certain disabilities due to undiagnosed illnesses.

* * * * *

(b) For the purposes of paragraph (a)(1) of this section, signs or symptoms which may be manifestations of undiagnosed illness or medically unexplained chronic multisymptom illness include, but are not limited to:

Abnormal weight loss.
Cardiovascular signs or symptoms.
Fatigue.
Gastrointestinal signs or symptoms.
Headache.
Joint pain.
Menstrual disorders.
Muscle pain.
Neurologic signs and symptoms.
Neuropsychological signs or symptoms.
Signs or symptoms involving the respiratory system (upper or lower).
Signs or symptoms involving skin.
Sleep disturbances.

* * * * *

[FR Doc. 04–16758 Filed 7–26–04; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 298–0459b; FRL–7784–2]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from solvent cleaning operations. We are proposing to approve a local rule 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 August 26, 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 document (TSD), 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.

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

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

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: SCAQMD 1171. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule 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: June 17, 2004.

Nancy Lindsay,

Acting Regional Administrator, Region IX.

[FR Doc. 04–16711 Filed 7–26–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket–AK–04–002b; FRL–7792–4]

Approval and Promulgation of State Implementation Plans: State of Alaska; Fairbanks Carbon Monoxide Nonattainment Area; Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On June 21, 2004, the State of Alaska submitted a carbon monoxide (CO) maintenance plan for the Fairbanks CO nonattainment area to EPA for approval. The State concurrently requested that EPA redesignate the Fairbanks CO nonattainment area to attainment for the National Ambient Air Quality Standard (NAAQS) for CO. In this action, EPA is proposing approval of the maintenance plan and redesignation of the Anchorage CO nonattainment area to attainment.

DATES: Written comments must be received by August 26, 2004.

ADDRESSES: Comments may be mailed to Connie L. Robinson, Environmental Protection Agency, Office of Air, Waste and Toxics (OAQ–107), EPA Region 10, 1200 Sixth Ave., Seattle, Washington 98101. Comments may also be submitted electronically or through hand delivery/courier. Please follow the detailed instructions in the Addresses section of the Direct Final Rule which is located in the Rules section of this **Federal Register**. To submit comments, please follow the detailed instructions described in the Direct Final Rule, **SUPPLEMENTARY INFORMATION** section, Part I, General Information.

Copies of the documents relevant to this action are available for public inspection between 8 a.m. and 4 p.m., Monday through Friday at the following office: United States Environmental Protection Agency, Region 10, Office of Air, Waste and Toxics, 1200 Sixth Ave., Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Connie L. Robinson, EPA, Region 10, Office of Air, Waste, and Toxics (OAQ–107), Seattle, Washington, (206) 553–1086.

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. If no adverse comments are received in response to this action, no further activity is contemplated.

If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: July 19, 2004.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 04–17061 Filed 7–26–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7447]

Proposed Flood Elevation Determinations

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

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

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

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

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This proposed rule is not a significant

regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

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

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

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD) +Elevation in feet (NAVD)	
				Existing	Modified
California	Plumas County	Boyle Ravine	Confluence with Nugget Creek	None	+3,409
			Approximately 625 feet upstream of Alder Street.	None	+3,545
		Chandler Creek	Confluence with Greenhorn Creek	None	+4,434
			Approximately 320 feet upstream of Chandler Road.	None	+3,464
		Clear Stream	Confluence with Spanish Creek	None	+3,404
			Approximately 2,200 feet upstream of conflunce of Gansner Creek.	None	+3,427
		Gasner Creek	Confluence with Clear Stream	None	+3,423
			Approximately 740 feet upstream of Bucks Lake Road.	None	+3,497
		Greenhorn Creek	Confluence with Spanish Creek	None	+3,401
			Approximately 1,950 feet upstream of Highway 89/70.	None	+3,494
		Mill Creek	Confluence with Spanish Creek	None	+3,401
			Approximately 2,500 feet upstream of Highway 89/70.	None	+3,555
		Nugget Creek	Confluence with Mill Creek	None	+3,402
			Approximately 200 feet upstream of Nugget Lane.	None	+3,455
		Spanish Creek	At Oakland Camp Road	None	+3,392
			Approximately 11,700 feet upstream of Highway 89/70.	None	+3,452
		Taylor Creek	Confluence with Greenhorn Creek	None	+3,446
			Approximately 300 feet upstream of Chandler Road.	None	+3,491
		Thompson Creek	Confluence with Greenhorn Creek	None	+3,454
			Approximately 3,400 feet upstream of confluence with Thompson Creek Splitflow.	None	+3,548
		Thompson Creek Splitflow	Confluence with Thompson Creek	None	+3,488
			Approximately 2,600 feet upstream of confluence with Thompson Creek.	None	+3,493
		Unnamed Tributary to Boyle Ravine	Confluence with Boyle Ravine	None	+3,410
			Approximately 150 feet upstream of Highway 89/70.	None	+3,417
		Wolf Creek	Approximately 4,500 feet downstream of Greenville Park Road Bridge.	None	+3,534
			Approximately 2 miles upstream of Main Street Bridge.	None	+3,640

+ North American Vertical Datum

Maps are available for inspection at the Plumas County Planning Department, 520 Main Street, Room 21, Quincy, California 95971.

Send comments to The Honorable Kenneth Nelson, Chairman, Plumas County Board of Supervisors, 520 Main Street, Room 121, Quincy, California 95971.

Oregon	Durham (City),	Fanno Creek	At confluence with the Tualatin River	*126	*125
	Washington County	Tualatin River	At Burlington Northern Railroad	*126	*125
			At Interstate Highway 5	*123	*123
			At Burlington Northern Railroad (Just upstream of confluence with Fanno Creek).	*126	*125

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. (NGVD) +Elevation in feet (NAVD)	
				Existing	Modified
*Elevation in feet					
Maps are available for inspection at City Hall, 17160 Southwest Upper Boones Ferry Road, Durham, Oregon 97281. Send comments to The Honorable Gerry Schirado, Mayor, City of Durham, P.O. Box 23483, Durham, Oregon 97281.					
Oregon	Tigard (City), Washington County	Ash Creek	Confluence with Fanno Creek	*160	*160
			Just upstream of Oak Street	*169	*170
		Fanno Creek	At Burlington Northern Railroad	*126	*126
			At Southwest Scholls Ferry Road	*162	*164
		Summer Creek	At confluence with Fanno Creek	*157	*158
			Just upstream of 135th Avenue	*175	*176
		Tualatin River	At confluence with Fanno Creek	*126	*125
			Approximately 1.6 miles upstream of confluence with Fanno Creek.	*127	*127
*Elevation in feet					
Maps are available for inspection at the Engineering Department, City Hall, 13125 Southwest Hall Boulevard, Tigard, Oregon 97223. Send comments to The Honorable James Griffith, Mayor, City of Tigard, 13125 Southwest Hall Boulevard, Tigard, Oregon 97223.					
Oregon	Beaverton (City), Washington County	Fanno Creek	Just upstream of Southwest Scholls Ferry Road.	*163	*165
			Approximately 850 feet upstream of Southwest Scholls Ferry Road.	*196	*198
*Elevation in feet					
Maps are available for inspection at the Community Development Department, City Hall, 4755 Southwest Griffith Drive, Beaverton, Oregon 97076. Send comments to The Honorable Rob Drake, Mayor, City of Beaverton, P.O. Box 4755, Beaverton, Oregon 97076.					
Oregon	Washington County	Ash Creek	Just upstream of Southwest Hall Boulevard.	*170	*171
			Just upstream of Hemlock Street	*181	*181
		Fanno Creek	Just upstream of Scholls Ferry Road	*193	*197
			Approximately 200 feet upstream of Beaverton-Hillsdale Highway.	*244	*243
*Elevation in feet					
Maps are available for inspection at the Department of Land Use and Transportation, 155 North First Avenue, Suite 350, MS 12, Hillsboro, Oregon 97124. Send comments to The Honorable Tom Brian, Chairman, Washington County Board of Commissioners, 155 North First Avenue, Suite 300, Hillsboro, Oregon 97124.					

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

Dated: July 20, 2004.

David I. Maurstad,

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

[FR Doc. 04–17033 Filed 7–26–04; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 040713206–4206–01; I.D. 070704F]

RIN 0648–AR77

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to the Annual Harvest Specifications Process for the Groundfish Fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues a proposed rule that would implement Amendment 48 to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and Amendment 48 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI) (Amendments 48/48). If approved, Amendments 48/48 would revise the administrative process used to establish annual harvest specifications for the groundfish fisheries of the GOA and the BSAI and would update the FMPs by revising the description of the groundfish fisheries and participants, revising the name of the BSAI FMP, revising text to simplify wording and correct typographical errors, and revising the description of the North Pacific Fishery Management

Council (Council) Groundfish Plan Teams' responsibilities. This action is necessary to manage fisheries based on the best scientific information available, to provide for adequate prior public review and comment to the Secretary of Commerce (Secretary) on Council recommendations, to provide for additional opportunity for Secretarial review, to minimize unnecessary disruption to fisheries and public confusion, and to promote administrative efficiency. The proposed rule would revise regulations to implement the new harvest specifications process in Amendments 48/48 and would revise the name of the BSAI FMP. This action is intended to promote the goals and objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the FMPs, and other applicable laws.

DATES: Written comments must be received by September 10, 2004.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802;
- Hand Delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- E-mail to *4848PR–0648–AR77@noaa.gov* and include in the subject line of the e-mail comments the document identifier: 48/48 Proposed Rule. E-mail comments, with or without attachments, are limited to 5 megabytes.
- FAX to 907–586–7557; or
- Webform at the Federal eRulemaking Portal: *www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of the Environmental Assessment/Regulatory Impact Review/ Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendments 48/48 and the proposed rule may be obtained from the same mailing address above or from the NMFS Alaska Region website at *www.fakr.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Melanie Brown, 907–586–7228 or *melanie.brown@noaa.gov*.

SUPPLEMENTARY INFORMATION: The groundfish fisheries in the Exclusive Economic Zone of the GOA and the BSAI are managed under the FMPs. The Council prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq.* Regulations implementing the FMPs appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The Council has submitted Amendments 48/48 for Secretarial review and a notice of availability (NOA) of the FMP amendments was published in the **Federal Register** on July 14, 2004 (69 FR 42128) with comments on the FMP amendments invited through September 13, 2004. A complete description of the amendments is in the NOA. This proposed rule describes the FMP amendments and proposed implementing regulations.

Comments may address the FMP amendments, the proposed rule, or both, but must be received by September 13, 2004, to be considered in the approval/ disapproval decision on the FMP amendments. All comments received by that time, whether specifically directed to the FMP amendments or the proposed rule, will be considered in the approval/disapproval decision on the FMP amendments.

Background

Amendments 48/48 were unanimously recommended by the Council in October 2003. If approved by NMFS, these amendments would revise the administrative process used to establish annual harvest specifications for the groundfish fisheries of the BSAI and GOA. Harvest specifications establish specific limits on the commercial harvest of groundfish and are used to manage the groundfish fisheries. Harvest specifications include total allowable catch (TAC), acceptable biological catch, overfishing levels, and prohibited species catch (PSC) amounts, and apportionments thereof, which have been recommended by the Council. The current regulations authorize annual harvest specifications that are applicable January 1 through December 31. The goals in revising the harvest specifications process are to: (1) manage fisheries based on the best scientific information available, (2) provide for adequate prior public review and comment to the Secretary on Council recommendations, (3) provide for additional opportunity for Secretarial review, (4) minimize unnecessary disruption to fisheries and public confusion, and (5) promote administrative efficiency.

The current harvest specifications process involves proposed, interim, and final rulemaking. Each October, the Council recommends proposed harvest specifications for the next year. NMFS reviews the Council's recommendations and publishes a notice of proposed specifications in the **Federal Register** for public comment in December. In November, new biological information regarding the groundfish target species becomes available and is used to develop the Council's final harvest specifications recommendations for the fishing year starting in January. The Council makes its final harvest specifications recommendations to NMFS in December. NMFS reviews these recommendations and publishes a notice of final specifications in the **Federal Register** in February or March of the following year.

Starting in January of the new fishing year, groundfish fisheries are managed using interim harvest specifications, pending publication of the final harvest specifications. These interim harvest specifications remain in place until superseded by final harvest specifications in approximately February or March each year. The interim harvest specifications are required by § 679.20(c)(2) to be 25 percent or the first seasonal apportionment of the proposed TAC amounts for most groundfish target species and 25 percent of the proposed PSC amounts.

A number of statutory requirements must be met by NMFS to implement annual harvest specifications. National standard 2 in section 301(a)(2) of the Magnuson-Stevens Act requires management of the groundfish fisheries to be based on the best scientific information available. Each year in October, proposed harvest specifications for the following year are developed based on either TAC amounts used in the current year for some species or on projections from the Stock Assessment and Fishery Evaluation (SAFE) reports written the previous year. The SAFE reports written in the previous year often comprise the best scientific information available in October for supporting the harvest specifications for the following year. The new SAFE reports completed in November are used by the Council to recommend final harvest specifications in mid-December, usually after publication in the **Federal Register** of the proposed harvest specifications.

The proposed and final specifications process normally requires six months to complete, yet only two weeks exist between the time the new final SAFE reports are available (mid- December) and the start of the fishing year on January 1. The Council's Groundfish Plan Teams develop the SAFE reports in November for the following fishing year based on the summer survey data and new analysis. These November SAFE reports are reviewed and approved by

the Council in December and used as the scientific basis for its recommended harvest specifications. Because of this time constraint, the proposed harvest specifications are completed before the new information supporting the final harvest specifications is available. The proposed harvest specifications and supporting information available for public review and comment can differ from the final harvest specifications and their supporting information.

For some species, the harvest specifications change little among years, such as TAC amounts for certain long-lived target groundfish species in the GOA. For other species, harvest specifications can change greatly between the proposed and final harvest specifications for various reasons. In some cases, adjustments are made based on the new information developed in the November SAFE reports. In the BSAI, the need to maximize the harvest of a particular groundfish species can cause changes between proposed and final TACs for a number of groundfish species to maintain the overall harvest at or below the 2 million metric ton optimal yield specified at § 679.20(a)(1)(i). Because the proposed harvest specifications and supporting information can differ from the final harvest specifications and supporting information, the current specifications process may not provide adequate opportunity in some cases for prior public review and comment on the annual harvest specifications or on the supporting information used for the annual harvest specifications.

Subject to certain exceptions, the Administrative Procedure Act (APA) requires prior public review and comment on a proposed rule, including public review and opportunity for comment on the information used as the basis for the proposed rule (see 5 U.S.C. 553). Prior public review and comment on the interim specifications have been routinely waived for "good cause" pursuant to 5 U.S.C. 553(b)(B). However, recent case law has raised legal concerns under the APA regarding this practice of annual waiver of notice and comment because of generic data collection and timing constraints. See *Natural Resources Defense Council* v. *Evans*, 316 F.3d 904 (9th Cir. 2003). In addition, as a practical consideration, the interim harvest specifications also may provide inadequate TAC and PSC amounts for those fisheries that are prosecuted in the early part of the year (i.e., rock sole).

Amendments 48/48 would provide a process that allows for prior public review and comment on the annual harvest specifications and supporting information and would allow the groundfish fisheries to be managed based on the best available scientific information. Each year in October, the Council would recommend to NMFS proposed harvest specifications for up to two years. The rationale for providing for up to two years of harvest specifications is further explained later in this document.

In consideration of the current stock assessment survey schedules, regulatory procedures, and quality of stock assessment information for the GOA and BSAI target species, the proposed harvest specifications process would authorize specifications that would be effective for up to 24 months. NMFS would review the recommendations and publish in the **Federal Register** proposed harvest specifications in November or early December, including detailed descriptions of what the final harvest specifications are likely to be and the new information anticipated to support them. In November, the new SAFE reports would be forwarded to the Council by the Council's Groundfish Plan Teams. The Council would consider the new SAFE reports, public comments on the proposed harvest specifications, and public testimony and then develop recommendations for the final harvest specifications in December. NMFS would review those recommendations and public comments on the proposed harvest specifications, and specifically determine if the final harvest specifications are a logical outgrowth of the proposed harvest specifications. If the final harvest specifications recommendations are consistent with applicable law and are a logical outgrowth of the proposed harvest specifications, the final harvest specifications may be published without additional public review and comment.

If the final harvest specifications recommendations are not a logical outgrowth of the proposed harvest specifications, an additional publication of proposed harvest specifications may be needed to provide an additional opportunity for prior public review and comment under the APA. In May or June of the following year, the final harvest specifications would be published based on the additional proposed harvest specifications and after consideration of public comment. Alternatively, depending on the particular circumstances, NMFS may find "good cause" to waive the publication of proposed harvest specifications for prior public review and comment. In this case, the final harvest specifications likely would become effective in March.

To provide opportunity for a potential additional public comment period after the Council's final harvest specifications recommendation in December, the groundfish fisheries in the new fishing year would be managed on the specifications that had been published previously. Each year, the latter January through June portion of the harvest specifications would be superseded by the new annual harvest specifications. This proposed specification process would eliminate the need for the interim harvest specifications. Having harvest specifications effective into the second fishing year would allow time for NMFS to complete an additional public review and comment period, if needed, while preventing disruption of the fisheries.

To provide consistency between the groundfish FMPs for the harvest specifications process and to provide flexibility during the harvest specifications process, Amendments 48/48 would allow specifications to be effective for up to two fishing years. The stock assessment models used for determining the harvest specifications would use two-year projections for biomass and acceptable biological catch. The frequency of fishery resource surveys also affects whether specifications should be done on a more or less frequent basis. Allowing specifications to be effective for up to two years would fit well with the frequency of stock projections that must be used for the harvest specifications, and would provide the Council and NMFS the flexibility to adjust the specifications time periods in response to potential changes in the frequency of stock assessment surveys or other stock assessment data or administrative issues.

The Council recommended that harvest specifications for the hook-and-line gear and pot gear sablefish individual fishing quota (IFQ) fisheries be limited to the succeeding fishing year to ensure those fisheries are conducted concurrent with the halibut IFQ fishery. Having the sablefish IFQ fisheries concurrent with the halibut IFQ fishery would reduce the potential for discards of halibut and sablefish in these fisheries. The sablefish IFQ fisheries would remain closed at the beginning of each fishing year, until the final harvest specifications for the sablefish IFQ fisheries are in effect. The trawl sablefish fishery would be managed using harvest specifications for up to two years with the remaining target species in the BSAI and with GOA pollock, Pacific cod, and the "other species" complex.

Regulation Revisions

Amendment 48 to the BSAI FMP would revise the title of the FMP. The GOA FMP title is a more concise description of the document compared to the title used for the BSAI FMP. Definitions at § 679.2 describe the BSAI as the "Bering Sea and Aleutian Islands management area." Consistency between the names of the groundfish FMPs and with the groundfish fishery regulations would reduce confusion for users of the documents. The BSAI FMP title would be revised to "The Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area." In § 679.1(b), the title of the BSAI FMP would be revised to reflect the new title that would result from approval of Amendment 48 to the BSAI FMP.

Sections 679.20 and 679.21 would be revised to implement the new administrative process for harvest specifications under Amendments 48/48. In §§ 679.20(c)(1) and (c)(3), and §§ 679.21(d)(1)(i), (e)(1)(ii), (e)(1)(iii), and (e)(6)(i), the revisions would allow proposed and final harvest specifications to remain in effect for up to two fishing years. These revisions would allow flexibility for harvest specifications to be effective for more than 12 months, allowing time to comply with APA rulemaking requirements and ensuring that management would be based on the best scientific information available.

Section 679.20(c)(1) would be further revised to remove the requirement to address the U. S. harvesting and processing capacity in the proposed harvest specifications. This was necessary when foreign groundfish fishing occurred before the 1990s. Harvesting and processing groundfish in Alaskan waters is performed exclusively by U. S. owned and operated vessels and processors under the Magnuson-Stevens Act and the American Fisheries Act (AFA). Amendments 48/48 would remove references to allocations to foreign fishing in the FMPs and this revision would make the regulations consistent with the FMPs.

The proposed rule would allow NMFS to specify the length of the public comment period for the proposed harvest specifications when the proposed specifications are published. Current regulations require a public comment period of 30 days (§§ 679.20(c)(1), 679.21(d)(2), and 679.21(e)(6)(ii)). The proposed rule would afford NMFS the discretion to specify a comment period of appropriate length under the circumstances present when the proposed specifications are published.

The proposed rule would rescind provisions for interim harvest specifications at § 679.20(c)(2) on April 1, 2005. However, as NMFS implements the new harvest specification process, interim harvest specifications would be needed in the first year until the new harvest specifications are effective. The use of interim harvest specifications until April 1, 2005, would ensure no disruption to the groundfish fisheries until the final harvest specifications are effective. Once the new process is in place, interim harvest specifications would no longer be needed, and therefore, the applicable regulatory provision would be rescinded on April 1, 2005.

The species listed for seasonal allowances for the final harvest specifications under §§ 679.20 (c)(1)(ii), (c)(1)(iii), (c)(3)(ii) and (c)(3)(iii) would be revised by the proposed rule. The Steller sea lion protection measures (68 FR 204, January 2, 2003) require the seasonal apportionment of the harvest of Pacific cod, pollock, and Atka mackerel in the BSAI and of Pacific cod and pollock in the GOA. The current regulations reference seasonal harvest specifications only for pollock in the BSAI and GOA. The proposed rule would add Pacific cod and Atka mackerel seasonal allowances to the BSAI harvest specifications and Pacific cod seasonal allowances to the GOA harvest specifications. Paragraphs (c)(1)(ii) and (c)(1)(iii) also would be revised to be consistent with (c)(3)(ii) and (c)(3)(iii) so that proposed and final harvest specifications contents would be consistent.

The proposed rule would revise §§ 679.20(c)(5), 679.20(c)(6), and 679.62(a)(3) to remove references to interim harvest specifications. Interim harvest specifications would not be used once the new harvest specifications process is effective. This revision would be effective April 1, 2005, when the regulations for interim harvest specifications at § 679.20(c)(2) are no longer effective.

Classification

NMFS has not yet determined whether the amendments that this proposed rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. In making that determination, NMFS will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) to evaluate alternative regulatory actions that would change the way the annual harvest specifications are established for the GOA and BSAI groundfish fisheries. The IRFA examines the impacts of the alternative actions on small fishing entities, and addresses the statutory requirements of the Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. The IRFA requirements are given at 5 U.S.C. 603.

The current harvest specifications process provides a very short period of time in which to develop and implement annual harvest specifications. The key biomass survey data become available in September and October. The fishing year begins on the following January 1. This leaves only a short time to evaluate the survey data and update fishery models, obtain peer review of this work, receive review and comment from the Council's SSC and AP, develop the Council's recommendations, provide for public notice and comment, publish a final rule, and meet the APA requirement for a 30–day delay of effectiveness.

The goals in revising the harvest specifications process are to: (1) manage fisheries based on the best scientific information available, (2) provide for adequate prior public review and comment to the Secretary on Council recommendations, (3) provide for additional opportunity for Secretarial review, (4) minimize unnecessary disruption to fisheries and public confusion, and (5) promote administrative efficiency.

The entities directly regulated by this action are those that commercially harvest federally managed groundfish in the BSAI and GOA. These entities include the groundfish catcher vessels and catcher/processor vessels active in these areas. They also include organizations to whom direct allocations of groundfish are made. In the BSAI, this includes the CDQ groups and the AFA fishing cooperatives.

Pursuant to the Small Business Administration criteria and NMFS guidelines, fishing vessels, including catcher vessels and catcher/processors, are considered "small entities" if they gross less than $3.5 million in a year, when all their affiliated elements are taken together. Catcher vessel gross revenues are measured at the ex-vessel level. Catcher/processor revenues are the first wholesale value of the processed product. About 832–838 catcher vessels, 30–33 catcher/processors, and six CDQ groups were

estimated to be small entities under this criterion.

The proposed regulatory amendments do not impose new recordkeeping or reporting requirements on the regulated small entities.

The EA/RIR/IRFA did not reveal any federal rules that duplicate, overlap or conflict with the proposed action.

Four alternatives to the preferred alternative were considered. Alternative 1 would require NMFS to publish proposed specifications, followed by interim and final specifications, under the status quo schedule. This alternative is the most constraining of the alternatives with respect to small businesses' access to the decision-making process. Alternative 1 may result in larger harvests than Alternatives 2 through 4, and thus, potentially higher average revenues for small entities. This alternative fails to achieve the objectives of the proposed action in that it does not provide opportunity for prior public review and comment on interim specifications and does not guarantee meaningful opportunity for public comment on the proposed specifications to the Secretary. For this reason, this alternative was not chosen.

Alternative 2 would eliminate interim harvest specifications, and would require NMFS to issue proposed and final harvest specifications before the start of the fishing year. This alternative would introduce an additional year's lag between the time fishery survey data become available and the time harvest specifications based on those data are implemented. This alternative would improve opportunities for small businesses' access to the decision making process. However, the alternative may result in reductions in groundfish harvests and revenues and with increased year-to-year variation in harvests. These changes could reduce small entities' revenues, but disproportionate impacts on small entities are not identified. These potential adverse effects to small entities outweigh the benefits from an enhanced rulemaking process. The potential for revenue reductions caused this alternative to be rejected.

Alternative 3 would postpone the start of the fishing year by six months to provide enough time for proposed and final harvest specifications. An option to this alternative would postpone the start of the fishing year for most species by six months, but would not change the fishing year for sablefish IFQ fisheries. This option would protect the IFQ management of the sablefish fisheries. This alternative would have revenue impacts very similar to those for Alternative 5, but was not preferred to Alternative 5 due to the administrative problems for managers and fishermen that might be associated with a change in the fishing year.

Alternative 4 would use stock assessment projections to prepare biennial harvest specifications, while setting PSC limits annually. This alternative would improve opportunities for small business access to the decision making process. The two options for this alternative are likely to result in larger potential reductions in harvests and revenues than Alternative 2, and more potential for year-to-year variation in harvests. The changes could reduce small entities' revenues, but disproportionate impacts on small entities are not identified. The potential adverse effects outweigh the enhanced rulemaking process in the alternative. This is no better for directly regulated small entities than Alternative 5.

Alternative 5 is the preferred alternative. Under this alternative, harvest specifications would be set for up to two years. Harvest specifications would be superseded by new harvest specifications typically published between March and June of the second year. This alternative would provide increased opportunities for notice and comment under the APA. This alternative would introduce relatively modest lags between biological surveys and subsequent harvest specifications, thus creating relatively modest adverse revenue impacts compared to Alternatives 2 and 4. If a second proposed rule is required, the revenue effects would be similar to Alternative 3; if not, they may be similar to those for Alternative 1.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: July 20, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; 16 U.S.C. 1540(f); Pub. L. 105–277, Title II of Division C; Pub L. 106–31, Sec. 3027; and Pub. L.106–554, Sec. 209.

2. In § 679.1, the introductory heading of paragraph (b) is revised to read as follows:

§ 679.1 Purpose and scope.

* * * * *

(b) *Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area.* * *

* * * * * *

3. In § 679.20, paragraphs (c)(1), (c)(3), (c)(5), (c)(6), and the introductory paragraph to (c)(2) are revised to read as follows:

§ 679.20 General limitations.

* * * * * *

(c) *Annual specifications.* --(1) *Proposed specifications*--(i) *Notification.* As soon as practicable after consultation with the Council, NMFS will publish proposed specifications for the groundfish fisheries in the BSAI and the GOA.

(ii) *Public comment.* NMFS will accept public comment on the proposed specifications established by this section and by § 679.21 for a period specified in the notice of proposed specifications published in the **Federal Register**.

(iii) *GOA.* The proposed specifications will specify for up to 2 fishing years the annual TAC for each target species and the "other species" category and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iv) *BSAI.* The proposed specifications will specify for up to 2 fishing years the annual TAC for each target species and the "other species" category and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

(2) *Interim specifications.* (Applicable until April 1, 2005.) Interim harvest specifications will be in effect on January 1 and will remain in effect until superseded by the filing of the final specifications by the Office of the **Federal Register**. Interim specifications will be established as follows:

* * * * * *

(3) *Final specifications*--(i) *Procedure and notification.* NMFS will consider comments received on the proposed specifications and, after consultation with the Council, will publish a notice of final specifications in the **Federal Register** unless NMFS determines that the final specifications would not be a logical outgrowth of the notice of

proposed specifications. In that event, NMFS will either:

(A) Publish a revised notice of proposed specifications in the **Federal Register** for public comment, and after considering comments received on the revised proposed specifications, publish a notice of final specifications in the **Federal Register**; or

(B) Publish a notice of final specifications in the **Federal Register** without an additional opportunity for public comment based on a finding that good cause pursuant to the Administrative Procedure Act justifies waiver of the requirement for a revised notice of proposed specifications and opportunity for public comment thereon.

(ii) *GOA.* The final specifications will specify for up to 2 fishing years the annual TAC for each target species and the "other species" category and apportionments thereof, halibut prohibited species catch amounts, and seasonal allowances of pollock and Pacific cod.

(iii) *BSAI.* The final specifications will specify for up to 2 fishing years the annual TAC for each target species and the "other species" category and apportionments thereof, PSQ reserves and prohibited species catch allowances, seasonal allowances of pollock, Pacific cod, and Atka mackerel TAC (including pollock, Pacific cod, and Atka mackerel CDQ), and CDQ reserve amounts.

* * * * *

(5) *BSAI Pacific cod gear allocations.* (Effective April 1, 2005.) The proposed and final specifications will specify the allocation of BSAI Pacific cod among gear types as authorized under paragraph (a)(7) of this section.

(6) *BSAI Atka mackerel allocations.* (Effective April 1, 2005.) The proposed and final specifications will specify the allocation of BSAI Atka mackerel among gear types and HLA fisheries as authorized under paragraph (a)(8) of this section.

* * * * *

4. In § 679.21, paragraphs (d)(1)(i), (d)(2), and (e)(6), and introductory paragraphs to (e)(1)(ii) and (e)(1)(iii), are revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(d) * * *

(1) * * *

(i) *Proposed and final limits and apportionments.* NMFS will publish in the **Federal Register** proposed and final halibut PSC limits, and apportionments thereof, in the notification required under § 679.20.

* * * * *

(2) *Public comment.* NMFS will accept public comment on the proposed halibut PSC limits, and apportionments thereof, for a period specified in the notice of proposed halibut PSC limits published in the **Federal Register**. NMFS will consider comments received on proposed halibut PSC limits and, after consultation with the Council, will publish notification in the **Federal Register** specifying the final halibut PSC limits and apportionments thereof.

* * * * *

(e) * * *

(1) * * *

(ii) *Red king crab in Zone 1.* The PSC limit of red king crab caught by trawl vessels while engaged in directed fishing for groundfish in Zone 1 during any fishing year will be specified for up to 2 fishing years by NMFS, after consultation with the Council, based on abundance and spawning biomass of red king crab using the criteria set out under paragraphs (e)(1)(iii)(A) through (C) of this section. The following table refers to the PSC limits for red king crab that you must follow in Zone 1:

* * * * *

(iii) *Tanner crab (C. bairdi).* The PSC limit of *C. bairdi* crabs caught by trawl vessels while engaged in directed fishing for groundfish in Zones 1 and 2 during any fishing year will be specified for up to 2 fishing years by NMFS under paragraph (e)(6) of this section, based on total abundance of *C. bairdi* crabs as indicated by the NMFS annual bottom trawl survey, using the criteria set out under paragraphs (e)(1)(iii)(A) and (B) of this section.

* * * * *

(6) *Notification*--(i) *General.* NMFS will publish in the **Federal Register**, for up to 2 fishing years, the annual red king crab PSC limit, and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final PSQ reserve amounts, the proposed and final bycatch allowances, the seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, as required by paragraph (e) of this section.

(ii) *Public comment.* Public comment will be accepted by NMFS on the proposed annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the annual *C. bairdi* PSC limit, the annual *C. opilio* PSC limit, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, for a period specified in the notice of proposed specifications published in the **Federal Register**.

* * * * *

5. In § 679.62, paragraph (a)(3) is revised to read as follows:

§ 679.62 Inshore sector cooperative allocation program.

(a) * * *

(3) *Conversion of quota share percentage to TAC allocations.* (Effective April 1, 2005) Each inshore pollock cooperative that receives a quota share percentage for a fishing year will receive an annual allocation of Bering Sea and/or Aleutian Islands pollock that is equal to the cooperative's quota share percentage for that subarea multiplied by the annual inshore pollock allocation for that subarea. Each cooperative's annual pollock TAC allocation may be published in the proposed and final BSAI harvest specifications notice.

* * * * *

[FR Doc. 04–16957 Filed 7–26–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 143
Tuesday, July 27, 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

Federal Crop Insurance Corporation

Crop Insurance Education in Targeted States (Targeted States Program)

Announcement Type: Modification—Competitive Cooperative Agreements. This announcement modifies the Request for Application Notice published in the **Federal Register**, May 24, 2004 (Vol. 69, No. 100, Pages 29498–29503). The Dates and Summary portions have been modified.

CFDA Number: 10.458.

DATES: Applications are due 5 p.m. e.d.t., August 11, 2004.

SUMMARY: The following paragraph has been added to the beginning of the **SUMMARY** portion of the May 24, 2004, **Federal Register** Notice:

The Risk Management Agency (RMA) did not receive complete and valid application packages for the States of Nevada, Pennsylvania, and West Virginia under the original Request for Application Notice published in the **Federal Register** on May 24, 2004, for the Crop Insurance Education in Targeted States Program (Targeted States Program). RMA is re-announcing its Funding Opportunity—Request for Applications under the Targeted States Program for the States of Nevada, Pennsylvania, and West Virginia. Applicants who previously submitted an application under the May 24, 2004, Targeted States Program Request for Applications Notice for Nevada, Pennsylvania, and West Virginia must reapply in accordance with the original Notice published in the **Federal Register** on May 24, 2004 (*http://www.rma.usda.gov/news/2004/05/04rfa-education.html*).

All other portions and sections of the full text Notice remain unchanged.

FOR FURTHER INFORMATION CONTACT: Applicants and other interested parties are encouraged to contact: Michelle Fuller, USDA–RMA–RME, 1400 Independence Ave. SW., Stop 0808, (Portals Bldg., Suite 508), Washington, DC 20250–0808, phone: 202–720–6356, fax: 202–690–3605, e-mail: *Michelle.Fuller@wdc.usda.gov*. You may also obtain information regarding this announcement from the RMA Web site at: *www.rma.usda.gov*.

Dated: July 22, 2004.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–17041 Filed 7–26–04; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss 2004 projects and hold a short public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393). The meeting is open to the public.

DATES: The meeting will be held on July 27, 2004, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: July 21, 2004.

David T. Bull,

Forest Supervisor.

[FR Doc. 04–17038 Filed 7–26–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03–B–W]

Designation of Kankakee (IA) to Provide Class X or Class Y Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration (USDA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Kankakee Grain Inspection, Inc., (Kankakee) to provide Class X or Class Y weighing services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: June 25, 2004.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the November 22, 2002, **Federal Register** (67 FR 70399), GIPSA announced the designation of Kankakee to provide official inspection services under the Act, effective January 1, 2003, and ending December 31, 2005. Subsequently, Kankakee asked GIPSA to amend their designation to include official weighing services. Section 7A(c)(2) of the Act authorizes GIPSA's Administrator to designate authority to perform official weighing to an agency providing official inspection services within a specified geographic area, if such agency is qualified under Section 7(f)(1)(A) of the Act. GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and determined that Kankakee is qualified to provide official weighing services in their currently assigned geographic area.

Effective June 25, 2004, and terminating December 31, 2005 (the end of Kankakee's designation to provide

official inspection services), Kankakee's present designation is amended to include Class X or Class Y weighing within their assigned geographic area, as specified in the June 3, 2002, **Federal Register** (67 FR 38249). Official services may be obtained by contacting Kankakee at 815–365–2268.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 04–17047 Filed 7–26–04; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1342]

Grant of Authority For Subzone Status; L'Oreal USA, Inc. (Cosmetic and Beauty Products); Middlesex, Somerset and Union Counties, NJ

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the New Jersey Commerce and Economic Growth Commission, grantee of Foreign-Trade Zone 44, has made application to the Board for authority to establish a special-purpose subzone at the cosmetic and beauty products manufacturing and warehousing facilities of L'Oreal USA, Inc., located in Middlesex, Somerset and Union Counties, New Jersey (FTZ Docket 60–2003, filed 11/6/03, amended 3/12/04);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 65245–65246, 11/19/03 and 69 FR 13811–13812, 3/24/04); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the cosmetic and beauty products manufacturing and warehousing facilities of L'Oreal USA, Inc., located in Middlesex, Somerset and Union Counties, New Jersey (Subzone 44E), at the locations described in the amended application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 15th day of July 2004.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–17073 Filed 7–26–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–854, A–201–833]

Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Circular Welded Carbon Quality Line Pipe from Mexico and the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is postponing the preliminary determinations in the antidumping duty investigations of certain circular carbon quality line pipe from Mexico and the Republic of Korea until no later than September 29, 2004. This postponement is made pursuant to section 733(c)(1)(B) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: July 27, 2004.

FOR FURTHER INFORMATION CONTACT: John Drury (Mexico) or Brandon Farlander (Korea), at (202) 482–0195 or (202) 482–0195, respectively, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 2004, the Department initiated antidumping duty investigations of imports of certain circular welded carbon quality line pipe from Mexico, the Republic of Korea (Korea), and the People's Republic of China (China). *See Notice of Initiation of Antidumping Duty Investigations: Certain Circular Welded Carbon Quality Line Pipe from Mexico, the Republic of Korea, and the People's Republic of China*, 69 FR 16521 (March 30, 2004). Section 733(b) of the Act requires the Department to make a preliminary determination no later than 140 days after the date of initiation. The preliminary determinations in these investigations are currently due not later than August 10, 2004.

Postponement of Preliminary Determinations

Under section 733(c)(1)(B) of the Act, the Department can extend the period for reaching a preliminary determination until not later than the 190th day after the date on which the administering authority initiates an investigation if the administering authority concludes that the parties concerned are cooperating and determines that: (i) the case is extraordinarily complicated by reason of (I) the number and complexity of the transactions to be investigated or adjustments to be considered; (II) the novelty of the issues presented; or (III) the number of firms whose activities must be investigated; and (ii) additional time is necessary to make the preliminary determination.

The parties concerned are cooperating in these investigations. Additional time is necessary, however, to complete the preliminary determinations for Mexico and Korea due to

(1) the number and complexity of the transactions to be investigated and adjustments to be considered, and (2) certain affiliation issues.

Moreover, with respect to the Mexican and both Korean respondents, on July 9, 2004, the Department received from American Steel Pipe Division of ACIPC, IPSCO Tubulars Inc., Lone Star Steel Company, Maverick Tube Corporation, Northwest Pipe Company, and Stupp Corporation, petitioners in these investigations, company–specific allegations that sales were made below the cost of production during the period of investigation. We are currently reviewing these allegations. Therefore, for both investigations, additional time is required to review the issues and the cost information for purposes of the preliminary determinations.

For the reasons identified above, we are postponing the preliminary determinations under Section 733(c)(1)(A) of the Act by 50 days, to no

later than September 29, 2004. The deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations. This notice is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: July 21, 2004.

Holly A. Kuga,

Acting Assistant Secretary for Import Administration.

[FR Doc. 04–17072 Filed 7–26–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

[I.D. 072204E]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Logbook Family of Forms.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 3,034.

Number of Respondents: 907.

Average Hours Per Response: 1 hour for trip report; 5 minutes for pre-trip report; and 24 seconds for VMS report.

Needs and Uses: The owners of vessels that fish out of West Coast ports for highly migratory species such as tuna, billfish, and sharks would be required to submit information about their fishing activities so that the National Marine Fisheries Service and the Pacific Fishery Management Council will be able to monitor the fisheries and determine the effects and effectiveness of the Fishery Management Plan (FMP) for U.S. West Coast Fisheries for Highly Migratory Species (HMS). Catch and effort statistics from logbooks are essential for evaluating if the objectives of the FMP are being achieved and for evaluating the impacts of potential changes in management to respond to new information or new problems in the fisheries. Vessel monitoring system units will facilitate enforcement of closures associated with the longline fishery.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion, annually, daily, hourly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: July 20, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–17069 Filed 7–26–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072204B]

Proposed Information Collection; Comment Request; Gear-Marking Requirements for the Harbor Porpoise Take Reduction Plan

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 27, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to David Gouveia, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930 (or via the Internet at *david.gouveia@noaa.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

Federal regulations at 50 CFR 229.34 limit the number of nets that can be used in certain fisheries in the mid-Atlantic that appear to be most closely linked with accidental catch of harbor porpoises. The fishermen in these fisheries must obtain and attach numbered tags for their nets. Because the number of tags per vessel is capped, the tagging program helps to limit the number of nets in use and helps NOAA identify the number in use.

II. Method of Collection

Requests for tags are submitted to NOAA on a paper form.

III. Data

OMB Number: 0648–0357.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations. individuals or households.

Estimated Number of Respondents: 25.

Estimated Time Per Response: 1 minute to attach a tag to a net and 2 minutes to request tags.

Estimated Total Annual Burden Hours: 22.

Estimated Total Annual Cost to Public: $400.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 20, 2004.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–17070 Filed 7–26–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seat for the Monterey Bay National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (DOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Monterey Bay National Marine Sanctuary (MBNMS or Sanctuary) is seeking applicants for the Recreational Fishing seat on its Sanctuary Advisory Council.

Applicants chosen for this seat should expect to serve until February 2007. Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary.

DATES: Applications are due by August 13, 2004.

ADDRESSES: Application kits may be obtained from Nicole Capps at the Monterey Bay National Marine Sanctuary, 299 Foam Street, Monterey, California 93940. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Nicole Capps at (831) 647–4206, or *Nicole.Capps@noaa.go*

SUPPLEMENTARY INFORMATION: The MBNMS Advisory Council was established in March 1994 to assure continued public participation in the management of the Sanctuary. Since its establishment, the Advisory Council has played a vital role in decisions affecting the Sanctuary along the central California coast.

The Advisory Council's twenty voting members represent a variety of local user groups, as well as the general public, plus seven local, state and Federal governmental jurisdictions. In addition, the respective managers or superintendents for the four California National Marine Sanctuaries (Channel Islands National Marine Sanctuary, Cordell Bank National Marine Sanctuary, Gulf of the Farallones National Marine Sanctuary and the Monterey Bay National Marine Sanctuary) and the Elkhorn Slough National Estuarine Research Reserve sit as non-voting members.

Four working groups support the Advisory Council: The Research Activity Panel ("RAP") chaired by the Research Representative, the Sanctuary Education Panel ("SEP") chaired by the Education Representative, the Conservation Working Group ("CWG") chaired by the Conservation Representative, and the Business and Tourism Activity Panel ("BTAP") chaired by the Business/Industry Representative, each dealing with matters concerning research, education, conservation and human use. The working groups are composed of experts from the appropriate fields of interest and meet monthly, or bi-monthly, serving as invaluable advisors to the Advisory Council and the Sanctuary Superintendent.

The Advisory Council represents the coordination link between the Sanctuary and the state and Federal management agencies, user groups, researchers, educators, policy makers, and other various groups that help to focus efforts and attention on the central California coastal and marine ecosystems.

The Advisory Council functions in an advisory capacity to the Sanctuary Superintendent and is instrumental in helping develop policies, program goals, and identify education, outreach, research, long-term monitoring, resource protection, and revenue enhancement priorities. The Advisory Council works in concert with the Sanctuary Superintendent by keeping him or her informed about issues of concern throughout the Sanctuary, offering recommendations on specific issues, and aiding the Superintendent in achieving the goals of the Sanctuary Program within the context of California's marine programs and policies.

Authority: 16 U.S.C. 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: July 20, 2004.

Daniel J. Basta,

Director, National Marine Sanctuary Program, National Ocean Services, National Oceanic and Atmospheric Administration.

[FR Doc. 04–17013 Filed 7–26–04; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072104C]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council), Executive Committee, its Ecosystems Committee, and its Demersal Species Committee meeting as a Council Committee of the Whole with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board, and Bluefish Board (s) will hold a public meeting.

DATES: The meeting will be held on Tuesday, August 10, 2004 through Thursday, August 12, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meeting will be held at the Wyndham Baltimore Inner Harbor, 101 Fayette Street, Baltimore, MD; telephone: (410) 752–1100.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: Agenda items for the Council's committees and the Council itself are:

On Tuesday, August 10, the Executive Committee will meet from 9 a.m. to 10 a.m. and the Council will convene at 10 a.m., and meet from 10 a.m. to 5 p.m. On Wednesday, August 11, new and reappointed members will be sworn into office from 8 a.m. to 8:10 a.m. The Council will meet jointly with the ASMFC's Summer Flounder, Scup, and Black Sea Bass Boards from 8:10 a.m. to 5:30 p.m. On Thursday, August 12, the Ecosystems Committee will meet from 8 a.m. to 9:30 a.m. and the Council will meet from 9:30 a.m. until approximately 2 p.m.

On Tuesday, August 10, the Executive Committee will review functional responsibilities of the Council; also will review and discuss Council relationships with NMFS, NOAA, DOC and U.S. Congress vis-a-vis "teamwork

and cooperation;" the Council will receive a report of the 39th Stock Assessment Review Committee and review summary results of this report; the Council and ASMFC's Bluefish Board will review the Bluefish Monitoring Committee's recommendations regarding 2005 harvest level and associated management measures, and recommend the 2005 harvest level and associated management measures.

On Wednesday, August 11, the Council and ASMFC's Summer Flounder, Scup, and Black Sea Bass Boards will review Monitoring Committee recommendations regarding the 2005, 2005 and 2006, or 2005, 2006, and 2007 harvest levels and commercial management measures, and recommend the 2005, 2005 and 2006, or 2005, 2006, and 2007 harvest levels and commercial management measures for summer flounder, scup, and black sea bass.

On Thursday, August 12, the Ecosystems Committee will review the Council's grant Statement of Work (SOW) and develop additional options to be included in the proposed program. The Council will also receive and discuss committee and organizational reports including the Highly Migratory Species, the Trawl Survey Committee's report on items discussed at its meeting held July 7 and 8 in Philadelphia, the Executive Committee, Ecosystems Committee, New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates and whiting; the South Atlantic Council's report; and act on any new and/or continuing business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Debbie Donnangelo at least 5 days prior to the meeting date.

Dated: July 22, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–1652 Filed 7–26–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070204C]

Endangered Species; Files No. 1472 and No. 1473

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permits.

SUMMARY: Notice is hereby given that Maritime Aquarium in Norwalk (Ellen Riker, Principal Investigator), 10 North Water Street, South Norwalk, Connecticut 06854 and the Virginia Living Museum (Lory Scott, principle investigator), 524 J. Clyde Morris Blvd., Newport News, Virginia 23601, have been issued permits to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of enhancement through educational display.

ADDRESSES: The permits and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION: On March 4, 2004, notice was published in the **Federal Register** (69 FR 10213) that requests for enhancement permits to take shortnose sturgeon had been submitted by the above-named organizations. The requested permits have been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The Maritime Aquarium in Norwalk and the Virginia Living Museum are authorized to receive and use 50 individual, captive-bred, non-releaseable shortnose sturgeon for educational display exhibits. These projects of displaying endangered cultured shortnose sturgeon respond directly to a recommendation of the NMFS recovery outline for this species. In addition, the facilities will formulate public education programs and exhibits to increase awareness of the shortnose sturgeon and its status. These projects will educate the public on shortnose sturgeon life history and the reason for its declining numbers.

Issuance of these permits, as required by the ESA, was based on a finding that such permits (1) were applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: July 21, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–17068 Filed 7–26–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Processing (Updating).

Form Number(s): PTO/SB/08a, PTO/SB/08b, PTO/SB/17i, PTO/SB/17P, PTO/SB/21–27, PTO/SB/30–37, PTO/SB/42–43, PTO/SB/61–64, PTO/SB/64a, PTO/SB/67–68, PTO/SB/91–92, PTO/SB/96–97, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B, PTOL/413A.

Agency Approval Number: 0651–0031.

Type of Request: Revision of a currently approved collection.

Burden: 2,731,841 hours.

Number of Respondents: 2,281,439 responses.

Avg. Hours Per Response: 1 minute 48 seconds to 8 hours. The USPTO estimates that it will take 8 minutes (0.13) to complete the request to retrieve electronic priority application(s) and 6

minutes (0.10) to complete the authorization to permit access to application by priority offices. This includes time to gather the necessary information, create the documents, and submit the completed request.

Needs and Uses: This proposed new electronic exchange of copies of priority applications will benefit applicants by reducing the cost of ordering paper certified copies of priority applications for filing in other participating intellectual property offices, and will benefit participating intellectual property offices by reducing the administrative costs associated with transferring paper copies of priority applications and scanning them into the electronic image record management systems. The USPTO is submitting this collection in support of a final rulemaking, "Changes to Implement Priority Document Exchange between Intellectual Property Offices" (RIN 0651–AB75). There are two forms associated with this final rulemaking, PTO/SB 33, Request to Retrieve Electronic Priority Application(s) Under 37 CFR 1.55(d), which will allow the applicant to request that the USPTO retrieve such documents from other participating intellectual property offices; and PTO/SB/34, Authorization to Permit Access to Application by Participating Offices Under 37 CFR 1.14(h), which will allow the applicant to authorize the USPTO to release confidential documents to other participating intellectual property offices that are important to the prosecution of the patent application.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms, the Federal Government, and State, Local or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- E-mail: *Susan.Brown@uspto.gov.* Include "0651–0031 copy request" in the subject line of the message.
- Fax: 703–308–7407, marked to the attention of Susan Brown.
- Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before August 26, 2004, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: July 21, 2004.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 04–17039 Filed 7–26–04; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0078]

Federal Acquisition Regulation; Information Collection; Make-or-Buy Program

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0078).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning make-or-buy programs. The clearance currently expires on October 31, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 27, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the General Services Administration, FAR Secretariat (VR),1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0078, Make-or-Buy Program, in all correspondence.

FOR FURTHER INFORMATION CONTACT Julia Wise, Contract Policy Division, GSA (202) 208–1168.

SUPPLEMENTARY INFORMATION:

A. Purpose

Price, performance, and/or implementation of socio-economic policies may be affected by make-or-buy decisions under certain Government prime contracts. Accordingly, FAR 15.407–2, Make-or-Buy Programs (i) Sets forth circumstances under which a Government contractor must submit for approval by the contracting officer a make-or-buy program, i.e., a written plan identifying major items to be produced or work efforts to be performed in the prime contractor's facilities and those to be subcontracted;

(ii) Provides guidance to contracting officers concerning the review and approval of the make-or-buy programs; and

(iii) Prescribes the contract clause at FAR 52.215–9, Changes or Additions to Make-or-Buy Programs, which specifies the circumstances under which the contractor is required to submit for the contracting officer's advance approval a notification and justification of any proposed change in the approved make-or-buy program.

The information is used to assure the lowest overall cost to the Government for required supplies and services.

B. Annual Reporting Burden

Respondents: 150.

Responses Per Respondent: 3.

Total Responses: 450.

Hours Per Response: 8.

Total Burden Hours: 3,600.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0078, Make-or-Buy Program, in all correspondence.

Dated: July 20, 2004.

Ralph J. De Stefano

Acting Director, Contract Policy Division.

[FR Doc. 04–17065 Filed 7–26–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0033]

Federal Acquisition Regulation; Information Collection; Contractor's Signature Authority

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0033).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning contractor's signature authority. The clearance currently expires on October 31, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before September 27, 2004.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0033, Contractor's Signature Authority, in all correspondence.

FOR FURTHER INFORMATION CONTACT Gerald Zaffos, Contract Policy Division, GSA, (202) 208–6091.

SUPPLEMENTARY INFORMATION:

A. Purpose

Entities doing business with the Government must identify those persons who have the authority to bind the principal. This information is needed to ensure that Government contracts are legal and binding. The information is used by the contracting officer to ensure that authorized persons sign contracts.

B. Annual Reporting Burden

Respondents: 4,800.
Responses Per Respondent: 1.
TOTAL RESPONSES: 4,800.
Hours Per Response: .017.
Total Burden Hours: 82.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0033, Contractor's Signature Authority, in all correspondence.

Dated: July 20, 2004.

Ralph J. De Stefano

Acting Director, Contract Policy Division.

[FR Doc. 04–17066 Filed 7–26–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 26, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The 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.

Dated: July 21, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.
Title: Reading First Impact Study.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household.
Reporting and Recordkeeping Hour Burden:
Responses: 75,347.
Burden Hours: 110,320.
Abstract: The Reading First Impact Study is a five-year evaluation of the effectiveness of the Reading First Program. This study will estimate the impact of the program on student reading achievement through the use of a regression discontinuity design that compares Reading First schools with non-Reading First schools.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2556. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–16997 Filed 7–26–04; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 26, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The 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.

Dated: July 21, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: The Professional Development Impact Study—Participating District and School Screening Protocols.

Frequency: One time.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 179.

Burden Hours: 179.

Abstract: The current OMB package requests clearance for the instruments to be used in screening districts and schools for eligibility to participate in the Professional Development Impact Study. To be eligible for the full study, districts and schools must meet a list of criteria that are designed to ensure that the study sample is relevant to the purposes of the study (e.g., are implementing one of two scientifically based reading programs of interest in the study) and are relevant to current legislation such as the No Child Left Behind (NCLB) Act (e.g., districts and schools serve high poverty students).

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2557. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–16998 Filed 7–26–04; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 26, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, Desk Officer. Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The 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.

Dated: July 21, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: New.

Title: Reading First Implementation Evaluation.

Frequency: Biennially.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 8,250.
Burden Hours: 4,125.
Abstract: The proposed data collection is necessary to complete a national evaluation of Reading First. The purpose of this evaluation is to assess how the Reading First program is being implemented in a nationally representative sample of Reading First schools. The Reading Implementation Evaluation will use surveys of teachers, literacy coaches, and principals to answer the evaluation questions.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2546. 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 Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–16999 Filed 7–26–04; 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 September 27, 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: July 21, 2004.

Jeanne Van Vlandren,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Pre-Elementary Education Longitudinal Study (PEELS).
Frequency: Varies.
Affected Public: Individuals or household; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 6,398.
Burden Hours: 4,327.
Abstract: PEELS will provide the first national picture of experiences and outcomes of three to five year old children in early childhood special education. The study will inform special education policy development and support Government Performance and Results Act (GPRA) measurement and Individuals with Disabilities Education Act (IDEA) reauthorization with data from parents, service providers, and teachers.

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 2590. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to 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. 04–17000 Filed 7–26–04; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.
ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Saturday, August 7, 2004, 8 a.m.–5 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail:

halseypj@oro.doe.gov or check the Web site at *www.oakridge.doe.gov/em/ssab.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

8 a.m.—Introductions, overview of meeting agenda and logistics (Dave Mosby)

8:15 a.m.—Past year evaluation—Board and stakeholder survey results, what worked, what can be improved (Facilitator)

9:50 a.m.—Break

10:05 a.m.—Past year evaluation continued

10:45 a.m.—Summaries and Q&A on the most important issues to DOE, TN Department of Environment & Conservation, and EPA (Facilitator)

11:30 a.m.—Lunch

12:30 p.m.—Environmental Management Committee (Luther Gibson)

- Accomplishments and impacts
- Review FY 2004 Work Plan
- Identify issues for FY 2005
- Assignment of new issues/issues managers

1:30 p.m.—Stewardship Committee (Ben Adams)

- Accomplishments and impacts
- Review FY 2004 Work Plan
- Identify issues for FY 2005
- Assignment of new issues/issues managers

2:30 p.m.—Break

2:45 p.m.—Public Outreach Committee (Committee Chair)

- Accomplishments and impacts
- Review FY 2004 Work Plan
- Identify issues for FY 2005

3:15 p.m.—Board Finance Committee (Kerry Trammell)

- Accomplishments and impacts
- Review FY 2004 Work Plan
- Identify issues for FY 2005

3:45 p.m.—Convene Board meeting to elect officers and conduct other business as needed

- Public Comment Period

4:45 p.m.—Set date for next retreat and adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC, on July 20, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–17049 Filed 7–26–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Record of Decision for Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Portsmouth, OH, Site

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: The Department of Energy (DOE) prepared a *Final Environmental Impact Statement for Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Portsmouth, Ohio, Site* (FEIS) (DOE/EIS–0360). The FEIS Notice of Availability was published by the U.S. Environmental Protection Agency (EPA) in the **Federal Register** (69 FR 34161) on June 18, 2004. In the FEIS, DOE considered the potential environmental impacts from the construction, operation, maintenance, and decontamination and decommissioning (D&D) of the proposed depleted uranium hexafluoride (DUF_6) conversion facility at three alternative locations within the Portsmouth site, including transportation of cylinders (DUF_6, normal and enriched UF_6, and empty) currently stored at the East Tennessee Technology Park (ETTP) near Oak Ridge, Tennessee, to Portsmouth; construction of a new cylinder storage yard at Portsmouth (if required) for the ETTP cylinders; transportation of depleted uranium conversion products and waste materials to a disposal facility; transportation and sale of the aqueous hydrogen fluoride (HF) produced as a conversion co-product; and neutralization of aqueous HF to calcium fluoride (CaF_2) and its sale or disposal in the event that the aqueous HF product is not sold. An option of shipping the ETTP cylinders to the Paducah, Kentucky, site has also been considered, as has an option of expanding operations by increasing throughput (through efficiency improvements or by adding a fourth conversion line) or by extending the period of operation. A similar EIS was issued concurrently for construction and operation of a DUF_6 conversion facility at DOE's Paducah site (DOE/EIS–0359).

DOE has decided to construct and operate the conversion facility in the west-central portion of the Portsmouth site, the preferred alternative identified in the FEIS as Location A. Groundbreaking for construction of the facility will commence on or before July 31, 2004, as anticipated by Public Law (Pub. L.) 107–206. Cylinders currently stored at the ETTP site will be shipped to Portsmouth; a new cylinder yard will be constructed, if necessary, based on the availability of storage yard space when the cylinders are received. The aqueous HF produced during conversion will be sold for use, pending approval of authorized release limits, as appropriate.

ADDRESSES: The FEIS and this Record of Decision (ROD) are available on the DOE National Environmental Policy Act (NEPA) Web site at *http://www.eh.doe.gov/nepa* and on the Depleted UF_6 Management Information Network Web site at *http://web.ead.anl.gov/uranium.* Copies of the FEIS and this ROD may be requested by e-mail at *Ports_DUF6@anl.gov,* by toll-free telephone at 1–866–530–0944, by toll-free fax at 1–866–530–0943, or by contacting Gary S. Hartman, Oak Ridge Operations Office, U.S. Department of Energy, SE–30–1, P.O. Box 2001, Oak Ridge, Tennessee 37831.

FOR FURTHER INFORMATION CONTACT: For information on the conversion facility construction and operation, contact Gary Hartman at the address listed above. For general information on the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW.,

Washington, DC 20585, 202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The United States has produced UF_6 since the early 1950s as part of the process of enriching natural uranium for both civilian and military applications. Production took place at three gaseous diffusion plants (GDPs), first at the K–25 site (now called ETTP) at Oak Ridge, Tennessee, and subsequently at Paducah, Kentucky, and Portsmouth, Ohio. The K–25 plant ceased enrichment operations in 1985, and the Portsmouth plant ceased enrichment operations in 2001. The Paducah GDP continues to operate.

Approximately 250,000 t (275,000 tons) of UF_6 is presently stored in about 16,000 cylinders at Portsmouth and about 4,800 cylinders at ETTP. The majority of the cylinders weigh approximately 12 t (14 tons) each, are 48 inches (1.2 m) in diameter, and are stored on outside pads. DOE has been looking at alternatives for managing this inventory. Also in storage are 3,200 cylinders at Portsmouth and 1,100 cylinders at ETTP that contain enriched UF_6 or normal UF_6 (collectively called "non-UF_6" cylinders) or are empty. [The non-UF_6 cylinders would not be processed in the conversion facility.] The Portsmouth FEIS considers the shipment of all ETTP cylinders to Portsmouth, as well as the management of both the Portsmouth and ETTP non-UF_6 cylinders at Portsmouth.

As a first step, DOE evaluated potential broad management options for its UF_6 inventory in a *Programmatic Environmental Impact Statement for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride* (UF_6 PEIS) (DOE/EIS–0269) issued in April 1999. In the PEIS Record of Decision (64 FR 43358, August 10, 1999), DOE decided to promptly convert the UF_6 inventory to a more stable uranium oxide form and stated that it would use the depleted uranium oxide as much as possible and store the remaining depleted uranium oxide for potential future uses or disposal, as necessary. In addition, DOE would convert UF_6 to depleted uranium metal, but only if uses for metal were available. DOE did not select specific sites for the conversion facilities but reserved that decision for subsequent NEPA review. Today's Record of Decision announces the outcome of that site-specific NEPA review. DOE is also issuing today a separate but related ROD announcing the siting of a UF_6 conversion facility at Paducah, Kentucky.

Congress enacted two laws that directly addressed DOE's management of its UF_6 inventory. The first law, Pub. L. 105–204, signed by the President in July 1998, required the Secretary of Energy to prepare a plan to commence construction of, no later than January 31, 2004, and to operate an on-site facility at each of the GDPs at Paducah, Kentucky, and Portsmouth, Ohio, to treat and recycle UF_6, consistent with NEPA. The second law, Pub. L. 107–206, signed by the President on August 2, 2002, required that no later than 30 days after enactment, DOE must award a contract for the scope of work described in its Request for Proposals (RFP) issued in October 2000 for the design, construction, and operation of a UF_6 conversion facility at each of the Department's Paducah, Kentucky, and Portsmouth, Ohio, gaseous diffusion sites. It also stipulated that the contract require groundbreaking for construction to occur no later than July 31, 2004, at both sites.

In response to these laws, DOE issued the *Final Plan for the Conversion of Depleted Uranium Hexafluoride as Required by Public Law 105–204* in July 1999, and awarded a contract to Uranium Disposition Services (UDS) for construction and operation of two conversion facilities on August 29, 2002, consistent with NEPA.

On September 18, 2001, DOE published a Notice of Intent (NOI) in the **Federal Register** (66 FR 48123) announcing its intention to prepare an EIS for the proposed action to construct, operate, maintain, and decontaminate and decommission two UF_6 conversion facilities: One at Portsmouth and one at Paducah. Following the enactment of Pub. L. 107–206, DOE reevaluated the appropriate scope of its site-specific NEPA review and decided to prepare two separate EISs, one for the plant proposed for the Paducah site and a second for the Portsmouth site. This change in approach was announced in the **Federal Register** on April 28, 2003 (68 FR 22368).

The two draft conversion facility EISs were mailed to stakeholders in late November 2003, and a Notice of Availability was published by the EPA in the **Federal Register** on November 28, 2003 (68 FR 66824). Comments on the draft EISs were accepted during a 67-day review period that ended on February 2, 2004. DOE considered these comments and prepared two FEISs. The Notice of Availability for the two FEISs was published by the EPA in the **Federal Register** (69 FR 34161) on June 18, 2004.

II. Purpose and Need for Agency Action

DOE needs to convert its inventory of UF_6 to more stable chemical form(s) for use or disposal. This need follows directly from (1) the decision presented in the August 1999 ROD for the PEIS, namely, to begin conversion of the UF_6 inventory as soon as possible, and (2) Pub. L. 107–206, which directs DOE to award a contract for construction and operation of conversion facilities at both the Paducah site and the Portsmouth site.

III. Alternatives

No Action Alternative. Under the no action alternative, conversion would not occur. Current cylinder management activities (handling, inspection, monitoring, and maintenance) would continue: Thus the status quo would be maintained at Portsmouth and ETTP indefinitely.

Action Alternatives. The proposed action evaluated in the FEIS is to construct and operate a conversion facility at the Portsmouth site for conversion of the Portsmouth and ETTP UF_6 inventories into depleted uranium oxide (primarily triuranium octaoxide [U_3O_8]) and other conversion products. The FEIS review is based on the conceptual conversion facility design proposed by the selected contractor, UDS. The UDS dry conversion process is a continuous process in which UF_6 is vaporized and converted to a mixture of uranium oxides (primarily U_3O_8) by reaction with steam and hydrogen in a fluidized-bed conversion unit. The hydrogen is generated from anhydrous ammonia (NH_3). The depleted U_3O_8 powder is collected and packaged for disposition in bulk bags (large-capacity, strong, flexible bags) or the emptied cylinders to the extent practicable. Equipment would also be installed to collect the aqueous HF (also called HF acid) co-product and process it into HF at concentrations suitable for commercial resale. A backup HF acid neutralization system would convert up to 100% of the HF acid to CaF_2 for sale or disposal in the future, if necessary. The conversion products would be transported to a disposal facility or to users by truck or rail. The conversion facility will be designed with three parallel processing lines to convert 13,500 t (15,000 tons) of UF_6 per year, requiring 18 years to convert the Portsmouth and ETTP inventories.

Three alternative locations within the site were evaluated, Locations A (preferred), B, and C. The proposed action includes the transportation of the cylinders currently stored at the ETTP site to Portsmouth. In addition, an

option of transporting the ETTP cylinders to Paducah was considered, as was an option of expanding conversion facility operations.

Alternative Location A (Preferred Alternative). Location A is the preferred location identified in the FEIS for the conversion facility and is located in the west-central portion of the site, encompassing 26 acres (10 ha). This location has three existing structures that were formerly used to store containerized lithium hydroxide monohydrate. The site was rough graded, and storm water ditch systems were installed. This location was identified in the RFP for conversion services as the site for which bidders were to design their proposed facilities.

Alternative Location B. Location B is in the southwestern portion of the site and encompasses approximately 50 acres (20 ha). The site has two existing structures built as part of the gas centrifuge enrichment project that was begun in the early 1980s and was terminated in 1985. USEC is currently in the process of developing and demonstrating an advanced enrichment technology based on gas centrifuges. A license for a lead test facility to be operated at the Portsmouth site was issued by the U.S. Nuclear Regulatory Commission (NRC) in February 2004. The lead facility would be located in the existing gas centrifuge buildings within Location B. In addition, USEC announced in January 2004 that it planned to site its American Centrifuge Facility at Portsmouth, although it did not identify an exact location. Therefore, Location B might not be available for construction of the conversion facility.

Alternative Location C. Location C is in the southeastern portion of the site and has an area of about 78 acres (31 ha). This location consists of a level to very gently rolling grass field. It was graded during the construction of the Portsmouth site and has been maintained as grass fields since then.

Under the action alternatives, DOE evaluated the impacts from packaging, handling, and transporting depleted uranium oxide conversion product (primarily U_3O_8) from the conversion facility to a low-level waste (LLW) disposal facility that would be (1) selected in a manner consistent with DOE policies and orders and (2) authorized to receive the conversion products by DOE (in conformance with DOE orders), or licensed by the NRC (in conformance with NRC regulations), or an NRC Agreement State agency (in conformance with state laws and regulations determined to be equivalent to NRC regulations). Assessment of the impacts and risks from on-site handling and disposal at an LLW disposal facility has been deferred to the disposal site's site-specific NEPA or licensing documents. While the FEIS presents the impacts from transporting the DUF_6 conversion products to both the Envirocare of Utah, Inc., facility and the Nevada Test Site (NTS), DOE plans to decide the specific disposal location(s) for the depleted U_3O_8 conversion product after additional NEPA review, as necessary. Accordingly, DOE will continue to evaluate its disposal options and will consider any further information or comments relevant to that decision. DOE will give a minimum 45-day notice before making its specific disposal decision and will provide any additional NEPA analysis for public review and comment.

The following alternatives were considered but not analyzed in detail in the FEIS: Use of Commercial Conversion Capacity, Sites Other Than Portsmouth, Alternative Conversion Processes, Long-Term Storage and Disposal Alternatives, Transportation Modes Other Than Truck and Rail, and One Conversion Plant Alternative.

IV. Summary of Environmental Impacts

The FEIS evaluated potential impacts from the range of alternatives described above. The impact areas included human health and safety, air quality, noise, water and soil, socioeconomics, ecological resources, waste management, resource requirements, land use, cultural resources, environmental justice, and cumulative impacts. In general, the impacts are low for both the no action and the proposed action alternatives. Among the three alternative locations considered at the Portsmouth site for the conversion facility, there are no major differences in impacts that would make one location clearly environmentally preferable. The discussion below summarizes the results of the FEIS impact analyses, highlighting the differences among the alternatives.

Human Health and Safety—Normal Operations and Transportation. Under all alternatives, it is estimated that potential exposures of workers and members of the general public to radiation and chemicals would be well within applicable public health standards and regulations. UDS would confirm, prior to conversion or at the initiation of the conversion operations, that polychlorinated biphenyl (PCB) releases to the workplace from the paint coating of some cylinders manufactured prior to 1978 would be within applicable Occupational Safety and Health Administration (OSHA) limits. Transportation by rail would tend to cause fewer impacts than by truck primarily because of exhaust emissions from the trucks and the higher number of shipments for trucks than for rail. The option of converting the aqueous HF to CaF_2 and transporting the CaF_2 to a disposal facility would result in increased shipments. The impacts associated with transportation of uranium oxide product to a disposal facility in the western United States by truck would be about the same if bulk bags are used or two filled cylinders are loaded onto a truck. If only one cylinder is loaded onto a truck, the impacts would be higher because of the increased number of shipments.

Human Health and Safety—Accidents. DOE has extensive experience in safely storing, handling, and transporting cylinders containing UF_6 (depleted, normal, or enriched). In addition, the chemicals used or generated at the conversion facility are commonly used for industrial applications in the United States, and there are well-established accident prevention and mitigative measures for their storage and transportation.

Under all alternatives, it is possible that accidents could release radiation or chemicals to the environment, potentially affecting both the workers and members of the general public. It is also possible that, similar to other industrial facilities, workers could be injured or killed as a result of on-the-job accidents unrelated to radiation or chemical exposure. Similarly, during transportation of materials, both crew members and members of the public may be injured or killed as a result of traffic accidents.

Three kinds of accidents have the largest possible consequences: (1) Those involving the DUF_6 cylinders during storage and handling under all alternatives, (2) those involving chemicals used or generated by the conversion process at the conversion site (in particular NH_3 and aqueous HF) under the action alternatives, and (3) those occurring during transportation of chemicals and cylinders under the action alternatives, The severity of the consequences from such accidents would depend on weather conditions at the time of the accident, and, in the case of the transportation accidents, the location of the accident, and could be significant. However, those accidents would have a low estimated probability of occurring, making the risk low. (Risk is determined by multiplying the consequences by the probability of occurrence).

Under the no action alternative, the risks associated with cylinder storage

and handling would continue to exist as long as the cylinders are there. However, under the action alternatives, the risks associated with both the cylinder accidents and the chemical accidents would decline over time and disappear at the completion of the conversion project.

In comparing truck versus rail transportation, even though the consequences of rail accidents are generally higher (because of the larger cargo load per railcar than per truck), the accident probabilities tend to be lower for railcars than for trucks. As a result, the risks of accidents would be about the same under either option.

Air Quality and Noise. Under the action alternatives, the total (modeled plus background value) concentrations due to emissions of most criteria pollutants—such as sulfur dioxide, nitrogen oxides, and carbon monoxide—would be well within applicable air quality standards. For construction, the primary concern would be particulate matter (PM) released from near-ground-level sources. Total concentrations of PM_{10} and $PM_{2.5}$ (PM with an aerodynamic diameter of 10 μm or less and 2.5 μm or less, respectively) at the construction site boundaries would be close to or above the standards because of the high background concentrations. On the basis of maximum background values from 5 years of monitoring at the nearest monitoring station, exceedance of the annual $PM_{2.5}$ standard would be unavoidable because the background concentration already exceeds the standard. Construction activities would be conducted so as to minimize further impacts on ambient air quality.

Water and Soil. During construction of the conversion facility, concentrations of any potential contaminants in soil, surface water, or groundwater would be kept well within applicable standards or guidelines by implementing storm water management, sediment and erosion controls, and good construction practices. During operations, no impacts would be expected because no contaminated liquid effluents are anticipated.

Socioeconomics. Under the action alternatives, construction and operation of the conversion facility would create more jobs and personal income in the vicinity of the Portsmouth site than would be possible under the no action alternative. The number of jobs would be approximately 190 direct and 280 total during construction, and 160 direct and 320 total during operations.

Ecology. For the action alternatives, the total area disturbed during conversion facility construction would be up to 65 acres (26 ha). Although vegetation communities in the disturbed area would be impacted by a loss of habitat, impacts could be minimized (*e.g.*, by appropriate placement of the facility within each location), and negligible long-term impacts to vegetation and wildlife are expected at all locations. Impacts to wetlands could be minimized, depending on where exactly the facility was placed within each location and by maintaining a buffer near adjacent wetlands during construction. During construction, trees with exfoliating bark (such as shagbark hickory or dead trees with loose bark) that can be used by the Indiana bat (federal- and state-listed as endangered) as roosting trees during the summer would be saved if possible.

Waste Management. Under the action alternatives, waste generated during construction and operations would have negligible impacts on the Portsmouth site waste management operations, with the exception of possible impacts from disposal of CaF_2. If the aqueous HF were not sold but instead neutralized to CaF_2, it is currently unknown whether (1) the CaF_2 could be sold, (2) the low uranium content would allow the CaF_2 to be disposed of as nonhazardous solid waste, or (3) disposal as LLW would be required. The low level of uranium contamination expected (*i.e.*, less than 1 ppm) suggests that sale or disposal as nonhazardous solid waste would be most likely. Waste management for disposal as nonhazardous waste could be handled through appropriate planning and design of the facilities. If the CaF_2 had to be disposed of as LLW, it could represent a potentially large impact on waste management operations.

The U_3O_8 produced during conversion would amount to about 5% of Portsmouth's annual projected LLW volume.

Cylinder Preparation at ETTP. The cylinders at ETTP will require preparation for shipment by either truck or rail. Three cylinder preparation options were considered for the shipment of noncompliant cylinders: cylinder overpacks, shipping "as-is" under a U.S. Department of Transportation (DOT) exemption, and use of a cylinder transfer facility (there are no current plans to build such a facility at ETTP). The operational impacts (*e.g.*, storage, handling, and maintenance of cylinders) from any of the options would be small and limited primarily to external radiation exposure of involved workers. If a decision was made to construct and operate a transfer facility at ETTP in the future, additional NEPA review would be conducted.

Conversion Product Sale and Use. The conversion of the DUF_6 inventory produces products having some potential for reuse. These products include aqueous HF and CaF_2, which are commonly used as commercial materials. DOE is currently pursuing the establishment of authorization limits (allowable concentration limits of uranium) in these products to be able to free-release them to commercial users. In addition, there is a small potential for reuse of the depleted uranium oxide product.

D&D Activities. D&D impacts would be primarily from external radiation to involved workers and would be a small fraction of allowable doses. Wastes generated during D&D operations would be disposed of in an appropriate disposal facility and would result in low impacts in comparison with projected site annual generation volumes.

Cumulative Impacts. The FEIS analyses indicated that no significant cumulative impacts at either the Portsmouth or the ETTP site and its vicinity would be anticipated due to the incremental impacts of the proposed action when added to other past, present, and reasonably foreseeable future actions.

Option of Expanding Conversion Facility Operations. The throughput of the Portsmouth facility could be increased either by making process efficiency improvements or by adding an additional (fourth) process line. The addition of a fourth process line at the Portsmouth facility would require the installation of additional plant equipment and would result in a nominal 33% increase in throughput compared with the current base design. This throughput increase would reduce the time necessary to convert the Portsmouth and ETTP DUF_6 inventories by about 5 years. The construction impacts presented in the FEIS would be the same if a fourth line was added, because the analyses in the FEIS used a footprint sized to accommodate four process lines. In general, a 33% increase in throughput would not result in significantly greater environmental impacts during operations than with three parallel lines. Although annual impacts in certain areas might increase up to 33% (proportional to the throughput increase), the estimated annual impacts during operations would remain well within applicable guidelines and regulations, with collective and cumulative impacts being quite low.

The conversion facility operations could be extended to process any additional DUF_6 for which DOE might assume responsibility by operating the

facility longer than the currently anticipated 18 years. With routine facility and equipment maintenance and periodic equipment replacements or upgrades, it is believed that the conversion facility could be operated safely beyond this time period. If operations were extended beyond 18 years and if the operational characteristics (*e.g.*, estimated releases of contaminants to air and water) of the facility remained unchanged, it is expected that the annual impacts would be essentially unchanged.

V. Environmentally Preferred Alternative

In general, the FEIS shows greater impacts for the no action alternative than for the proposed action of constructing and operating the conversion facility mainly because of the relatively higher radiation exposures of the workers from the cylinder management operations and cylinder yards and because the cylinders and associated risk would remain if no action occurred. However, considering the uncertainties in the impact estimates and the magnitude of the impacts, the differences are not considered to be significant. The no action alternative has the potential for groundwater contamination with uranium over the long-term; this adverse impact is not anticipated under the proposed action alternatives. Beneficial socioeconomic impacts would be higher for the action alternatives than for the no action alternative.

The impacts associated with transportation of materials among sites would be comparable whether the transportation is by truck or rail.

With all alternatives, there is the potential for some high-consequence accidents to occur. The risks associated with such accidents can only be completely eliminated when the conversion of the DUF_6 inventory has been completed.

Although there are some differences in impacts among the three alternative locations for the conversion facility, these differences are small and well within the uncertainties associated with the methods used to estimate impacts. In general, because of the relatively small risks that would result under all alternatives and the absence of any clear basis for discerning an environmental preference, DOE concludes that no single alternative analyzed in depth in the FEIS is clearly environmentally preferable compared to the other alternatives.

VI. Comments on Final EIS

The Final EIS was mailed to stakeholders in early June 2004, and the EPA issued a Notice of Availability in the **Federal Register** on June 18, 2004. The entire document was also made available on the World Wide Web. Two comment letters were received on the DUF_6 Conversion Facility Final EISs. The State of Nevada indicated that it had no comments on the Final EISs and that the proposal was not in conflict with state plans, goals, or objectives. The U.S. Environmental Protection Agency, Region 5 in Chicago, stated that the Portsmouth Final EIS adequately address its concerns, and that it concurs with the Preferred Alternative and has no further concerns.

Decision

I. Bases for the Decision

DOE considered potential environmental impacts as identified in the FEIS (including the information contained in the classified appendix); cost; applicable regulatory requirements; Congressional direction as included in Pub. L. 105–204 and Pub. L. 107–206; agreements among DOE and the States of Ohio, Tennessee, and Kentucky concerning the management of DUF_6 currently stored at the Portsmouth, ETTP, and Paducah sites, respectively; and public comments in arriving at its decision. In deciding among the three alternative locations at the Portsmouth site for the conversion facility, DOE considered environmental factors, site preparation requirements affecting construction, availability of utilities, proximity to cylinder storage areas, and potential impacts to current or planned site operations. DOE has determined that Location A is the best alternative. DOE believes that the decision identified below best meets its programmatic goals and is consistent with all the regulatory requirements and public laws.

II. Decision

DOE has decided to implement the actions described in the preferred alternative from the FEIS at Location A. This decision includes the following actions:

- DOE will construct and operate the conversion facility at Location A within the Portsmouth site. Construction will commence on or before July 31, 2004, as intended by Congress in Pub. L. 107–206.
- DUF_6 cylinders currently stored at ETTP will be shipped to Portsmouth for conversion; a new cylinder yard will be constructed, if necessary, based on the availability of storage yard space when the cylinders are received.
- All shipments to and from the sites, including the shipment of UF_6 cylinders (DUF_6 and non-DUF_6) currently stored at ETTP to Portsmouth, will be conducted by either truck or rail, as appropriate. Cylinders will be shipped in a manner that is consistent with DOT regulations for the transportation of UF_6 cylinders.
- Although efficiency improvements can be accomplished, which would increase the conversion facility's throughput and decrease the operational period, DOE has decided not to add the fourth processing line to the conversion facility at this time.
- Current cylinder management activities (handling, inspection, monitoring, and maintenance) will continue, consistent with the Depleted Uranium Hexafluoride Management Plan included in the Ohio EPA Director's final findings and orders effective February 1998 and March 2004, which cover actions needed to meet safety and environmental requirements, until conversion could be accomplished.
- The aqueous HF produced during conversion will be sold for use, pending approval of authorized release limits as appropriate. If necessary, CaF_2 will be produced and reused, pending approval of authorized release limits, or disposed of as appropriate.
- The depleted U_3O_8 conversion product will be reused to the extent possible or packaged for disposal in emptied cylinders at an appropriate disposal facility. DOE plans to decide the specific disposal location(s) for the depleted U_3O_8 conversion product after additional appropriate NEPA review. Accordingly, DOE will continue to evaluate its disposal options and will consider any further information or comments relevant to that decision. DOE will give a minimum 45-day notice before making the specific disposal decision and will provide any supplemental NEPA analysis for public review and comment.

III. Mitigation

On the basis of the analyses conducted for the FEIS, the DOE will adopt all practicable measures, which are described below, to avoid or minimize adverse environmental impacts that may result from constructing and operating a conversion facility at Location A. These measures are either explicitly part of the alternative or are already performed as part of routine operations.

- The conversion facility will be designed, constructed, and operated in

accordance with the comprehensive set of DOE requirements and applicable regulatory requirements that have been established to protect public health and the environment. These requirements encompass a wide variety of areas, including radiation protection, facility design criteria, fire protection, emergency preparedness and response, and operational safety requirements.

- Cylinder management activities will be conducted in accordance with applicable DOE safety and environmental requirements, including the Cylinder Management Plan.
- Temporary impacts on air quality from fugitive dust emissions during reconstruction of cylinder yards or construction of any new facility will be controlled by the best available practices, as necessary, to comply with the established standards for PM_{10} and $PM_{2.5}$.
- During construction, impacts to water quality and soil will be minimized through implementing storm water management, sediment and erosion controls, and good construction practices consistent with the Soil, Erosion, and Sediment Control Plan and Construction Management Plan.
- If live trees with exfoliating bark are encountered on construction areas, they will be saved if possible to avoid destroying potential habitat for the Indiana bat.

Issued in Washington, DC, this 20th day of July, 2004.

Paul M. Golan,

Principal Deputy Assistant Secretary for Environmental Management.

[FR Doc. 04–17048 Filed 7–26–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Record of Decision for Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Paducah, KY, Site

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: The Department of Energy (DOE) prepared a Final Environmental Impact Statement for Construction and Operation of a Depleted Uranium Hexafluoride Conversion Facility at the Paducah, Kentucky, Site (FEIS) (DOE/EIS–0359). The FEIS Notice of Availability was published by the U.S. Environmental Protection Agency (EPA) in the **Federal Register** (69 FR 34161) on June 18, 2004. In the FEIS, DOE considered the potential environmental impacts from the construction, operation, maintenance, and decontamination and decommissioning (D&D) of the proposed depleted uranium hexafluoride (DUF_6) conversion facility at three alternative locations within the Paducah site, including transportation of depleted uranium conversion products and waste materials to a disposal facility; transportation and sale of the aqueous hydrogen fluoride (HF) produced as a conversion co-product; and neutralization of aqueous HF to calcium fluoride (CAF_2) and its sale or disposal in the event that the aqueous HF product is not sold. An option of shipping the East Tennessee Technology Park (ETTP) cylinders to the Paducah site has also been considered, as has an option of expanding operations by increasing efficiency or extending the period of operation. A similar EIS was issued concurrently for construction and operation of a DUF_6 conversion facility at DOE's Portsmouth, Ohio, site (DOE/EIS–0360).

DOE has decided to construct and operate the conversion facility in the south-central portion of the Paducah site, the preferred alternative identified in the FEIS as Location A. Groundbreaking for construction of the facility will commence on or before July 31, 2004, as anticipated by Public Law (Pub. L.) 107–206. The aqueous HF produced during conversion will be sold for use, pending approval of authorized release limits, as appropriate.

ADDRESSES: The FEIS and this Record of Decision (ROD) are available on the DOE National Environmental Policy Act (NEPA) Web site at *http://www.eh.doe.gov/nepa* and on the Depleted UF_6 Management Information Network Web site at *http://web.ead.anl.gov/uranium*. Copies of the FEIS and this ROD may be requested by e-mail at *Pad_DUF6@anl.gov*, by toll-free telephone at 1–866–530–0944, by toll-free fax at 1–866–530–0943, or by contacting Gary S. Hartman, Oak Ridge Operations Office, U.S. Department of Energy, SE–30–1, P.O. Box 2001, Oak Ridge, Tennessee 37831.

FOR FURTHER INFORMATION CONTACT: For information on the conversion facility construction and operation, contact Gary Hartman at the address listed above. For general information on the DOE NEPA process, contact Carol Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, 202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The United States has produced DUF_6 since the early 1950s as part of the process of enriching natural uranium for both civilian and military applications. Production took place at three gaseous diffusion plants (GDPs), first at the K–25 site (now called ETTP) at Oak Ridge, Tennessee, and subsequently at Paducah, Kentucky, and Portsmouth, Ohio. The K–25 plant ceased enrichment operations in 1985, and the Portsmouth plant ceased enrichment operations in 2001. The Paducah GDP continues to operate.

Approximately 440,000 t (484,000 tons) of DUF_6 is presently stored at Paducah in about 36,200 cylinders. The majority of the cylinders weigh approximately 12 t (14 tons) each, are 48 inches (1.2 m) in diameter, and are stored on outside pads. DOE has been looking at alternatives for managing this inventory. Also in storage at Paducah are approximately 1,940 cylinders of various sizes that contain enriched UF_6 or normal UF_6 (collectively called "non-DUF_6" cylinders) or are empty. [The non-DUF_6 cylinders would not be processed in the conversion facility.]

As a first step, DOE evaluated potential broad management options for its DUF_6 inventory in a Programmatic Environmental Impact Statement for Alternative Strategies for the Long-Term Management and Use of Depleted Uranium Hexafluoride (DUF_6 PEIS) (DOE/EIS–0269) issued in April 1999. In the PEIS Record of Decision (64 FR 43358, August 10, 1999), DOE decided to promptly convert the DUF_6 inventory to a more stable uranium oxide form and stated that it would use the depleted uranium oxide as much as possible and store the remaining depleted uranium oxide for potential future uses or disposal, as necessary. In addition, DOE would convert DUF_6 to depleted uranium metal, but only if uses for metal were available. DOE did not select specific sites for the conversion facilities but reserved that decision for subsequent NEPA review. Today's Record of Decision announces the outcome of that site-specific NEPA review. DOE is also issuing today a separate but related ROD announcing the siting of a DUF_6 conversion facility at Portsmouth, Ohio.

Congress enacted two laws that directly addressed DOE's management of its DUF_6 inventory. The first law, Public Law 105–204, signed by the President in July 1998, required the Secretary of Energy to prepare a plan to commence construction of, no later than January 31, 2004, and to operate an on-site facility at each of the GDPs at

Paducah, Kentucky, and Portsmouth, Ohio, to treat and recycle UF_6, consistent with NEPA. The second law, Public Law 107–206, signed by the President on August 2, 2002, required that no later than 30 days after enactment, DOE must award a contract for the scope of work described in its Request for Proposals (RFP) issued in October 2000 for the design, construction, and operation of a UF_6 conversion facility at each of the Department's Paducah, Kentucky, and Portsmouth, Ohio, gaseous diffusion sites. It also stipulated that the contract require groundbreaking for construction to occur no later than July 31, 2004, at both sites.

In response to these laws, DOE issued the *Final Plan for the Conversion of Depleted Uranium Hexafluoride* as Required by Public Law 105–204 in July 1999, and awarded a contract to Uranium Disposition Services (UDS) for construction and operation of two conversion facilities on August 29, 2002, consistent with NEPA.

On September 18, 2001, DOE published a Notice of Intent (NOI) in the **Federal Register** (66 FR 48123) announcing its intention to prepare an EIS for the proposed action to construct, operate, maintain, and decontaminate and decommission two UF_6 conversion facilities: One at Portsmouth and one at Paducah. Following the enactment of Public Law 107–206, DOE reevaluated the appropriate scope of its site-specific NEPA review and decided to prepare two separate EISs, one for the plant proposed for the Paducah site and a second for the Portsmouth site. This change in approach was announced in the **Federal Register** on April 28, 2003 (68 FR 22368).

The two draft conversion facility EISs were mailed to stakeholders in late November 2003, and a Notice of Availability was published by the EPA in the **Federal Register** on November 28, 2003 (68 FR 66824). Comments on the draft EISs were accepted during a 67-day review period that ended on February 2, 2004. DOE considered these comments and prepared two FEISs. The Notice of Availability for the two FEISs was published by the EPA in the **Federal Register** (69 FR 34161) on June 18, 2004.

II. Purpose and Need for Agency Action

DOE needs to convert its inventory of UF_6 to more stable chemical form(s) for use or disposal. This need follows directly from (1) the decision presented in the August 1999 ROD for the PEIS, namely, to begin conversion of the UF_6 inventory as soon as possible, and (2) Public Law 107–206, which directs DOE to award a contract for construction and operation of conversion facilities at both the Paducah site and the Portsmouth site.

III. Alternatives

No Action Alternative. Under the no action alternative, conversion would not occur. Current cylinder management activities (handling, inspection, monitoring, and maintenance) would continue; thus the status quo would be maintained at Paducah indefinitely.

Action Alternatives. The proposed action evaluated in the FEIS is to construct and operate a conversion facility at the Paducah site for conversion of the Paducah UF_6 inventory into depleted uranium oxide (primarily triuranium octaoxide [U_3O_8]) and other conversion products. The FEIS review is based on the conceptual conversion facility design proposed by the selected contractor, UDS. The UDS dry conversion process is a continuous process in which UF_6 is vaporized and converted to a mixture of uranium oxides (primarily U_3O_8) by reaction with steam and hydrogen in a fluidized-bed conversion unit. The hydrogen is generated from anhydrous ammonia (NH_3). The depleted U_3O_8 powder is collected and packaged for disposition in bulk bags (large-capacity, strong, flexible bags) or the emptied cylinders to the extent practicable. Equipment would also be installed to collect the aqueous HF (also called HF acid) co-product and process it into HF at concentrations suitable for commercial resale. A backup HF acid neutralization system would convert up to 100% of the HF acid to CaF_2 for sale or disposal in the future, if necessary. The conversion products would be transported to a disposal facility or to users by truck or rail. The conversion facility will be designed with four parallel processing lines to convert 18,000 t (20,000 tons) of UF_6 per year, requiring 25 years to convert the Paducah inventory.

Three alternative locations within the site were evaluated, Locations A (preferred), B, and C. In addition, an option of transporting the ETTP cylinders to Paducah rather than to Portsmouth was considered, as was an option of expanding conversion facility operations.

Alternative Location A (Preferred Alternative). Location A is the preferred location for the conversion facility. It is located south of the administration building and its parking lot, immediately west of and next to the primary location of the DOE cylinder yards and east of the main plant access road. This location is an L-shaped tract consisting mostly of grassy field. However, the southeastern section is a wooded area. A drainage ditch crosses the northern part of the site, giving the cylinder yard storm water access to Kentucky Pollution Discharge Elimination System (KPDES) Outfall 017. This location is about 35 acres (14 ha) in size and was identified in the RFP for conversion services as the site for which bidders were to design their proposed facilities.

Alternative Location B. Location B is directly south of the Paducah maintenance building and west of the main plant access road. The northern part of this location is mowed grass and has a slightly rolling topography. The southern part has a dense covering of trees and brush, and some high-voltage power lines cross it, limiting its use. This location has an area of about 59 acres (23 ha).

Alternative Location C. Location C is east of the Paducah pump house and cooling towers. It has an area of about 53 acres (21 ha). Dykes Road runs through the center of this location from north to south. Use of the eastern half of this location could be somewhat limited because several high-voltage power lines run through this area.

Under the action alternatives, DOE evaluated the impacts from packaging, handling, and transporting depleted uranium oxide conversion product (primarily U_3O_8) from the conversion facility to a low-level waste (LLW) disposal facility that would be (1) selected in a manner consistent with DOE policies and orders and (2) authorized to receive the conversion products by DOE (in conformance with DOE orders), or licensed by the U.S. Nuclear Regulatory Commission (NRC) (in conformance with NRC regulations), or an NRC Agreement State agency (in conformance with state laws and regulations determined to be equivalent to NRC regulations). Assessment of the impacts and risks from on-site handling and disposal at an LLW disposal facility has been deferred to the disposal site's site-specific NEPA or licensing documents. While the FEIS presents the impacts from transporting the UF_6 conversion products to both the Envirocare of Utah, Inc., facility and the Nevada Test Site (NTS), DOE plans to decide the specific disposal location(s) for the depleted U_3O_8 conversion product after additional NEPA review, as necessary. Accordingly, DOE will continue to evaluate its disposal options and will consider any further information or comments relevant to that decision. DOE will give a minimum 45-day notice before making its specific disposal decision and will provide any

additional NEPA analysis for public review and comment.

The following alternatives were considered but not analyzed in detail in the FEIS: Use of Commercial Conversion Capacity, Sites Other Than Paducah, Alternative Conversion Processes, Long-Term Storage and Disposal Alternatives, Transportation Modes Other Than Truck and Rail, and One Conversion Plant Alternative.

IV. Summary of Environmental Impacts

The FEIS evaluated potential impacts from the range of alternatives described above. The impact areas included human health and safety, air quality, noise, water and soil, socioeconomics, ecological resources, waste management, resource requirements, land use, cultural resources, environmental justice, and cumulative impacts. In general, the impacts are low for both the no action and the proposed action alternatives. Among the three alternative locations considered at the Paducah site for the conversion facility, there are no major differences in impacts that would make one location clearly environmentally preferable. The discussion below summarizes the results of the FEIS impact analyses, highlighting the differences among the alternatives.

Human Health and Safety—Normal Operations and Transportation. Under all alternatives, it is estimated that potential exposures of workers and members of the general public to radiation and chemicals would be well within applicable public health standards and regulations. UDS would confirm, prior to conversion or at the initiation of the conversion operations, that polychlorinated biphenyl (PCB) releases to the workplace from the paint coating of some cylinders manufactured prior to 1978 would be within applicable Occupational Safety and Health Administration (OSHA) limits. Transportation by rail would tend to cause fewer impacts than by truck primarily because of exhaust emissions from the trucks and the higher number of shipments for trucks than for rail. The option of converting the aqueous HF to CaF_2 and transporting the CaF_2 to a disposal facility would result in increased shipments. The impacts associated with transportation of uranium oxide product to a disposal facility in the western United States by truck would be about the same if bulk bags are used or two filled cylinders are loaded onto a truck. If only one cylinder is loaded onto a truck, the impacts would be higher because of the increased number of shipments.

Human Health and Safety—Accidents. DOE has extensive experience in safely storing, handling, and transporting cylinders containing UF_6 (depleted, normal, or enriched). In addition, the chemicals used or generated at the conversion facility are commonly used for industrial applications in the United States, and there are well-established accident prevention and mitigative measures for their storage and transportation.

Under all alternatives, it is possible that accidents could release radiation or chemicals to the environment, potentially affecting both the workers and members of the general public. It is also possible that, similar to other industrial facilities, workers could be injured or killed as a result of on-the-job accidents unrelated to radiation or chemical exposure. Similarly, during transportation of materials, both crew members and members of the public may be injured or killed as a result of traffic accidents.

Three kinds of accidents have the largest possible consequences: (1) Those involving the DUF_6 cylinders during storage and handling under all alternatives, (2) those involving chemicals used or generated by the conversion process at the conversion site (in particular NH_3 and aqueous HF) under the action alternatives, and (3) those occurring during transportation of chemicals and cylinders under the action alternatives. The severity of the consequences from such accidents would depend on weather conditions at the time of the accident, and, in the case of the transportation accidents, the location of the accident, and could be significant. However, those accidents would have a low estimated probability of occurring, making the risk low. (Risk is determined by multiplying the consequences by the probability of occurrence).

In comparing truck versus rail transportation, even though the consequences of rail accidents are generally higher (because of the larger cargo load per railcar than per truck), the accident probabilities tend to be lower for railcars than for trucks. As a result, the risks of accidents would be about the same under either option.

Under the no action alternative, the risks associated with cylinder storage and handling would continue to exist as long as the cylinders are there. However, under the action alternatives, the risks associated with both the cylinder accidents and the chemical accidents would decline over time and disappear at the completion of the project.

Air Quality and Noise. Under the action alternatives, the total (modeled plus background value) concentrations due to emissions of most criteria pollutants—such as sulfur dioxide, nitrogen oxides, and carbon monoxide—would be well within applicable air quality standards. For construction, the primary concern would be particulate matter (PM) released from near-ground-level sources. Total concentrations of PM_{10} and $PM_{2.5}$ (PM with an aerodynamic diameter of 10 μm or less and 2.5 μm or less, respectively) at the construction site boundaries would be close to or above the standards because of the high background concentrations. Accordingly, construction activities would be conducted so as to minimize further impacts on ambient air quality.

Water and Soil. During construction of the conversion facility, concentrations of any potential contaminants in soil, surface water, or groundwater would be kept well within applicable standards or guidelines by implementing storm water management, sediment and erosion controls, and good construction practices. During operations, no impacts would be expected because no contaminated liquid effluents are anticipated.

Socioeconomics. Under the action alternatives, construction and operation of the conversion facility would create more jobs and personal income in the vicinity of the Paducah site than would be possible under the no action alternative. The number of jobs would be approximately 190 direct and 290 total during construction, and 160 direct and 330 total during operations.

Ecology. For the action alternatives, the total area disturbed during conversion facility construction would be up to 45 acres (18 ha). Although vegetation communities in the disturbed area would be impacted by a loss of habitat, impacts could be minimized (*e.g.*, by appropriate placement of the facility within each location), and negligible long-term impacts to vegetation and wildlife are expected at all locations. Impacts to wetlands could be minimized, depending on where exactly the facility was placed within each location and by maintaining a buffer near adjacent wetlands during construction. Construction of the conversion facility in the eastern portion of Location C could impact potential habitat for cream wild indigo (state-listed as a species of special concern) and compass plant (state-listed as threatened). For construction at all three locations, potential impacts to forested areas could be avoided if temporary construction areas were placed in previously disturbed

locations. During construction, trees with exfoliating bark (such as shagbark hickory or dead trees with loose bark) that can be used by the Indiana bat (federal- and state-listed as endangered) as roosting trees during the summer would be saved if possible.

Waste Management. Under the action alternatives, waste generated during construction and operations would have negligible impacts on the Paducah site waste management operations, with the exception of possible impacts from disposal of CaF_2. If the aqueous HF were not sold but instead neutralized to CaF_2, it is currently unknown whether (1) the CaF_2 could be sold, (2) the low uranium content would allow the CaF_2 to be disposed of as nonhazardous solid waste, or (3) disposal as LLW would be required. The low level of uranium contamination expected (*i.e.*, less than 1 ppm) suggests that sale or disposal as nonhazardous solid waste would be most likely. Waste management for disposal as nonhazardous waste could be handled through appropriate planning and design of the facilities. If the CaF_2 had to be disposed of as LLW, it could represent a potentially large impact on waste management operations.

The U_3O_8 produced during conversion would amount to about 80% of Paducah's annual projected LLW volume.

Option of Shipping ETTP Cylinders to Paducah. The cylinders at ETTP would require preparation for shipment by either truck or rail. Three cylinder preparation options were considered for the shipment of noncompliant cylinders: cylinder overpacks, shipping "as-is" under a U.S. Department of Transportation (DOT) exemption, and use of a cylinder transfer facility (there are no current plans to build such a facility at ETTP). The operational impacts (*e.g.*, storage, handling, and maintenance of cylinders) from any of the options would be small and limited primarily to external radiation exposure of involved workers. The annual impacts from conversion operations at Paducah would remain the same, however the conversion period would be approximately 3 years longer. If a decision was made to construct and operate a transfer facility at ETTP in the future, additional NEPA review would be conducted.

Conversion Product Sale and Use. The conversion of the DUF_6 inventory produces products having some potential for reuse. These products include aqueous HF and CaF_2, which are commonly used as commercial materials. DOE is currently pursuing the establishment of authorization limits (allowable concentration limits of uranium) in these products to be able to free-release them to commercial users. In addition, there is a small potential for reuse of the depleted uranium oxide product.

D&D Activities. D&D impacts would be primarily from external radiation to involved workers and would be a small fraction of allowable doses. Wastes generated during D&D operations would be disposed of in an appropriate disposal facility and would result in low impacts in comparison with projected site annual generation volumes.

Cumulative Impacts. The FEIS analyses indicated that no significant cumulative impacts at the Paducah site and its vicinity would be anticipated due to the incremental impacts of the proposed action when added to other past, present, and reasonably foreseeable future actions.

Option of Expanding Conversion Facility Operations. The throughput of the Paducah facility could be increased by making process efficiency improvements. Such an increase would not be expected to significantly change the overall environmental impacts when compared with those of the current plant design.

The conversion facility operations could be extended to process any additional DUF_6 for which DOE might assume responsibility by operating the facility longer than the currently anticipated 25 years. With routine facility and equipment maintenance and periodic equipment replacements or upgrades, it is believed that the conversion facility could be operated safely beyond this time period. If operations were extended beyond 25 years and if the operational characteristics (*e.g.*, estimated releases of contaminants to air and water) of the facility remained unchanged, it is expected that the annual impacts would be essentially unchanged.

V. Environmentally Preferred Alternative

In general, the FEIS shows greater impacts for the no action alternative than for the proposed action of constructing and operating the conversion facility mainly because of the relatively higher radiation exposures of the workers from the cylinder management operations and cylinder yards and because the cylinders and associated risk would remain if no action occurred. However, considering the uncertainties in the impact estimates and the magnitude of the impacts, the differences are not considered to be significant. The no action alternative has the potential for groundwater contamination with uranium over the long-term; this adverse impact is not anticipated under the proposed action alternatives. Beneficial socioeconomic impacts would be higher for the action alternatives than for the no action alternative.

The impacts associated with transportation of materials among sites would be comparable whether the transportation is by truck or rail.

With all alternatives, there is the potential for some high-consequence accidents to occur. The risks associated with such accidents can only be completely eliminated when the conversion of the DUF_6 inventory has been completed.

Although there are some differences in impacts among the three alternative locations for the conversion facility, these differences are small and well within the uncertainties associated with the methods used to estimate impacts. In general, because of the relatively small risks that would result under all alternatives and the absence of any clear basis for discerning an environmental preference, DOE concludes that no single alternative analyzed in depth in the FEIS is clearly environmentally preferable compared to the other alternatives.

VI. Comments on Final EIS

The Final EIS was mailed to stakeholders in early June 2004, and the EPA issued a Notice of Availability in the **Federal Register** on June 18, 2004. The entire document was also made available on the World Wide Web. Two comment letters were received on the DUF_6 Conversion Facility Final EISs. The State of Nevada indicated that it had no comments on the Final EISs and that the proposal was not in conflict with state plans, goals, or objectives. The U.S. Environmental Protection Agency, Region 5 in Chicago, stated that the Portsmouth Final EIS adequately address its concerns, and that it concurs with the Preferred Alternative and has no further concerns.

Decision

I. Bases for the Decision

DOE considered potential environmental impacts as identified in the FEIS (including the information contained in the classified appendix); cost; applicable regulatory requirements; Congressional direction as included in Public Law 105–204 and 107–206; agreements among DOE and the States of Ohio, Tennessee, and Kentucky concerning the management of DUF_6 currently stored at the Portsmouth, ETTP, and Paducah sites,

respectively; and public comments in arriving at its decision. In deciding among the three alternative locations at the Paducah site for the conversion facility, DOE considered environmental factors, site preparation requirements affecting construction, availability of utilities, proximity to cylinder storage areas, and potential impacts to current or planned site operations. DOE has determined that Location A is the best alternative. DOE believes that the decision identified below best meets its programmatic goals and is consistent with all the regulatory requirements and public laws.

II. Decision

DOE has decided to implement the actions described in the preferred alternative from the FEIS at Location A. This decision includes the following actions:

- DOE will construct and operate the conversion facility at Location A within the Paducah site. Construction will commence on or before July 31, 2004, as intended by Congress in Public Law 107–206.
- All shipments to and from the conversion site, including any potential shipments of non-DUF_6 cylinders currently stored at ETTP to Paducah, will be conducted by either truck or rail, as appropriate. Cylinders will be shipped in a manner that is consistent with DOT regulations for the transportation of UF_6 cylinders.
- Current cylinder management activities (handling, inspection, monitoring, and maintenance) will continue, consistent with the Cylinder Project Management Plan for Depleted Uranium Hexafluoride, effective October 2003, which cover actions needed to meet safety and environmental requirements, until conversion could be accomplished.
- The aqueous HF produced during conversion will be sold for use, pending approval of authorized release limits as appropriate. If necessary, CaF_2 will be produced and reused, pending approval of authorized release limits, or disposed of as appropriate.
- The depleted U_3O_8 conversion product will be reused to the extent possible or packaged for disposal in emptied cylinders at an appropriate disposal facility. DOE plans to decide the specific disposal location(s) for the depleted U_3O_8 conversion product after additional appropriate NEPA review. Accordingly, DOE will continue to evaluate its disposal options and will consider any further information or comments relevant to that decision. DOE will give a minimum 45-day notice before making the specific disposal decision and will provide any supplemental NEPA analysis for public review and comment.

III. Mitigation

On the basis of the analyses conducted for the FEIS, the DOE will adopt all practicable measures, which are described below, to avoid or minimize adverse environmental impacts that may result from constructing and operating a conversion facility at Location A. These measures are either explicitly part of the alternative or are already performed as part of routine operations.

- The conversion facility will be designed, constructed, and operated in accordance with the comprehensive set of DOE requirements and applicable regulatory requirements that have been established to protect public health and the environment. These requirements encompass a wide variety of areas, including radiation protection, facility design criteria, fire protection, emergency preparedness and response, and operational safety requirements.
- Temporary impacts on air quality from fugitive dust emissions during reconstruction of cylinder yards or construction of any new facility will be controlled by the best available practices, as necessary, to comply with the established standards for PM_{10} and $PM_{2.5}$.
- During construction, impacts to water quality and soil will be minimized through implementing storm water management, sediment and erosion controls, and good construction practices consistent with the Soil, Erosion, and Sediment Control Plan and Construction Management Plan.
- If live trees with exfoliating bark are encountered on construction areas, they will be saved if possible to avoid destroying potential habitat for the Indiana bat.

Issued in Washington, DC this 20th day of July 2004.

Paul M. Golan,

Principal Deputy Assistant Secretary for Environmental Management.

[FR Doc. 04–17050 Filed 7–26–04; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–368–000]

El Paso Natural Gas Company; Notice of Request for Authorization

July 2, 2004.

Take notice that on June 25, 2004, El Paso Natural Gas Company (El Paso), P.O. Box 1087, Colorado Springs, Colorado 80904, filed in Docket No. CP04–368–000, a request pursuant to section 157.216(b) and 157.208(b) of the Commission's Regulations (18 CFR 157.214) to abandon, by removal, its 7.1 mile 10¾ inch diameter Nevada Loop Line (Line No. 2112), and replace two segments of its 16 inch diameter Nevada Loop Line (Line No. 2121), totaling 17.2 miles, located in Mohave County, Arizona, all as more fully set forth in the application on file with the Commission and open for public review.

Any questions regarding this application should be directed to Robert T. Tomlinson, Director, Regulatory Affairs, El Paso Natural Gas Company, P.O. Box 1087, Colorado Springs, Colorado, 80944, at (719) 520–3788.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests, comments and interventions may be filed electronically via the Internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages interveners to file electronically.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request

shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Comment Date: July 23, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1654 Filed 7–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1979]

Wisconsin Public Service Corporation; Notice of Authorization for Continued Project Operation

July 2, 2004.

On June 21, 2002, Wisconsin Public Service Corporation, licensee for the Alexander Project No. 1979, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations. Project No. 1979 is located on the Wisconsin River in Lincoln County, Wisconsin.

The license for Project No. 1979 was issued for a period ending June 30, 2004. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 1979 is issued to Wisconsin Public Service Corporation for a period effective July 1, 2004, through June 30, 2005, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before July 1, 2005, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Wisconsin Public Service Corporation is authorized to continue operation of the Alexander Project No. 1979 until such time as the Commission acts on its application for subsequent license.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1657 Filed 7–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–349–000 and CP04–356–000]

Columbia Gas Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Columbia Pavonia Storage Wells 8901 and 12446 Project and the Pavonia Storage Wells 3731 and 12447 Project and Request for Comments on Environmental Issues

July 2, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Columbia Gas Transmission Corporation's (Columbia) Pavonia Storage Wells 8901 and 12446 Project and Wells 3731 and 12447 Project in Ashland County, Ohio. For the facilities in Docket No. CP04–349–000, Columbia would plug and abandon Well 8901 by replacement because corrosion threatens the integrity of the well. A new storage well would be drilled and designated as Well 12446. For the facilities in Docket No. CP04–356–000, Columbia would plug and abandon Well 3731 by replacement because the well has developed excessive water production and cannot be economically repaired. The new storage well would be designated as Well 12447. Columbia would also abandon by removal the associated interconnecting pipeline and related facilities for the old wells and construct new interconnecting pipeline and appurtenances associated with the new wells. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Columbia provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*www.ferc.gov*).

Summary of the Proposed Project

In Docket No. CP04–349–000 Columbia proposes to:

- Plug and abandon Well 8901;
- Abandon by removal all equipment on well line SL–W8901. This would include about 23 feet of 4-inch diameter pipeline, 18 feet of 3-inch-diameter pipeline, 90 feet of 6-inch-diameter pipeline, a 35-barrel steel holding tank, a 16-inch vertical drip, a 4-inch tie-in valve setting, and the existing 4-inch tie-in valve setting for Line SL–W9623;
- Drill new storage Well 12446;
- Construct 75 feet of 6-inch-diameter well line designated as SL–W12446 and 90 feet of 4-inch-diameter well line designated as SL–W9623; and
- Construct a 6-inch orifice meter run, a 6-inch tie-in valve setting, and a 4-inch tie-in valve setting.

In Docket No. CP04–356–000 Columbia proposes to:

- Plug and abandon Well 3731;
- Abandon by removal all equipment on well line SL–W3731. This would include about 20 feet of 3-inch-diameter pipeline, 20 feet of 4-inch-diameter pipeline, and a drip;
- Drill new storage Well 12447;
- Construct 165 feet of 4-inch-diameter pipeline designated as Well Line SL–W12447;

• Construct a 4-inch orifice meter run and a 16-inch vertical drip.

The location of the projects' facilities is shown in appendix 1.[1]

Nonjurisdictional Facilities

No nonjurisdictional facilities would be built as a result of the proposed project.

Land Requirements for Construction

In Docket No. CP04–349–000, the well abandonment and construction of the new well and related pipeline facilities would disturb about 2.4 acres of land. Following construction, about 2.9 acres of land would be maintained as pipeline right-of-way or aboveground facility sites. Similarly, in Docket No. CP04–356–000, the well abandonment and construction of the new well and related pipeline facilities would disturb about 5.1 acres of land. Following construction, about 8.7 acres of land would be maintained as pipeline right-of-way or aboveground facility sites.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Hazardous waste
- Public safety

We will also evaluate possible alternatives to the proposed projects or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided for the project. This preliminary list of issues may be changed based on your comments and our analysis.

- One federally listed endangered or threatened species, the Indiana bat, may exist in the project area.
- Cultural resources may be affected in the project area.
- Nearby residences may be affected by well drilling noise.
- Two private water wells near the project area could potentially be affected.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the projects. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket Nos. CP04–349–000 and CP04–356–000.
- Mail your comments so that they will be received in Washington, DC on or before August 2, 2004.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line."

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission(s Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[3] Only

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the "eLibrary" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1653 Filed 7–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend Project Boundary and Soliciting Comments, Motions To Intervene, and Protests

July 2, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to remove project lands from the project boundary.

b. *Project No.:* 2452–171.

c. *Date Filed:* June 28, 2004.

d. *Applicant:* Consumers Energy Company.

e. *Name of Project:* Hardy Project.

f. *Location:* The project is located on the Muskegon River in Newaygo and Mecosta Counties, Michigan.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Robert M. Neustifter, Consumers Energy Company, Room EP11–233, One Energy Plaza, Jackson, MI 49201, (517) 788–2974, FAX: (517) 788–1682, e-mail: *rmneustifter@cmsenergy.com* or William A. Schoenlein, Consumers Energy Company, Director of Hydro Operations, 330 Chestnut Street, Cadillac, MI 49601, (231) 779–5505, e-mail: *waschoenlein@cmsenergy.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray at (202) 502–8838, or e-mail address: *diane.murray@ferc.gov.*

j. *Deadline for filing comments and or motions:* July 22, 2004.

k. *Description of Request:* Consumers Energy Company is seeking Commission authorization to sell a 6.0-acre parcel located in the extreme southeast corner of section 28, T. 13 N., R. 11 W., Michigan Meridian, in Newaygo County, MI, to Big Prairie Township as a site for a new Township fire and rescue station.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number, P–2452, to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number (P–2452) of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1658 Filed 7–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04–8–000]

Electric Creditworthiness Standards; Notice of Agenda for the July 13, 2004, Technical Conference on Credit-Related Issues for Electric Transmission Providers, Independent System Operators, and Regional Transmission Organizations

July 6, 2004.

As announced in the Notice of Conference issued May 28, 2004, the Federal Energy Regulatory Commission (Commission) will hold a Staff technical conference on Tuesday, July 13, 2004, from 9:30 a.m. to 4 p.m. e.s.t. at the Commission's headquarters, 888 First Street, NE., Washington, DC, in the Commission's meeting room (Room 2C). The conference will be conducted by the Commission's Staff, and members of the Commission may be present for all or part of the conference. The Commodity Futures Trading Commission (CFTC) may also participate. All interested parties are invited to attend. There is no requirement to register and no registration fee to attend the conference.

The purpose of the conference is to consider, among other things, whether the Commission should institute a generic rulemaking to consider credit-related issues for service provided by jurisdictional transmission providers,[1] Independent System Operators (ISOs), and Regional Transmission Organizations (RTOs).

The conference agenda is appended to this notice. The agenda includes four subject panels. Panelists are encouraged to file prepared written statements addressing the issues on or before July 13, 2004. Such statements should be filed with the Secretary of the Commission. Following the four panels, there will be time for public comment on issues related to the conference.

The conference will be transcribed. Those interested in acquiring the transcript should contact Ace Reporters at 202–347–3700 or 800–336–6646. Transcripts will be placed in the public record ten days after the Commission receives them.

Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone, or via satellite. Persons interested in receiving the broadcast or who need information on making arrangements should contact, as soon as possible, David Reininger or Julia Morelli at Capitol Connection (703–993–3100) or visit the Capitol Connection Web site at *http://www.capitolconnection.org* and click on "FERC."

Interested parties are urged to watch the docket for any further notices on the conference. You may register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new issuances and filings related to this docket. For additional information please contact Eugene Grace, 202–502–8543 or by e-mail at *eugene.grace@ferc.gov*.

Magalie R. Salas,

Secretary.

Attachment: Conference Agenda

Conference Agenda—July 13, 2004

Welcome and Opening Remarks 9:30–9:40 a.m.

Panel 1 9:40–10:30 a.m.

Current Company Practices Under the OATT.

Presentations describing transmission providers implementation of credit policies under the OATT and the extent to which they provide details of that process to their customers. Each company will describe its credit policies and interactions with transmission customers.

- Thomas Foster, Director, Investments, Regulatory Finance & Analysis, MidAmerican Energy Company
- John Janney, Corporate Director of Risk Management, Arizona Public Service
- Tommy Lee, Senior Director for Credit, Duke Energy

Panel 2 10:30 a.m.–11:45 a.m.

OATT-Related Credit Issues.

Short presentations on transmission providers' and customers' experiences with credit policies under the OATT and recommendations for changes.

- Tricia Harrod, Vice President of Credit Risk Management, Aquila
- Robert Klein, Group Risk Director, PacifiCorp
- Gary P. Mazo, Manager, Credit Enterprise Risk Management Department, Progress Energy Service Company
- Rajeshwar G. Rao, President, Indiana Municipal Power Agency
- Michael Thomas, Senior Vice President & Corporate Treasurer, Calpine
- Tom Zaremba, Attorney for National Rural Electric Cooperative Association

Lunch Break 11:45–12:45 p.m.

Panel 3 12:45–2:15 p.m.

RTO/ISO-Related Credit Issues.

Short presentations by representatives from ISOs and RTOs describing existing and near-term credit policies and practices. Short presentations by members of ISOs and RTOs describing their experiences with those policies and practices.

- J. Kennerly Davis, Jr., Attorney for New York ISO
- Harold Loomis, Credit Manager, PJM Interconnection L.L.C.
- Robert Ludlow, Chief Financial Officer, ISO New England Inc.
- Alan Yoho, Financial Systems Analyst, California Independent System Operator Corporation
- Thorn Dickinson, Director for Credit Policy, Energy East
- Billy Dixon, Chief Credit Officer, BP Amoco
- Daniel A. Doyle, Vice President and Chief Financial Officer, ATC (Midwest Stand-Alone Transmission Companies)
- Patrick McCullar, President and CEO, Delaware Municipal Electric Corp.
- Francis Pullaro, Regulatory Affairs Manager, Strategic Energy
- Scott Strauss, Attorney for Massachusetts Municipal Wholesale Electric Company

Panel 4 2:30–3:45 p.m.

Other Credit Options.

Additional options for reducing credit requirements and/or mutualized credit risk and evaluating creditworthiness. Insight on improving existing credit practices based on experiences in other industries.

- Peter Axilrod, Managing Director, Depository Trust and Clearing Corporation
- Mary Duhig, Director, Aon Trade Credit
- John Flory, President, North American Credit and Clearing Corporation
- Toby Hsieh, Director, Standard & Poor's
- Robert Levin, Senior Vice President & Chief Economist, NYMEX
- Bank representative

Public Comments 3:45–4:15 p.m.

[FR Doc. E4–1660 Filed 7–26–04; 8:45 am]

BILLING CODE 6717–01–P

[1] For the purposes of this notice, a Transmission Provider is defined as an entity that provides electric transmission service and is neither an ISO nor an RTO.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL04–12–000]

Information Technology for Reliability and Markets; Notice of Technical Conference

July 6, 2004.

Take notice that the Federal Energy Regulatory Commission will host a technical conference on Wednesday, July 14, 2004 to discuss information technology for reliability and markets. The workshop will be held at the Commission's Washington, DC headquarters, 888 First St., NE., 20426. The workshop is scheduled to begin at 9 a.m. and end at approximately 4 p.m. (EST) in the Commission Meeting Room, Room 2–C.

The goal of the technical conference is to discuss Reliability Coordinators' and Control Areas' use of information technology for electric bulk system reliability and markets. The Commission seeks to reduce IT costs, enhance software quality and security, and promote competition in reliability and market software development, with the desired result of enhancing grid reliability, increasing software compatibility to reduce reliability and market seams, and ultimately lowering costs to customers. Topics to be discussed will include best practices for IT management, system architecture, specific IT projects underway within the Independent System Operation/Regional Transmission Operator Council's Information Technology Committee, and progress since FERC's last software conference. A draft agenda is provided as Attachment A.

The conference is open for the public to attend, and preregistration is not required. There will be no on-line registration established for this event; on-site attendees may simply attend on the day of the event.

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening and viewing of the conference. It is available for a fee, live over the Internet, by phone or via satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC."

For more information about the conference, please contact Alison Silverstein at 202–502–8000 or at *alison.silverstein@ferc.gov*.

Magalie R. Salas,

Secretary.

Attachment A—AGENDA

9 a.m. Introductions
—Alison Silverstein, FERC
9:10 a.m. IT Management Best Practices
—Dave Turner, Gestalt
9:35 a.m. Audience Comment
9:45 a.m. Overview of ISO/RTO Council Information Technology Committee
—Tom O'Brien, PJM
—Ken Fell, NYISO
10:05 a.m. Common Architecture
—Dr. Walter Fontner, NYISO
10:45 a.m. CIM–CME
—Terry Saxton, Extensible Solutions
11:30 a.m. Audience Comment
12 p.m. Lunch
1 p.m. Cyber-Security Requirements
—Kevin Perry, SPP or Jamey Sample, CAISO
1:30 p.m. Energy Management Systems
—MISO
—TVA
—PJM
2:10 p.m. Minimum Tools and Competencies for RCs and CAs
—Frank Macedo, FERC
2:40 p.m. Vendors
3:45 p.m. Audience Comment
4 p.m. Adjourn

FR Doc. E4–1659 Filed 7–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–688–000, ER04–689–000, ER04–690–000, and ER04–693–000]

Pacific Gas and Electric Company; Notice of Technical Conference

July 2, 2004.

Parties are invited to attend a technical conference in the above-referenced Pacific Gas and Electric Company (PG&E) proceedings on July 13–14, 2004, at the Commission's Headquarters, 888 First Street, NE., Washington, DC 20426. The technical conference will be held in Hearing Room 3 on July 13th and Conference Room 3M2–B on July 14th. The July 13th technical conference will be held from 9 a.m. until 5 p.m. (EST). The July 14th technical conference will be held from 9 a.m. until 3 p.m. Arrangements have been made for parties to listen to the technical conference by telephone.

The purpose of the conference is to identify the issues raised in these proceedings, develop information for use by Commission staff in preparing an order on the merits, and to facilitate any possible settlements in these proceedings. The parties will discuss, among other things, the following issues related to the unexecuted agreements filed by PG&E in the above-referenced dockets: (1) The Parallel Operations Agreement between PG&E and Western Area Power Administration (WAPA) (PG&E Original Rate Schedule FERC No. 228); (2) split-wheeling agreement; (3) the Interconnection Agreement; and (4) related issues to these agreements.

Questions about the conference and the telephone conference call arrangements should be directed to:

Julia A. Lake, Office of the General Counsel—Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8370, *julia.lake@ferc.gov*.

Magalie R. Salas,

Secretary.

FR Doc. E4–1655 Filed 7–26–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act; Meeting

July 21, 2004.

The following notice of meeting is published pursuant to section 3(A) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 28, 2004, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recording listing items, stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

866th—Meeting July 28, 2004 Regular Meeting 10 a.m.

Administrative Agenda

A–1.
DOCKET# AD02–1, 000, Agency Administrative Matters
A–2.
DOCKET# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E–1.
DOCKET# ER04–691, 000, Midwest Independent Transmission System Operator, Inc.
OTHER#S EL04–104, 000, Public Utilities With Grandfathered Agreements in Midwest ISO Region
E–2.
DOCKET# EC04–81, 000, Ameren Corporation, Dynegy Inc., Illinova Corporation, Illinova Generating Company and Illinois Power Company
OTHER#S ER04–673, 000, Dynegy Midwest Generation, Inc., and Dynergy Power Marketing, Inc.
ER04–711, 000, Dynegy Power Marketing, Inc.
E–3.
DOCKET# ER04–445, 000, California Independent System Operator Corporation
OTHER#S ER04–435, 000, Southern California Edison Company
ER04–435, 001, Southern California Edison Company
ER04–435, 003, Southern California Edison Company
ER04–441, 000, San Diego Gas and Electric Company
ER04–441, 001, San Diego Gas and Electric Company
ER04–441, 002, San Diego Gas and Electric Company
ER04–443, 000, Pacific Gas and Electric Company
ER04–443, 001, Pacific Gas and Electric Company
ER04–443, 002, Pacific Gas and Electric Company
ER04–445, 001, California Independent System Operator Corporation
ER04–445, 002, California Independent System Operator Corporation
ER04–445, 003, California Independent System Operator Corporation
E–4.
DOCKET# EC02–113, 001, Cinergy Services, Inc., on behalf of PSI Energy, Inc., CinCap Madison, LLC and CinCap VII, LLC
E–5.
OMITTED
E–6.
DOCKET# EC03–53, 000, Ameren Energy Generating Company andUnion Electric Company d/b/a AmerenUE
OTHER#S EC03–53, 001, Ameren Energy Generating Company andUnion Electric Company d/b/a AmerenUE
E–7.
DOCKET# EL01–73, 002, Northeast Texas Electric Cooperative, Inc., Rusk County Electric Cooperative, Inc., Upshur-Rural Electric Cooperative, Inc., and Wood County Electric Cooperative, Inc.
E–8.
DOCKET# ER04–668, 000, Public Service Company of New Mexico
ER04–668, 001, Public Service Company of New Mexico
E–9.
DOCKET# ER04–898, 000, Virginia Electric and Power Company
E–10.
DOCKET# ER04–439, 001, PacifiCorp
OTHER#S ER04–439, 002, PacifiCorp
ER04–439, 000, PacifiCorp
E–11.
DOCKET# ER04–171, 000, Geysers Power Company, LLC
E–12.
DOCKET# ER04–449, 000, New York Independent System Operator, Inc. and New York Transmission Owners
OTHER#S ER04–449, 001, New York Independent System Operator, Inc. and New York Transmission Owners
ER04–449, 002, New York Independent System Operator, Inc. and New York Transmission Owners
E–13.
DOCKET# ER04–609, 000, California Independent System Operator Corporation
OTHER#S ER04–609, 001, California Independent System Operator Corporation
ER04–609, 002, California Independent System Operator Corporation
E–14.
DOCKET# ER03–452, 003, Conjunction LLC
OTHER#S ER03–452, 002, Conjunction LLC
E–15.
DOCKET# ER04–901, 000, Entergy Services, Inc
E–16.
DOCKET# ER04–563, 000, Southern Company Service Inc.
OTHER#S ER04–563, 001, Southern Company Service Inc.
E–17.
DOCKET# ER04–730, 000, Allegheny Energy Supply Company, LLC
E–18.
OMITTED
E–19.
DOCKET# ER03–406, 005, PJM Interconnection, L.L.C.
E–20.
DOCKET# ER03–1117, 001, PJM Interconnection, L.L.C.
E–21.
OMITTED
E–22.
DOCKET# EC04–36, 000, Sunbury Generation, LLC and Duquesne Power, L.P.
OTHER#S ER98–4159, 004, Duquesne Light Company
ER98–4159, 003, Duquesne Light Company
ER99–1293, 003, Monmouth Energy, Inc.
ER99–1293, 002, Monmouth Energy, Inc.
ER01–2317, 003, Metro Energy, L.L.C.
ER01–2317, 002, Metro Energy, L.L.C.
ER03–320, 005, NM Colton Genco, L.L.C.
ER03–320, 003, NM Colton Genco, L.L.C.
ER03–321, 005, NM Mid-Valley Genco, L.L.C.
ER03–321, 003, NM Mid-Valley Genco, L.L.C.
ER03–322, 005, NM Milliken Genco, L.L.C.
ER03–322, 003, NM Milliken Genco, L.L.C.
ER04–268, 001, Duquesne Power, L.P.
ER04–268, 000, Duquesne Power, L.P.
E–23.
DOCKET# EC04–104, 000, Virginia Electric and Power Company, UAE Mecklenburg Cogeneration LP, Mecklenburg Cogenco, Inc., Cogeneration Capital Corp., United American Energy Holdings Corp., and United American Energy Corp.
E–24.
DOCKET# TX04–2, 000, Nevada Power Company
E–25.
DOCKET# EL02–6, 001, Dynegy Midwest Generation, Inc. and Dynegy Power Marketing, Inc v. Commonwealth Edison Company
OTHER#S EL03–32, 001, Illinois Power Company
E–26.
DOCKET# ER03–262, 003, New PJM Companies American Electric Power Service Corporation, Commonwealth Edison Company, Dayton Power and Light Company, Virginia Electric and Power Company, and PJM Interconnection, LLC
OTHER#S ER03–262, 002, New PJM Companies American Electric Power Service Corporation, Commonwealth Edison Company, Dayton Power and Light Company, Virginia Electric and Power Company, and PJM Interconnection, LLC
ER03–262, 004, New PJM Companies American Electric Power Service Corporation, Commonwealth Edison Company, Dayton Power and Light Company, Virginia Electric and Power Company, and PJM Interconnection, LLC
ER03–262, 007, New PJM Companies American Electric Power Service Corporation, Commonwealth Edison Company, Dayton Power and Light Company, Virginia Electric and Power Company, and PJM Interconnection, LLC
ER03–262, 012, New PJM Companies American Electric Power Service Corporation, Commonwealth Edison Company, Dayton Power and Light Company, Virginia Electric and Power Company, and PJM Interconnection, LLC
E–27.
DOCKET# ER03–355, 002, Southern Company Services, Inc.
OTHER#S ER03–355, 003, Southern Company Services, Inc.
E–28.
OMITTED
E–29.
DOCKET# ER03–1046, 001, California Independent System Operator Corporation
OTHER#S ER03–1046, 002, California Independent System Operator Corporation
ER03–1046, 003, California Independent System Operator Corporation
ER03–1046, 004, California Independent System Operator Corporation
E–30.
OMITTED

E–31.
OMITTED
E–32.
DOCKET# TX96–4, 002, Suffolk County Electrical Agency
E–33.
DOCKET# ER02–136, 005, Allegheny Power
OTHER#S ER02–136, 006, Allegheny Power
E–34.
DOCKET# ER04–375, 003, Midwest Independent Transmission System Operator, Inc., and PJM Interconnection, L.L.C.
OTHER#S ER04–375, 001, Midwest Independent Transmission System Operator, Inc., and PJM Interconnection, L.L.C.
ER04–375, 005, Midwest Independent Transmission System Operator, Inc., and PJM Interconnection, L.L.C.
ER04–375, 006, Midwest Independent Transmission System Operator, Inc., and PJM Interconnection, L.L.C.
E–35.
DOCKET# ER04–121, 001, ISO New England Inc.
E–36.
DOCKET# ER04–554, 001, Southern Company, Services, Inc.
OTHER#S ER03–386, 005, Southern Company Services, Inc.
ER03–386, 002, Southern Company Services, Inc.
E–37.
DOCKET# EL04–57, 001, FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.
E–38.
DOCKET# RM96–11, 000, Capacity Reservation Open Access Transmission Tariffs
E–39.
DOCKET# EL04–74, 000, New England Electric Transmission Corporation, New England Hydro Transmission Corporation and New England Hydro-Transmission Electric Company, Inc.
E–40.
DOCKET# EL04–45, 000, Vermont Electric Cooperative, Inc.
E–41.
DOCKET# EL04–101, 000, Calpine King City Cogen, LLC
OTHER#S QF85–735, 005, Calpine King City Cogen, LLC
E–42.
DOCKET# EL98–66, 000, East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc., Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company
E–43.
DOCKET# ER99–4392, 004, Southwest Power Pool, Inc.
E–44.
DOCKET# ER99–1610, 006, New Century Services, Inc.
E–45.
DOCKET# EL04–65, 000, Citizens Communications Company
E–46.
DOCKET# EL04–66, 000, Vermont Electric Cooperative, Inc.
E–47.
DOCKET# EL01–50, 006, KeySpan-Ravenswood, Inc. v. New York Independent System Operator, Inc.
E–48.
DOCKET# ER03–1354, 000, Black Hills Power, Inc., Basin Electric Power Cooperative and Powder River Energy Corporation
OTHER#S ER03–1354, 001, Black Hills Power, Inc., Basin Electric Power Cooperative and Powder River Energy Corporation
ER03–1354, 002, Black Hills Power, Inc., Basin Electric Power Cooperative and Powder River Energy Corporation
E–49.
DOCKET# ER04–13, 000, Pacific Gas and Electric Company
OTHER#S ER04–13, 001, Pacific Gas and Electric Company
E–50.
DOCKET# ER04–190, 000, Midwest Generation EME, LLC
ER04–190, 002, Midwest Generation EME, LLC
OTHER#S EL04–22, 001, Midwest Generation EME, LLC v. Commonwealth Edison Company and Exelon Generation Company, LLC
E–51.
DOCKET# ER04–156, 000, Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, All d/b/a Allegheny Power; PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc.
OTHER#S RT01–10, 000, Allegheny Power System Operating Companies; Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, all d/b/a Allegheny Power
RT01–98, 000, PJM Interconnection, LLC
EL04–41, 000, Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, All d/b/a Allegheny Power; PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc.
EL04–41, 001, Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, All d/b/a Allegheny Power; PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc.
EL04–41, 002, Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, All d/b/a Allegheny Power; PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc.
ER04–156, 001, Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, All d/b/a Allegheny Power; PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc.
ER04–156, 002, Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, All d/b/a Allegheny Power; PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc.
ER04–156, 003, Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, All d/b/a Allegheny Power; PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric

Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc.
ER04–156, 004, Allegheny Power System Operating Companies: Monongahela Power Company, Potomac Edison Company, and West Penn Power Company, All d/b/a Allegheny Power; PHI Operating Companies: Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; PECO Energy Company; Pennsylvania Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company; Rockland Electric Company; and UGI Utilities, Inc.

E–52.
DOCKET# EL04–55, 000, Haviland Holdings, Inc

E–53.
DOCKET# ER03–409, 003, Pacific Gas and Electric Company
OTHER#S ER03–409, 002, Pacific Gas and Electric Company
ER03–409, 001, Pacific Gas and Electric Company
ER03–409, 000, Pacific Gas and Electric Company
ER03–666, 003, Pacific Gas and Electric Company
ER03–666 002 Pacific Gas and Electric Company
ER03–666, 001, Pacific Gas and Electric Company
ER03–666, 000, Pacific Gas and Electric Company

E–54.
DOCKET# ER04–13, 003, Pacific Gas and Electric Company
OTHER#S ER04–377, 003, Pacific Gas and Electric Company
ER04–743, 001, Pacific Gas and Electric Company

E–55.
DOCKET# EL03–196, 000, Northern California Power Agency

E–56.
DOCKET# EL03–158, 000, Mirant Americas Energy Marketing, LP, Mirant California, LLC Mirant Delta LLC, Mirant Potrero, LLC

E–57.
DOCKET# EL03–153, 000, Dynegy Power Marketing, Inc.

E–58.
OMITTED

E–59.
DOCKET# EL03–173, 000, Sempra Energy Trading Corporation
OTHER#S EL03–201, 000, Sempra Energy Trading Corporation

E–60.
DOCKET# EL03–151, 000, Coral Power, L.L.C
OTHER#S EL03–186, 000, Coral Power, L.L.C.

E–61.
DOCKET# EL03–147, 000, City of Glendale, California
OTHER#S EL03–182, 000, City of Glendale, California

E–62.
DOCKET# EL02–129, 001, Southern California Water Company

E–63.
DOCKET# ER97–2355, 005, Southern California Edison Company
OTHER#S ER98–1261, 002, Southern California Edison Company
ER98–1685, 001, Southern California Edison Company

E–64.
DOCKET# EL02–125, 000, KeySpan Energy Development Corporation, KeySpan-Ravenswood, LLC, New York Power Authority, Electric Power Supply Association, Independent Power Producers of New York, Inc. v. New York Independent System Operator, Inc.
OTHER#S EL02–125, 001, KeySpan Energy Development Corporation, KeySpan-Ravenswood, LLC, New York Power Authority, Electric Power Supply Association, Independent Power Producers of New York, Inc. v. New York Independent System Operator, Inc.

E–65.
DOCKET# ER04–230, 002, New York Independent System Operator, Inc.
OTHER#S EL01–45, 013, New York Independent System Operator, Inc.
ER01–1385, 014, New York Independent System Operator, Inc.
ER01–3155, 005, New York Independent System Operator, Inc.
ER04–230, 004, New York Independent System Operator, Inc.
ER04–230, 005, New York Independent System Operator, Inc.
ER04–230, 003, New York Independent System Operator, Inc.

E–66.
DOCKET# ER98–495, 000, Pacific Gas and Electric Company

E–67.
OMITTED

E–68.
DOCKET# ER98–3760, 009, California Independent System Operator Corporation
OTHER#S EC96–19, 060, California Independent System Operator Corporation
ER96–1663, 063, California Independent System Operator Corporation

E–69.
OMITTED

E–70.
DOCKET# ER04–539, 001, PJM Interconnection, L.C.C.
OTHER#S ER04–539, 002, PJM Interconnection, L.L.C.
EL04–121, 000, PJM Interconnection, L.L.C.

Miscellaneous Agenda

M–1.
DOCKET# RM01–10, 002, Standards of Conduct for Transmission Providers

M–2.
DOCKET# RM02–4, 002, Critical Energy Infrastructure Information
OTHER#S PL02–1, 002, Critical Energy Infrastructure Information
RM03–6, 001, Amendments to Conform Regulations with Order No. 630 (Critical Energy Infrastructure Information Final Rule)

Markets, Tariffs and Rates—Gas

G–1.
DOCKET# RP04–155, 000, Northern Natural Gas Company

G–2.
DOCKET# RP04–336, 000, Kinder Morgan Interstate Gas Transmission, LLC

G–3.
DOCKET# CP01–415, 016, East Tennessee Natural Gas Company
OTHER#S RP04–398, 000, East Tennessee Natural Gas Company

G–4.
OMITTED

G–5.
DOCKET# RP04–381, 000, CenterPoint Energy Gas Transmission Company

G–6.
OMITTED

G–7.
DOCKET# RP00–477, 004, Tennessee Gas Pipeline Company
OTHER#S RP98–99, 009, Tennessee Gas Pipeline Company
RP00–477, 005, Tennessee Gas Pipeline Company
RP01–18, 004, Tennessee Gas Pipeline Company
RP03–183, 001, Tennessee Gas Pipeline Company

G–8.
DOCKET# RP98–52, 053, Southern Star Central Gas Pipeline Inc.
OTHER#S SA98–33, 004, Pioneer Natural Resources USA, Inc.

G–9.
DOCKET# RP02–114, 004, Tennessee Gas Pipeline Company
OTHER#S RP02–114, 005, Tennessee Gas Pipeline Company
RP02–114, 006, Tennessee Gas Pipeline Company

G–10.
DOCKET# RP03–262, 004, Natural Gas Pipeline Company of America

G–11.
DOCKET# RP04–276, 001, Southern Star Central Gas Pipeline, Inc.

G–12.
DOCKET# OR01–2, 003, Big West Oil Company v. Frontier Pipeline Company and Express Pipeline Partnership
OTHER#S OR01–4, 002, Chevron Products Company v. Frontier Pipeline Company and Express Pipeline Partnership

G–13.
OMITTED

G–14.
DOCKET# TS04–230, 000, Black Marlin Pipeline Company
OTHER#S TS04–172, 000, Discovery Gas Transmission, LLC
TS04–257, 000, Honeoye Storage Corporation and KeySpan LNG, LP
TS04–258, 000, Nornew Energy Supply, Inc.
TS04–7, 000, ONEOK, Inc.
TS04–7, 001, ONEOK, Inc.
TS04–1, 000, Trans-Union Interstate Pipeline, L.P.

G–15.
DOCKET# PL04–3, 000, Natural Gas Interchangeability

G–16.
DOCKET# RP04–360, 000, Maritimes & Northeast Pipeline, L.L.C.

G–17.
DOCKET# RP04–371, 000, Viking Gas Transmission Company
G–18.
OMITTED
G–19.
DOCKET# RP04–349, 000, Tennessee Gas Pipeline Company
G–20.
DOCKET# RP98–18, 011, Iroquois Gas Transmission System, L.P.

Energy Projects—Hydro

H–1.
DOCKET# P–2778, 005, Idaho Power Company
H–2.
DOCKET# P–2777, 007, Idaho Power Company
H–3.
DOCKET# P–2061, 004, Idaho Power Company
H–4.
DOCKET# P–1975, 014, Idaho Power Company
H–5.
DOCKET# P–2055, 010, Idaho Power Company
H–6.
DOCKET# P–696, 013, PacifiCorp
H–7.
OMITTED
H–8.
DOCKET# P–1971, 089, Idaho Power Company
OTHER#S P–1971, 054, Idaho Power Company
H–9.
DOCKET# P–11393, 021, City of Saxman, Alaska
H–10.
DOCKET# P–803, 065, Pacific Gas and Electric Company

Energy Projects—Certificates

C–1.
DOCKET# RP04–139, 000, Virginia Natural Gas, Inc. v. Columbia Gas Transmission Corporation
C–2.
DOCKET# CP04–104, 000, Transwestern Pipeline Company
C–3.
DOCKET# CP04–367, 000, Unocal Windy Hill Gas Storage LLC
C–4.
DOCKET# CP04–79, 000, ANR Pipeline Company
C–5.
DOCKET# CP03–32, 003, Northwest Pipeline Corporation
C–6.
DOCKET# CP04–48, 001, Chandeleur Pipe Line Company
C–7.
DOCKET# CP04–102, 000, CenterPoint Energy Gas Transmission Company
C–8.
DOCKET# CP04–58, 002, Sound Energy Solutions

Magalie R. Salas,
Secretary.

The Capitol Connection offers the opportunity for remote listening and viewing of the meeting. It is available for a fee, live over the Internet, via C-Band Satellite. Persons interested in receiving the broadcast, or who need information on making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and click on "FERC".

[FR Doc. 04–17162 Filed 7–23–04; 11:47 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act; Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

July 21, 2004.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: July 28, 2004, (Within a relatively short time after the Commission's open meeting on July 28).

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public, Investigations and Inquiries, Enforcement Related Matters, and Security of Regulated Facilities.

FOR FURTHER INFORMATION CONTACT: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Brownell, Kelliher, and Kelly voted to hold a closed meeting on July 28, 2004. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,
Secretary.

[FR Doc. 04–17163 Filed 7–23–04; 11:47 am]
BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 04–2071]

Wireless Telecommunications Bureau Extends the Freeze on High Power Use of the 460–470 MHz Band Offset Channels

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document informs that the freeze on the filing of applications for high power operations on 12.5 kHz offset channels in the private land mobile radio (PLMR) 460–470 MHz band will remain in effect until December 31, 2005. The Bureau is extending the duration of the freeze to provide hospitals and other health care providers that operate medical telemetry equipment in the 460–470 MHz band adequate time to migrate to spectrum dedicated to the Wireless Medical Telemetry Service ("WMTS"), while providing PLMR users a date certain by which the freeze will end. The Bureau does not anticipate any further extensions of the December 31, 2005 deadline.

DATES: Effective July 8, 2004.

FOR FURTHER INFORMATION CONTACT: Freda Lippert Thyden, *freda.thyden@fcc.gov,* Public Safety & Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0627, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released on July 8, 2004.

1. The Commission, in 1995, adopted a new, more efficient channel plan for PLMR services in the 450–470 MHz band. Under the channel plan adopted, channels in the 450–470 MHz band that were 12.5 kHz removed from regularly-assignable channels at that time ("12.5 kHz offset channels") would be available for high power operations. Previously, medical telemetry systems used these "offsets" on a secondary, noninterference basis to primary adjacent channel PLMR operations. Recognizing that co-channel, high power operations could result in interference to medical telemetry operations, the Bureau froze the filing of applications for high power operations on offset channels in the 450–470 MHz band pending resolution of the medical telemetry issues.

2. In June 2000, the Commission established the Wireless Medical Telemetry Service (WMTS), an action aimed at ensuring that in-hospital medical telemetry devices can operate

free of harmful interference. In establishing the WMTS, the Commission allotted a total of 13.5 megahertz of spectrum on a primary basis in three blocks (608–614 MHz, 1395–1400 MHz, and 1427–1429.5 MHz). Also, the Commission determined that WMTS operations should be licensed by rule in lieu of individual licensing. Based on this decision, the Commission further decided that there was a need to establish some mechanism to track the usage of WMTS transmitters. In this regard, the Commission concluded that this information should be maintained in a database by one or more private sector frequency coordinators to be designated by the Bureau. Prior to operation, health care providers must register all medical telemetry devices operating on WMTS spectrum. In addition, the Commission encouraged hospitals to migrate their medical telemetry operations from the 460–470 MHz band to the new WMTS bands. To accommodate this migration, the Commission stated its intention to lift the freeze on applications for high power use of offset channels in the 460–470 MHz band within three years of the effective date of the WMTS rules.

3. On September 23, 2003, however, the American Hospital Association (AHA) reported that, based on its recent, informal polling of hospitals, there has been virtually no migration of medical telemetry systems to the WMTS frequencies. AHA noted that high power use in the 460–470 MHz band has the potential to interfere with existing medical telemetry systems that have not moved to the WMTS frequencies. AHA also recognized that the land mobile radio community is eager to obtain the full utilization of this band. In this connection, AHA stated that "no one will benefit if widespread interference to medical telemetry services results from the premature use of this band by higher-powered land mobile systems." To address this matter, AHA asked that the freeze not be lifted and proposed a thirty-month plan for the transition of medical telemetry operations to the WMTS spectrum. In a *Public Notice* released October 15, 2003, the Bureau announced it was extending the freeze for a period of up to 180 days and sought comment on the AHA proposal. The Land Mobile Communications Council (LMCC), an umbrella organization representing the PLMR community that includes as members all Part 90 frequency coordinators, opposed the AHA proposal.

4. The Bureau has been working with AHA and the American Society for Health Care Engineering (ASHE), representing health care provider interests, and LMCC, representing the interests of the PLMR community, to develop a plan to allow for the orderly transition of high power operations on 12.5 kHz offset channels in the PLMR 460–470 MHz band. The Bureau also has been coordinating with representatives of the U.S. Food and Drug Administration (FDA) on this matter to ensure that medical telemetry communications, particularly those of a critical nature, are not adversely affected during such transition. In this regard, the Bureau has extended the current freeze on previous occasions in an effort to develop a transition plan and process which equitably balanced the interests of the identified stakeholders and resulted in minimum disruption to current operations in the 460–470 MHz band. After months of discussions coordinated with the Bureau, AHA and LMCC, by consensus, developed an approach whereby the current freeze would remain in effect through December 31, 2005.

5. AHA and LMCC believe, on balance, that the public interest would be best served by maintaining the current freeze until December 31, 2005, rather than lifting it at some earlier time. This approach provides a date certain by which all medical telemetry operations in the 460–470 MHz band can either transition to the WMTS spectrum or obtain interference protection by becoming licensed on the same basis as other part 90 operations. It also provides sufficient time to permit effective planning for an orderly and efficient transition so as to avoid disruption to ongoing medical telemetry operations. In addition, it provides a mechanism to continue to protect medical telemetry operations from harmful interference pending their transition to WMTS spectrum or part 90 licensing.

6. Given this extended transition, the parties have agreed to work with both the FCC and the FDA to provide impetus for the migration of hospitals from the 460 MHz band to the new WMTS bands. To further assist health care facilities still operating low-powered telemetry systems in the 460–470 MHz band in their transition to the WMTS spectrum or to fully licensed status, ASHE has created a registration process that will allow such hospitals and health care facilities to register information about their current use with ASHE. This registration program will allow AHA and ASHE to compile a more accurate database of the number, location and frequency being used by hospitals operating in the 460–470 MHz band, which will, in turn allow AHA, ASHE, the FDA and the Bureau to track the progress of the migration of medical telemetry devices out of the 460–470 MHz band, assist hospitals with problems in migration, and communicate with the affected hospitals regarding the regulatory impact of the lifting of the freeze on December 31, 2005. We take this opportunity to remind operators of WMTS equipment that to be licensed as required by the Commission's rules, they must register their equipment and frequencies with ASHE prior to operation. *See* 47 CFR 95.1111.

7. The decision to extend the freeze is procedural in nature and therefore not subject to the notice and comment and effective date requirements of the Administrative Procedure Act. Moreover, there is good cause for not using notice and comment procedures in this case, or making the freeze extension effective 30 days after publication in the **Federal Register**. We find that such procedures would be impractical, unnecessary and contrary to the public interest as our compliance would undermine the public policy rationale of the freeze in the first place.

This action is authorized under Sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), and is taken under delegated authority pursuant to §§ 0.131 and 0.331 of the Commission's Rules, 47 CFR 0.131, 0.331.

Federal Communications Commission.

Ramona Melson,

Associate Chief, Public Safety and Critical Infrastructure Division, WTB.

[FR Doc. 04–17076 Filed 7–26–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of a proposed information collection titled

"Depositor Claims for Increased Insurance."

COMMENTS: Comments on this collection of information are welcome and should be submitted on or before August 26, 2004 to both the OMB reviewer and the FDIC contact listed below.

ADDRESSES: Interested parties are invited to submit written comments to Thomas Nixon, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to "Depositor Claims for Increased Insurance." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. Comments may also be submitted to the OMB desk officer for the FDIC: Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

SUPPLEMENTARY INFORMATION:

Title: Depositor Claims for Increased Insurance.

OMB Number: New collection.

Frequency of Response: On occasion.

Affected Public: Depositors of failed insured institutions who had more than $100,000 deposited in a testamentary deposit account, a trust account, a defined benefit plan, or other retirement account who may be entitled to more than $100,000 in deposit insurance.

Estimated Annual Number of Respondents: 5,025.

Estimated Time per Response: The time per response will range from one-half hour to one hour depending on the form required.

Estimated Total Annual Burden: 2,738 hours.

General Description of Collection: Depositors of failed institutions initially deemed to be uninsured because their deposits are over $100,000 may be qualified for additional insurance coverage if they provide the FDIC with documents certifying to the existence of varying ownership rights and capacities. The forms in this collection facilitate customers providing the FDIC with the information that would allow increased insurance coverage. Further information about this submission, including copies of the collection of information, may be obtained by calling or writing the FDIC contact listed above.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–17014 Filed 7–26–04; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, August 2, 2004.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, July 23, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–17179 Filed 7–23–04; 1:01 pm]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Water Resources Development Act of 1999, Candy Lake Project, Oklahoma; Availability of Purchase

AGENCY: Office of Real Property Disposal Office, General Services Administration (GSA).

ACTION: Notice.

SUMMARY: In accordance with the Water Resources Development Act of 1999, as amended, the Candy Lake Project, Osage County, Oklahoma, has become surplus to the needs of the Government. Under this law, the previous owner(s) of the land or their direct descendant(s) are given the opportunity to purchase the property for the fair market value, without competition.

DATES: All Applications to Purchase must be executed and returned to the General Services Administration no later than January 24, 2005.

ADDRESSES: Return all Applications to Purchase to the General Services Administration, Real Property Disposal Division (7PR), 817 Taylor Street, Room 11B03, Fort Worth, TX 76102.

FOR FURTHER INFORMATION CONTACT: Mr. Melvin Freeman, Realty Officer, General Services Administration (GSA), Real Property Disposal Division (7PR), 817 Taylor Street, Room 11B03, Fort Worth, TX 76102, telephone 817–978–3856, or e-mail *melvin.freeman@gsa.gov* if you are a previous owner (or a direct descendant) of land that was conveyed to the Corps of Engineers for use in the Candy Lake Project in Osage County, Oklahoma, and desire to repurchase the land and request Application to Purchase (7–D–OK–0529).

SUPPLEMENTARY INFORMATION: The property is identified as follows:

Tract No.	Acreage	FMV	Original owner
101–1	215.69	$86,275	Chester James Thornton, Mildred Laverne Thorton.
101–2	8.02	2,800	Chester James Thornton, Mildred Laverne Thornton.
102	400.0	110,000	Joseph Fingerlin
106	59.41	10,400	Ana Bates Other.
107	530.65	265,325	Roy Glasco.
108	218.5	87,400	Bud Crutchfield, Alberta Crutchfield.
109	120.0	48,000	William M. Smith, Alice A. Smith.
111	205.41	112,975	Rose Martin.
112	1.21	120	Betty Bowen.
113	160.0	104,000	Wilma Kohlmeyer, Richard Ernest Kohlmeyer, Kristen Marie Kohlmeyer, Emma Jo Sutton, and William W. Sutton.

Tract No.	Acreage	FMV	Original owner
114–1	190.74	47,675	Henry C. Kohlmeyer, et al.
114–2	25.95	4,550	Henry C. Kohlmeyer, et al.
116	23.83	4,175	James E. Barnett, et al.
117	30.0	21,000	Donald E. Hazelwood, et al.
118	55.0	33,000	Roger Franklin McWilliams, Dawn McWilliams.
119–1	32.27	19,350	Harry Littleton, et al.
119–2	3.24	1,125	Harry Littleton, et al.
121	338.48	59,225	John Francis Murphy, Linda K. Murphy.
201	160.0	104,000	Floyd Lemley, Mary Frances Lemley.
202	74.26	40,850	Troy E. Miller, Wanda M. Miller, Bobby W. Miller, Diane E. Miller.
203	40.0	26,000	Lewis J. Rutherford, et al.
204	46.96	25,825	James H. Gray, Ethel Mae Gray.
206–1	19.46	3,400	Michael T. Eschbach, Geraldine L. Eschbach.
206–2	4.17	725	Michael T. Eschbach, Gerald L. Eschbach.
207–1	692.86	363,750	Oklahoma Land and Cattle Company, Inc., et al.
207–2	1.33	675	Oklahoma Land and Cattle Company, Inc., et al.
107E–10	[1] 9.97	4,475	Oklahoma Land and Cattle Company, Inc., et al.
110E	[1] 1.30	50	Charlotte Tucker.
207E–17	[1] 1.34	10	Oklahoma Land and Cattle Company, Inc., et al.

[1] Road.

All Applications to Purchase must be executed and returned to the General Services Administration no later than January 24, 2005. Though a contract for sale and closing may not be readily accomplished, the time within which you respond may affect your eligibility to purchase. The first person to execute and return an acceptable Application to Purchase has the first option to purchase if the previous owner(s) is not interested.

All previous owners or direct descendants will be required to substantiate that they are a previous owner (or direct descendant) of the property they wish to purchase.

Dated: July 19, 2004.

Melvin Freeman,

Project Manager, GSA Real Property Disposal Office (7PR).

(c) Candy Lake Project, Osage County, Oklahoma.—

(1) Definitions.—In this subsection:

(A) Fair market value.—The term "fair market value" means the amount for which a willing buyer would purchase and a willing seller would sell a parcel of land, as determined by a qualified, independent land appraiser.

(B) Previous owner of land.—The term "previous owner of land" means a person (including a corporation) that conveyed, or a descendant of a deceased individual who conveyed, land to the Corps of Engineers for use in the Candy Lake project in Osage County, Oklahoma.

(2) Conveyances.—

(A) In general.—The Secretary shall convey all right, title, and interest of the United States in and to the land acquired by the United States for the Candy Lake project in Osage County, Oklahoma.

(B) Previous owners of land.—

(i) In general.—The Secretary shall give a previous owner of land the first option to purchase the land described in subparagraph (A).

(ii) Application.—

(I) In general.—A previous owner of land that desires to purchase the land described in paragraph (1) that was owned by the previous owner of land, or by the individual from whom the previous owner of land is descended, shall file an application to purchase the land with the Secretary not later than 180 days after the official date of notice to the previous owner of land under paragraph (3).

(II) First to file has first option.—If more than 1 application is filed to purchase a parcel of land described in subparagraph (A), the first option to purchase the parcel of land shall be determined in the order in which applications for the parcel of and were filed.

(iii) Identification of previous owners of land.—As soon as practicable after the date of enactment of this Act, the Secretary shall, to the extent practicable, identify each previous owner of land.

(iv) Consideration.—Consideration for land conveyed under this subsection shall be the fair market value of the land.

(C) Disposal.—Any land described in subparagraph (A) for which an application to purchase the land has not been filed under subparagraph (B)(ii) within the applicable time period shall be disposed of in accordance with law.

[[Page 113 STAT. 358]]

(D) Extinguishment of easements.—All flowage easements acquired by the United States for use in the Candy Lake project in Osage County, Oklahoma, are extinguished.

(3) Notice.—

(A) In general.—The Secretary shall notify—

(i) each person identified as a previous owner of land under paragraph (2)(B)(iii), not later than 90 days after identification, by United States mail; and

(ii) <<NOTE: **Federal Register**, publication.>> the general public, not later than 90 days after the date of enactment of this Act, by publication in the **Federal Register**.

(B) Contents of notice.—Notice under this paragraph shall include—

(i) a copy of this subsection;

(ii) information sufficient to separately identify each parcel of land subject to this subsection; and

(iii) specification of the fair market value of each parcel of land subject to this subsection.

(C) Official date of notice.—The official date of notice under this subsection shall be the later of—

(i) the date on which actual notice is mailed; or

(ii) the date of publication of the notice in the **Federal Register**.

* * * * *

(i) Candy Lake Project, Osage County, Oklahoma.—Section 563(c)(1)(B) of the Water Resources Development Act of 1999 (113 Stat. 357) is amended by striking "a deceased individual" and inserting "an individual".

[FR Doc. 04–17011 Filed 7–26–04; 8:45 am]

BILLING CODE 6820–YM–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–17511]

Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers: 1625–0025 [Formerly 2115–0100], 1625–0030 [Formerly 2115–0120], 1625–0072 [Formerly 2115–0613], 1625–0078 [Formerly 2115–0623] and 1625–0082 [Formerly 2115–0628]

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded five Information Collection Reports (ICRs)—1625–0025, Carriage of Bulk Solids

Requiring Special Handling—46 CFR part 148; 1625–0030, Oil and Hazardous Materials Transfer Procedures; 1625–0072, Waste Management Plans, Refuse Discharge Logs, and Letters of Instruction for Certain Persons-in-Charge (PIC); 1625–0078, Licensing and Manning Requirements for Officers on Towing Vessels; and 1625–0082, Navigation Safety Equipment and Emergency Instructions for Certain Towing Vessels—abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before August 26, 2004.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG–2004–17511] more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001.

(2) By delivery to 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.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at *http://dms.dot.gov.*

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

Copies of the completed ICRs are available through this docket on the Internet at *http://dms.dot.gov,* and also from Commandant (CG–611), U.S. Coast Guard Headquarters, room 6106 (Attn: Mr. Arthur Requina), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, 202–267–2326, for questions on these documents; or Ms. Andrea M. Jenkins, Program Manager, Docket Operations, 202–366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's "Privacy Act" below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2004–17511], 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 them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this notice as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Regulatory History: This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published (69 FR 19446, April 13, 2004) the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments: The Coast Guard invites comments on the proposed collection of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the Information Collection Reports (ICR) addressed. Comments to DMS must contain the docket number of this request, USCG 2003–16251 comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Requests

1. *Title:* Carriage of Bulk Solids Requiring Special Handling—46 CFR part 148.

OMB Control Number: 1625–0025 [Formerly 2115–0100].

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of vessels that carry certain bulk solids.

Form: None.

Abstract: The Coast Guard administers and enforces statutes and rules for the safe transport and stowage of hazardous materials, including bulk solids. Under 46 CFR part 148, the Coast Guard may issue special permits for the carriage of bulk solids requiring special handling.

Burden Estimates: The estimated burden is 1,130 hours a year.

2. *Title:* Oil and Hazardous Materials Transfer Procedures.

OMB Control Number: 1625–0030 [Formerly 2115–0120].

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of vessels.

Form: None.

Abstract: Title 33 U.S.C. 1231 authorizes the Coast Guard to prescribe regulations related to the prevention of pollution. Title 33 CFR part 155 prescribe pollution prevention regulations including those related to transfer procedures.

Burden Estimate: The estimated burden is 89 hours a year.

3. *Title:* Waste Management Plans, Refuse Discharge Logs, and Letters of Instruction for Certain Persons-in-Charge (PIC).

OMB Control Number: 1625–0072 [Formerly 2115–0613].

Type of Request: Extension of currently approved collection.

Affected Public: Owners, operators, masters, and persons-in-charge of vessels.

Form: None.

Abstract: This collection of information is needed as part of the Coast Guard's pollution prevention compliance program.

Burden Estimate: The estimated burden is 55,484 hours a year.

4. *Title:* Licensing and Manning Requirements for Officers of Towing Vessels.

OMB Control Number: 1625–0078 [Formerly 2115–0623].

Type of Request: Extension of currently approved collection.

Affected Public: Owners and operators of towing vessels.

Form: None.

Abstract: Title 46 CFR part 10 prescribe regulations for the licensing of maritime personnel. This information collection is necessary to ensure that a mariner's training information is available to assist in determining his or her overall qualifications to hold certain licenses.

Burden Estimates: The estimated burden is 17,159 hours a year.

5. *Title:* Navigation Safety Equipment and Emergency Instructions for Certain Towing Vessels.

OMB Control Number: 1625–0082 [Formerly 2115–0628].

Type of Request: Extension of currently approved collection.

Affected Public: Owners, operators, and masters of vessels.

Form: None.

Abstract: The purpose of the regulations is to improve the safety of towing vessels and the crews that operate them.

Burden Estimates: The estimated burden is 367,701 hours a year.

Dated: July 15, 2004

Nathaniel S. Heiner,

Acting Assistant Commandant for C4 and Information Technology.

[FR Doc. 04–17054 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–18650]

Chemical Transportation Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard is seeking applications for appointment to membership on the Chemical Transportation Advisory Committee (CTAC). CTAC provides advice and makes recommendations to the Coast Guard on matters relating to the safe and secure transportation and handling of hazardous materials in bulk on U.S.-flag vessels in U.S. ports and waterways.

DATES: Application forms should reach the Coast Guard on or before October 31, 2004. However, the Coast Guard will include all applications received before any recommendations are made to the Secretary of Homeland Security.

ADDRESSES: You may request an application form by writing to Commandant (G–MSO–3), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001; by calling (202) 267–1217/0081; or by faxing (202) 267–4570. Submit application forms to the same address. This notice and the application form are available on the Internet at *http://dms.dot.gov*. The application form is also available at *http://www.uscg.mil/hq/g-m/advisory/ctac/ctac.htm*.

FOR FURTHER INFORMATION CONTACT: Commander Robert J. Hennessy, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone (202) 267–1217/0081, fax (202) 267–4570.

SUPPLEMENTARY INFORMATION: The Chemical Transportation Advisory Committee (CTAC) is an advisory committee constituted under the Federal Advisory Committee Act, 5 U.S.C. App. 2. It provides advice and makes recommendations to the Commandant through the Assistant Commandant for Marine Safety, Security and Environmental Protection on matters relating to the safe and secure transportation and handling of hazardous materials in bulk on U.S.-flag vessels in U.S. ports and waterways. The advice and recommendations of CTAC also assist the U.S. Coast Guard in formulating the position of the United States on hazardous material transportation issues prior to meetings of the International Maritime Organization.

CTAC meets at least once a year, usually twice a year, at Coast Guard Headquarters in Washington, DC, or in another location. CTAC's subcommittees and working groups may meet to perform specific assignments as required.

The Coast Guard will consider applications for eight positions that expire in December 2004. To be eligible, applicants should have experience in chemical manufacturing, vessel design and construction, marine transportation of chemicals, occupational safety and health, or marine environmental protection issues associated with chemical transportation. Each member serves for a term of 3 years. Some members may serve consecutive terms. All members serve at their own expense, and receive no salary, reimbursement of travel expenses, or other compensation from the Federal Government.

In support of the policy of the Department of Homeland Security on gender and ethnic diversity, the Coast Guard encourages applications from qualified women and members of minority groups.

Dated: July 15, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 04–17052 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–026]

RIN 1625–AA09

Drawbridge Operation Regulation; Inner Harbor Navigation Canal, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander Eighth Coast Guard District is issuing a temporary deviation from the regulation governing the operation of the Almonaster Avenue (L & N Railroad/Old Gentilly Road) bascule span bridge across the Inner Harbor Navigation Canal, mile 2.9 at

New Orleans, Orleans Parish, Louisiana. This deviation will allow the Port of New Orleans to close the bridge to navigation from 7 a.m. on Thursday, July 29, 2004 until 7 a.m. on Friday, July 30, 2004 to conduct necessary repairs on the bridge.

DATES: This temporary deviation is effective from 7 a.m. on Thursday, July 29, 2004 until 7 a.m. on Friday, July 30, 2004.

ADDRESSES: Materials referred to in this temporary deviation are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 500 Poydras Street, New Orleans, Louisiana 70130–3310, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Eighth District Bridge Administration Branch maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Port of New Orleans requested a temporary deviation from the normal operation of the drawbridge in order to replace a damaged link pin bushing in the inboard side of the strain arm. This bushing has been damaged as the result of numerous bridge allisions that have occurred recently. The repairs are necessary to ensure the continued operation of the drawbridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position from 7 a.m. on Thursday, July 29, 2004 until 7 a.m. on Friday, July 30, 2004. In the event of an approaching tropical storm or hurricane, prior to commencement of repairs, the work will be rescheduled and the bridge will continue to operate normally.

The bridge has a vertical clearance of one foot above high water in the closed-to-navigation position and unlimited clearance in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, small ships, fishing vessels, sailing vessels, and other recreational craft. Due to prior experience, as well as coordination with waterway users, it has been determined that this closure will not have a significant effect on these vessels. No alternate routes are available. The bridge will not be able to open for emergencies.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: July 15, 2004.

Marcus Redford,

Bridge Administrator.

[FR Doc. 04–17053 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1529–DR]

California; Amendment No. 1 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA–1529–DR), dated June 30, 2004, and related determinations.

EFFECTIVE DATE: July 12, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective July 12, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–17029 Filed 7–26–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1520–DR]

Indiana; Amendment No. 7 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1520–DR), dated June 3, 2004, and related determinations.

EFFECTIVE DATE: July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 3, 2004:

Union County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–17028 Filed 7–26–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1520–DR]

Indiana; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency

Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA–1520–DR), dated June 3, 2004, and related determinations.

EFFECTIVE DATE: July 14, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is reopened. The incident period for this declared disaster is now May 25, 2004, through and including June 25, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–17031 Filed 7–26–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1527–DR]

Michigan; Amendment No. 1 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Michigan (FEMA–1527–DR), dated June 30, 2004, and related determinations.

EFFECTIVE DATE: July 16, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Michigan is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 30, 2004:

All counties in the State of Michigan are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–17032 Filed 7–26–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1530–DR]

New Jersey; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New Jersey (FEMA–1530–DR), dated July 16, 2004, and related determinations.

EFFECTIVE DATE: July 16, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 16, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New Jersey, resulting from severe storms and flooding beginning on July 12, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of New Jersey.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Peter Martinasco, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Jersey to have been affected adversely by this declared major disaster:

Burlington and Camden Counties for Individual Assistance.

Burlington County for Public Assistance.

Burlington and Camden Counties in the State of New Jersey are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program-Other Needs; 97.036, Public Assistance

Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–17030 Filed 7–26–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Reports, Forms, and Record Keeping Requirements: Agency Information Collection Activity Under OMB Review; Transportation Worker Identification Credential (TWIC) Prototype; Transportation Worker Survey; Lead Stakeholder Port Security Interviews

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on April 5, 2004, 69 FR 17704.

DATES: Send your comments by August 26, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS-TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Conrad Huygen, Office of Information Management Programs, TSA Headquarters, TSA–17, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1954; facsimile (571) 227–2906.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration (TSA)

Title: Transportation Worker Identification Credential (TWIC) Prototype; Transportation Worker Survey; Lead Stakeholder Port Security Interviews.

Type of Request: New collection.

OMB Control Number: Not yet assigned.

Form(s): Transportation Worker Identification Credential (TWIC) Prototype Enrollment; Transportation Worker Survey.

Affected Public: Transportation Workers; Transportation Facility Security Stakeholders.

Abstract: TSA is in the process of evaluating the TWIC Program concept, which, if approved, will provide for a single, uniform credential nationwide for transportation workers who require access to secure transportation areas. In the Technology Evaluation phase, TSA evaluated five card technologies in various types of physical and logical access transactions. In the Prototype phase, the program intends to evaluate a broad range of business processes as they relate to credentialing, identity, and identity management. Specifically, TSA will evaluate certain technologies and business processes in the Prototype Phase of TSA's pilot project to fully development the program, measure credential performance and effectiveness, collect user feedback, and provide data analysis prior to proceeding to full-scale deployment. TSA will issue credentials to a select group of transportation workers and then administer two instruments to collect data on the effectiveness of the TWIC program as well as the satisfaction of the transportation workers who will be using these credentials.

Number of Respondents: 200,050.

Estimated Annual Burden Hours: 73,633.

Estimated Annual Cost Burden: $0.

TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Issued in Arlington, Virginia, on July 20, 2004.

Susan T. Tracey,

Chief Administrative Officer.

[FR Doc. 04–17024 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Notice; Reports, Forms, and Record Keeping Requirements: Agency Information Collection Activity Under OMB Review; Transportation Worker Identification Credential (TWIC) National Survey

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: This notice announces that TSA has forwarded the Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act. The ICR describes the nature of the information collection and its expected burden. TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on April 5, 2004, 69 FR 17704.

DATES: Send your comments by August 26, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Comments may be faxed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: DHS–TSA Desk Officer, at (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Conrad Huygen, Office of Information Management Programs, TSA Headquarters, TSA–17, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–1954; facsimile (571) 227–2906.

SUPPLEMENTARY INFORMATION:

Transportation Security Administration (TSA)

Title: Transportation Worker Identification Credential (TWIC) National Survey.

Type of Request: New collection.

OMB Control Number: Not yet assigned.

Form(s): TWIC National Survey.

Affected Public: Transportation Site Security Directors or designees.

Abstract: TSA is in the process of evaluating the TWIC Program concept, which, if approved, will provide for a single, uniform credential nationwide for transportation workers who require access to secure transportation areas. In the Technology Evaluation phase, TSA evaluated five card technologies in various types of physical and logical access transactions, and in the Prototype phase, it intends to evaluate a broad

range of business processes as they relate to credentialing, identity, and identity management. The information collected for the TWIC National Survey will be used as a means to develop a predictive model of the current access control technology infrastructure at transportation sites across the nation, should the TWIC be approved for implementation. The information collected in the National Survey pertains to the transportation facility and the numbers and categories of transportation workers at the facility, not to the individuals. This information will be used to help determine implementation approaches for the TWIC Program at transportation facilities and modes across the country that differ by type and size. Participation will be voluntary.

Number of Respondents: 300.

Estimated Annual Burden Hours: 600.

Estimated Annual Cost Burden: $0.

TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology where appropriate.

Issued in Arlington, Virginia, on July 20, 2004.

Susan T. Tracey,

Chief Administrative Officer.

[FR Doc. 04–17025 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 5-Year Review of the Bliss Rapids Snail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review.

SUMMARY: The U.S. Fish and Wildlife Service ("we") announces a 5-year review of the Bliss Rapids snail (*Taylorconcha serpenticola*) under section 4(c)(2)(A) of the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq.*). The purpose of reviews conducted under this section of the Act is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants (List) is accurate.

We are requesting submission of the most current scientific and commercial information available on the Bliss Rapids snail since its original listing as a threatened species in 1992 (57 FR 59244). If the present classification of this species is not consistent with the best scientific and commercial information available at the conclusion of this review, we may propose a change in the listing status of this species. Any change in Federal classification would require a separate rule-making process.

DATES: In order to allow us adequate time to consider your information in this review, we must receive your information no later than September 24, 2004. We also continue to accept information about any listed species at any time.

ADDRESSES: Submit information and questions to the Field Supervisor, Attention Bliss Rapids Snail 5-Year Review, Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Suite 368, Boise, Idaho 83709. Comments may also be faxed to 208–378–5262, or e-mailed to *fw1srbocomment@fws.gov*. Please include "Bliss Rapids Snail 5-Year Review Comments" in the title line for faxes and e–mails. Please submit electronic comments in an ASCII file format, and avoid the use of special characters and encryption. Information received in response to this notice and review will be available for public inspection by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Steve Lysne at the above address, by phone at 208/378–5243, or by e–mail at *steve_lysne@fws.gov*.

SUPPLEMENTARY INFORMATION:

Why is a 5-year Review Conducted?

Section 4(c)(2)(A) of the Act requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B) and the provisions of subsections (a) and (b) to determine, on the basis of such review, whether or not any species should be removed from the List (delisted), or reclassified from endangered to threatened, or threatened to endangered. Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the Bliss Rapids snail.

What Information is Considered in the Review?

The 5-year review considers all new information available at the time of the review. This review will consider the best scientific and commercial data that has become available since the current listing determination or most recent status review, such as:

A. Species biology including, but not limited to, population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions including, but not limited to, amount, distribution, and suitability;

C. Conservation measures that have been implemented that benefit the species;

D. Threat status and trends (*see* five factors under heading "How Do We Determine Whether a Species is Endangered or Threatened?"); and

E. Other new information, data, or corrections including, but not limited to, taxonomic or nomenclatural changes, identification of erroneous information contained in the List, and improved analytical methods.

How is the Bliss Rapids Snail Currently Listed?

The List is found in 50 CFR 17.11 (wildlife) and 17.12 (plants). Amendments to the List through final rules are published in the **Federal Register**. The List is also available on our Internet site at *http://endangered.fws.gov/wildlife.html#Species*. In Table 1 below, we provide a summary of the listing information for the Bliss Rapids snail.

TABLE 1.—SUMMARY OF THE LISTING INFORMATION FOR THE BLISS RAPIDS SNAIL

Common name	Scientific name	Status	Where listed	Final listing rule
Bliss Rapids snail	*Taylorconcha serpenticola*	Threatened	U.S.A. (ID)	57 FR 59244 (14–DEC–92).

Definitions Related to This Notice

The following definitions are provided to assist those persons who contemplate submitting information regarding the status of the species being reviewed:

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature.

B. *Endangered* means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened* means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species is Endangered or Threatened?

Section 4(a)(1) of the Act requires that we determine whether a species is endangered or threatened based on one or more of the five following factors:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. The inadequacy of existing regulatory mechanisms; or

E. Other natural or manmade factors affecting its continued existence.

Our assessment of these factors is required, under section 4(b)(1) of the Act, to be based solely on the best scientific and commercial data available.

What Could Happen as a Result of This Review?

If we find that there is information concerning the Bliss Rapids snail indicating a change in classification may be warranted, we may propose a new rule that could do one of the following: (a) reclassify the species from threatened to endangered; or (b) remove of the species from the List. If we find that a change in classification is not warranted, the Bliss Rapids snail will remain on the List under its current threatened status.

Public Solicitation of New Information

We request any new scientific or commercial information concerning the status of the Bliss Rapids snail. See "What Information is Considered in the Review?" heading above for specific types of information. If possible, this information should be supported by documentation such as maps, a list of bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources.

Authority: This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: June 22, 2004.

William F. Shake,

Acting Regional Director, Region 1, U. S. Fish and Wildlife Service.

[FR Doc. 04–16988 Filed 7–26–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–961–1410–HY–P; AA–6981–D, SEA–4]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act and the Haida Land Exchange Act of 1986 will be issued to Haida Corporation. The lands are located in T. 54 S., R. 63 E., and T. 56 S., R. 64 E., Copper River Meridian, in the vicinity of Sitka, Alaska, and contain approximately 63 acres. Notice of decision will also be published four times in the *Juneau Empire.*

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until August 26, 2004 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from:

Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599.

FOR FURTHER INFORMATION CONTACT: Sherry Belenski, by phone at (907) 271–3333, or by e-mail at *Sherri_Belenski@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Mrs. Belenski.

Sherri D. Belenski,

Land Law Examiner, Branch of Land Transfer Services.

[FR Doc. 04–17091 Filed 7–26–04; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID074–04–1430–EU 252R, IDI–34375/IDI–33756]

Notice of Intent To Prepare a Land Use Plan Amendment To Provide for a Proposed Direct Land Sale

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent.

SUMMARY: Pursuant to 43 CFR part 1600, the Bureau of Land Management (BLM) Idaho Falls Field Office (IFFO) proposes to amend the Medicine Lodge Resource Management Plan (RMP) to identify a 5.81 acre parcel of public land for disposal in Jefferson County, Idaho. Additionally, the IFFO proposes to patent the parcel to Byron and Teresa Blakely, reserving a conservation easement to the United States.

DATES: Comments regarding the proposed plan amendment must be received by September 10, 2004.

ADDRESSES: Written comments should be sent to Carol McCoy Brown, Field Manager, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401.

FOR FURTHER INFORMATION CONTACT: Karen Rice, Wildlife Biologist, or Skip Staffel, Realty Specialist, at the above address or by calling (208) 524–7500.

SUPPLEMENTARY INFORMATION: The following described public land in Jefferson County, Idaho, will be examined for possible disposal by direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719:

Boise Meridian, Idaho

T. 4 N., R. 40 E.,
Sec. 25, Lot 18.

The land described above contains approximately 5.81 acres.

Upon publication of this notice in the **Federal Register**, the land described above will be segregated from appropriation under the public land laws, including the mining laws, except for the sale provisions of FLPMA.

An environmental assessment will be completed for this action. If the land is

found suitable for disposal, the United States would offer it for direct sale to Byron and Teresa Blakely at fair market value, with a conservation easement retained by the BLM. This action would resolve litigation entitled *United States v. Byron Blakely and Teresa Blakely* (Civ. 99–339–E–BLW) over disputed ownership of lands. The public is invited to provide scoping comments on the issues that should be addressed in the plan amendment and environmental assessment. The following resources will be considered in preparation of the plan amendment: Lands, wildlife and migratory birds, recreation, wilderness, range, minerals, cultural resources, watershed/soils, threatened/endangered species, and hazardous materials. Staff specialists representing these resources will make up the planning team. Planning issues will include the same planning criteria originally considered for the Medicine Lodge RMP; however, issues for this amendment are expected to primarily involve the adjustment of land tenure. No public meetings are scheduled.

Current land use planning information is available at the Idaho Falls BLM office. Office hours are 7:45 a.m. to 4:30 p.m., Monday through Friday except holidays.

Dated: July 1, 2004.

Glen Guenther,

Acting Field Manager, Idaho Falls Field Office.

[FR Doc. 04–17093 Filed 7–26–04; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award two temporary concession contracts, one at Watch Hill and the other at Sailor's Haven to include the operation of marina, food service, campground, and sundry merchandise sales facilities and services for the public at these locations within Fire Island National Seashore, New York for a term not to exceed October 31, 2004. It is necessary to award these contracts in order to avoid the interruption of visitor services.

SUPPLEMENTARY INFORMATION: These temporary concession contracts are being awarded to the Davis Park Marine Service, Inc., Patchogue, New York and the Howard T. Rose Company, Inc., Sayville, New York.

This action is issued pursuant to 36 CFR 51.24(a). This is not a request for proposals and no prospectus is being issued at this time. The Secretary intends to issue a competitive solicitation for offers for a long-term operator for various services in the near future. You may be placed on a mailing list for receiving information regarding the competitive solicitation by sending a written request to the following address: Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, NY 11772.

EFFECTIVE DATE: August 26, 2004.

FOR FURTHER INFORMATION CONTACT: Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: March 27, 2004.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 04–16990 Filed 7–26–04; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice To Prepare a Revised Draft EIS

AGENCY: National Park Service, Interior.

ACTION: Notice to prepare a Revised Draft Backcountry Management Plan, General Management Plan Amendment and Environmental Impact Statement for Denali National Park and Preserve.

SUMMARY: The National Park Service (NPS) announces its intent to prepare a Revised Draft Backcountry Management Plan, General Management Plan Amendment and Environmental Impact Statement (EIS) for Denali National Park and Preserve. The Revised Draft EIS will evaluate four new action alternatives in addition to the no-action alternative which will replace the four action alternatives included in the February 2003 Draft Backcountry Management Plan and EIS (**Federal Register**, 68 FR 8782, 2003). The NPS decision to revise the plan is in response to public comment on the February 2003 draft which indicated the need for revised management area descriptions and additional actions. The Revised Draft Backcountry Management Plan and EIS will be available in Fall 2004.

FOR FURTHER INFORMATION CONTACT: Mike Tranel, Chief of Planning, Denali National Park and Preserve. Telephone: (907) 644–3611.

SUPPLEMENTARY INFORMATION: The National Park Service (NPS) is preparing a backcountry management plan and EIS that will amend the 1986 General Management Plan for Denali National Park and Preserve. The purpose of the plan and EIS is to formulate a comprehensive plan for the backcountry of Denali National Park and Preserve, including designated wilderness that will provide management direction over the next 15–20 years. The backcountry of Denali National Park and Preserve is defined to include the entire park except for those areas designated specifically for development in the entrance area and along the road corridor. The NPS initiated this backcountry management plan EIS (**Federal Register**, 64 FR 49503, 1999) to address the rapidly growing level and diversity of uses, resource management needs, and the anticipated demand for future uses not foreseen or addressed in the 1986 General Management Plan. In the February 2003 Draft Plan and EIS, the NPS presented a range of four action alternatives based on planning objectives, park resources, and public input which described actions related to management area designation, recreational activities, and administrative activities.

The Revised Draft Plan and EIS will present four new action alternatives that respond to public comment on the February 2003 Draft Backcountry Management Plan and EIS. The revised alternatives will broaden the range of potential actions, clarify the descriptions of management areas, and describe methodologies for managing access to the park and preserve. It will also refine other actions described in the draft plan in response to substantive comments related to guided activities and commercial services, facilities, and administration.

Ralph Tingey,

Acting Regional Director, Alaska.

[FR Doc. 04–16993 Filed 7–26–04; 8:45 am]

BILLING CODE 4312–HT–P

DEPARTMENT OF THE INTERIOR

National Park Service

Merced Wild and Scenic River Revised Comprehensive Management Plan; Yosemite National Park, Mariposa and Madera Counties, CA; Notice of Intent To Prepare Supplemental Environmental Impact Statement

Summary: Pursuant to provisions of the National Environmental Policy Act (Pub. L. 91–190), the Wild and Scenic Rivers Act (Pub. L. 90–542), and the Order of the U.S. District Court for the Eastern District of California, the National Park Service is initiating public scoping for the conservation planning and environmental impact

analysis process necessary for revising the Merced Wild and Scenic River Comprehensive Management Plan (CMP) and preparing a Supplemental Environmental Impact Statement (SEIS). The revised plan will address factors identified by the Court, including user capacities throughout the entire park corridor and the river corridor boundary in El Portal. The purpose of this scoping phase is to elicit early public comments regarding issues and concerns to be addressed, including a suitable range of alternatives, appropriate mitigation measures, and the nature and extent of potential environmental impacts.

Background: In 1987, Congress designated 122 miles of the Merced River as Wild and Scenic, including 81 miles within Yosemite National Park and the El Portal Administrative Site. Subsequently the U.S. Forest Service and Bureau of Land Management jointly completed a comprehensive management plan for those portions of the Merced River within their jurisdiction outside of Yosemite National Park. The National Park Service (NPS) completed all planning for the NPS administered river segments with the signing, on August 9, 2000, of the Record of Decision for the Merced Wild and Scenic River Comprehensive Management Plan/Final Environmental Impact Statement (a revised Record of Decision was signed on November 3, 2000). In February 2001, the Merced Wild and Scenic River Comprehensive Management Plan was released, which set forth the approved management policies and guidelines for the Merced Wild and Scenic River (analyzed as the Preferred Alternative in the Merced Wild and Scenic River Comprehensive Management Plan/Final Environmental Impact Statement, and modified by the Record of Decision). In accord with the 1968 Wild and Scenic Rivers Act, the river segments within Yosemite National Park and the El Portal Administrative Site were classified, boundaries delineated, and outstandingly remarkable values identified.

In August 2000, subsequent to the original signing of the Record of Decision, a lawsuit was brought against the completed plan in the U.S. District Court for the Eastern District of California by the Friends of Yosemite Valley and Mariposans for Environmentally Responsible Growth (Friends of Yosemite Valley v. Norton, 194 F.Supp.2d 1066). In April 2004, the U.S. Court of Appeals for the Ninth Circuit issued an Order granting "a temporary stay of proceedings and an injunction prohibiting NPS from implementing any and all projects developed in reliance upon the invalid CMP.", and clarified its Opinion of October 27, 2003, stating the Court "held that the entire Merced Wild and Scenic River Comprehensive Management Plan (CMP) is invalid due to two deficiencies: (1) A failure to adequately address user capacities; and (2) the improper drawing of the Merced River's boundaries at El Portal" (Friends of Yosemite Valley v. Norton, 348 F.3d 789, 803 9th Cir. 2003).

The Merced Wild and Scenic River Comprehensive Management Plan/Final Environmental Impact Statement, its Record of Decision, the 2001 Merced Wild and Scenic River Comprehensive Management Plan, and the U.S. District Court Order defining the scope of this supplemental conservation planning effort, are available at *http://www.nps.gov/yose/planning/*. Copies of the 2001 Comprehensive Management Plan may also be obtained by phoning (209) 379–1365 or writing to the Superintendent at the address below.

Scoping and Public Meetings: Participation of interested individuals and organizations will be a key element of the current conservation planning and environmental analysis process. Concurrently, tribal, Federal, State, and local government representatives will be consulted. All written comments received during the scoping period and public meetings will aid in preparing the Merced Wild and Scenic River Revised Comprehensive Management Plan/Supplemental Environmental Impact Statement. Suggestions regarding issues to be addressed and information relevant to determining the scope of the current conservation planning and environmental impact analysis process are being sought for a 30-day period beginning on the publication date of this NOI (and immediately upon confirmation of this date an announcement of the duration of the scoping period will be posted on the park Web site, and press releases distributed to local and regional media). Public scoping meetings will be held during July including the following locations: Yosemite Valley, Mariposa, and the San Francisco Bay Area; dates, times, specific locations, and additional information will be released via regional and local news media, and updates will also be available at the above website or phone.

Scope of issues identified to date include: Land management, user capacities, appropriate types and levels of recreation, and protection and enhancement of the Merced River's Outstandingly Remarkable Values. All scoping comments received will be incorporated into a comment database and considered during revision of the CMP, and are to be addressed to the Superintendent, Attn: Merced River Plan, PO Box 577, Yosemite National Park, CA 95389, or faxed to (209) 379–1294, and must be postmarked not later than 30 days from the publication date of the NOI (if sent via e-mail or fax, transmitted by that date to *Yose_Planning@nps.gov).* Please note that names and addresses of people who comment become part of the public record. If individuals commenting request that their name or\and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There also may be circumstances wherein the NPS will withhold from the record a respondent's identity, as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments are not considered.

Decision Process: Announcements of future public involvement opportunities, including availability of the draft CMP/SEIS for review, will be achieved via regional news media, direct mailings, and the **Federal Register**. After due consideration of all comments received on the draft CMP/SEIS, a final document will be prepared and its availability similarly announced. As this is a delegated EIS, the official responsible for the final decision regarding the forthcoming plan is the Regional Director, Pacific West Region, National Park Service; the official responsible for subsequent implementation would be the Superintendent, Yosemite National Park.

Dated: June 9, 2004.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 04–16991 Filed 7–26–04; 8:45 am]

BILLING CODE 4312–FY–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 17, 2004. Pursuant to section 60.13 of 36 CFR Part 60 written comments

concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 11, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

IOWA

Bremer County

Bank of Sumner, 118 W. First St., Sumner, 04000900

Cerro Gordo County

Cannon, Amaziah and Cornelia (Wait), House, 1581 N. Eisenhower Ave., Mason City, 04000899

Linn County

Lustron Home #02102, 2009 Williams Blvd. SW, Cedar Rapids, 04000898

MASSACHUSETTS

Berkshire County

Lenox High School, 109 Housatonic St., Lenox, 04000903

Middlesex County

Silver Hill Historic District, Silver Hill, Westland Rds., Merriam St., Weston, 04000902

MISSISSIPPI

De Soto County

Dockery House, 3831 Robertson Gin Rd., Hernando, 04000901

NORTH CAROLINA

Forsyth County

Ardmore Historic District, Roughly bounded by Knollwood, Queen, Duke, and Ardsley Sts., Winston-Salem, 04000904

Nissen Building (Boundary Increase), 314 W. Fourth St., Winston-Salem, 04000907

Mecklenburg County

Blake, Chairman, House, 318 Chairman Blake Ln., Davidson, 04000905

Palmer Fire School, 2601 E. Seventh St., Charlotte, 04000906

PUERTO RICO

Cabo Rojo Municipality

Punta Ostiones, Address Restricted, Cabo Rojo, 04000908

Carolina Municipality

Quebrada Maracuto, Address Restricted, Carolina, 04000909

TEXAS

Kendall County

Comfort Historic District (Boundary Increase), Roughly bounded by TX 27. Lindner Ave., Cypress Creek, First St., and Front St., Comfort, 04000911

VIRGINIA

Brunswick County

Church Home for Aged, Infirm and Disabled Colored People, 236 Pleasant Grove Rd., Broadnax, 04000910

WASHINGTON

King County

Falls City Masonic Hall, 4304 337th Place SE, Fall City, 04000922

Neighbor—Bennett House, 4317–337th Place SE, Fall City, 04000921

Vincent School, (Rural Public Schools of Washington State MPS) 8010 W. Snoqualmie Valley Rd., Carnation, 04000920

WEST VIRGINIA

Hampshire County

Pugh, Capt. David, House, Cty Rte 14 at Cty Rte 23/4, Hooks Mills, 04000913

Jackson County

Ripley Historic District, Portions of Charleston and Highlawn Drs., Church, Court, Main, Maple, North, Seventh, and South Sts., Ripley, 04000919

Jefferson County

Halltown colored Free School, Halltown Rd., 0.5 mi. NE of US 340, Halltown, 04000912

Monongalia County

Fourth Ward School, 287 Eureka Dr., Morgantown, 04000914

Pendleton County

Boggs Mill, US 33 and WV 28, N of jct. with Cty Rte 9, Seneca Rocks, 04000915

Pleasants County

Pleasants County Courthouse, (County Courthouses of West Virginia MPS) 301 Court Ln., St. Marys, 04000917

Ritchie County

Ritchie County Courthouse, (County Courthouses of West Virginia MPS) 115 E. Main St., Harrisville, 04000916

Wirt County

Wirt County Courthouse, (County Courthouses of West Virginia MPS) Washington St., Elizabeth, 04000918

A request for REMOVAL has been made for the following resource(s):

MISSISSIPPI

Yalbusha County

Newberger, Leopold, House 714 Depot St. Coffeeville 97001300

PENNSYLVANIA

Bucks County

Mood's Covered Bridge (Covered Bridges of the Delaware River Watershed TR) E of Perkasie on LR 09118, East Rockhill Township Perkasie 80003440

A request for a MOVE has been made for the following resource:

MISSISSIPPI

Hinds County

Porter Family Homestead (Raymond and Vicinity MRA) Off MS 18 Raymond vicinity, 86001702

[FR Doc. 04–16994 Filed 7–26–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 3, 2004. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 11, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Orange County

Hillcrest Park, 200 Brea Blvd., Fullerton, 04000812

IOWA

Clayton County

St. Mary's Catholic Church Historic District, (Guttenberg, Iowa MPS) 502,518,520 S. Second St., 214 Herder St., Guttenberg, 04000817

Dubuque County

Langworthy Historic District, (Dubuque, Iowa MPS) Langworthy, West-Third, Melrose Terrace, vet. Hill and W. 5th, Alpine and Walnut bet. Solon and W. Fifth, Dubuque, 04000813

West Eleventh Street Historic District, (Dubuque, Iowa MPS) Bounded by Grove Terrace, Loras Blvd., Wilbur and Walnut Sts., Dubuque, 04000814

Polk County

Big Creek Schoolhouse, 112 3rd St., Polk City, 04000816

Hazen, Allen, Water Tower, 4800 Hickman Rd., Des Moines, 04000819
Hubbell Building, 904 Walnut St., Des Moines, 04000818

Wapello County

B'naie Jacob Synagogue, (Ottumwa MPS) 529 E. Main, Ottumwa, 04000815

MINNESOTA

Otter Tail County

People's Union Church, 48566 205th Ave., Scambler Township, 04000836

Todd County

Batcher Opera House Block, Fifth St. and Second Ave., Staples, 04000837

MISSISSIPPI

Washington County

Gamwyn Park Historic District, Bounded by Gamwyn Park Dr., N. Gamwyn Dr., E. Gamwyn Dr., S. Dr., and W. Gamwyn Dr., Greenville, 04000820

NEW YORK

Broome County

Riverside Cemetery, 400 Vestal Ave., Endicott, 04000824

New York County

Pier 57, Eleventh Ave. at end of W. 15th St., New York, 04000821

Otsego County

Bassett Family House, 2399 Main St., Mt. Vision, 04000823

Washington County

Revolutionary War Cemetery, 9 Archibald St., Salem, 04000822

NORTH CAROLINA

Alleghany County

Rock House, 7 Chestnut Ln., Roaring Gap, 04000827

Buncombe County

Eller, Joseph P., House, 494 Clarks' Chapel Rd., Weaverville, 04000826
Riverside Industrial Historic District, Roughly bounded by Clingman Ave., Lyman St., Roberts St., and Riverside Dr., Asheville, 04000825

Carteret County

Morehead City Municipal Building, 202 S. Eighth St., Morehead City, 04000828

OHIO

Cuyahoga County

Kies, Lewis, House, 4208 Prospect Ave., Cleveland, 04000833

Hancock County

Adams School, 826 Washington St., Findlay, 04000832

OREGON

Lane County

Dads' Gates, 11th Ave. E. bet. Kincaid St. and Franklin Blvd., Eugene, 04000829

Multnomah County

Hotel Alder, (Downtown Portland, Oregon MPS) 415 SW Alder St., Portland, 04000831
Kline, Moses, and Ida, House, 2233 SW 18th Ave., Portland, 04000830

PENNSYLVANIA

Chester County

Williams, Ellis, House, 1711 E. Boot Rd., East Goshen, 04000835

Cumberland County

Givjn, Amelia S., Free Library, 114 N. Baltimore Ave., Mt. Holly Springs, 04000841

Lehigh County

Slatington Historic District, Roughly bounded by Ridge Alley, Chesnut St., Railroad St., Kern St., Hill Alley, 5th St. and Dowell, Slatington, 04000839
Vigilant Fire Company Firemen's Monument, Union Cemetery W side of PA 873, approx. 1/3 mil S of Slatington, Washington Township, 04000838

Northampton County

Stout, Isaac, House, 50 Durham Rd., Williams, 04000834

VIRGINIA

Bedford County

Thomas Methodist Episcopal Chapel, VA 684, Penicks Mill Rd., Thaxton, 04000844

Charlottesville Independent City

Recoleta, 120 Rothery Rd., Charlottesville (Independent City), 04000858

Clarke County

Chapel Hill, 300 Chapel Hill Ln., Berryville, 04000846

Dinwiddie County

Montrose, 19216 Old White Oak Rd., McKenney, 04000855

Fairfax County

Four Stairs, 840 Leigh Mill Rd., Great Falls, 04000842
Great Falls Grange Hall and Forestville School, 9812 and 9818 Georgetown Pike, Great Falls, 04000861
Taft Archeological Site #029–5411, Address Restricted, Lorton, 04000859

Fluvanna County

Pleasant Grove, Thomas Jefferson Pkwy, VA 53, Palmyra, 04000843

Franklin Independent City

Franklin Historic District (Boundary Increase), Jct. of U.S. 58 and VA 258, Franklin (Independent City), 04000853

King George County

Millbank, 15615 Millbank Rd. (VA 631), Port Conway, 04000845

Louisa County

Bloomingtong, Bloomington Ln., Louisa, 04000850

Page County

Milford Battlefield, VA 340 and VA 665, Overall, 04000854

Richmond Independent City

Broad Street Commercial Historic District (Boundary Increase), 709–916 W. Broad St., 308–310 N. Laurel St., 301–306 Gilmer St., Richmond (Independent City), 04000851
Grace Hospital, 401 West Grace St., Richmond (Independent City), 4000856

Suffolk Independent City

Nansemond County Training School, (Rosenwald Schools in Virginia MPS) 9307 Southwestern Blvd., Suffolk (Independent City), 04000847

Virginia Beach Independent City

Camp Pendleton—State Military Reservation Historic District, Roughly bounded by General Booth Blvd., S. Birdneck Rd., and the Atlantic Ocean, Virginia Beach (Independent City), 04000852

Warren County

Balthis House, 55 Chester St., Front Royal, 04000860

Washington County

Walnut Grove, 14081 Lee Highway, Bristol, 04000840

Williamsburg Independent City

Whaley, Matthew, School, 301 Scotland St., Williamsburg (Independent City), 04000857

WISCONSIN

Clark County

Owen High School, 101 East Third St., Owen, 04000848

Milwaukee County

Wadhams Gas Station, 1647 S. 76th St., West Allis, 04000849

A request for REMOVAL has been made for the following resources:

ILLINOIS

Coles County

Cleveland, Cincinnati, Chicago and St. Louis Railroad Station, 1632 Broadway St., Mattoon, 86000135

Du Page County

Middaugh, Henry C., House, 66 Norfolk Ave., Clarendon Hills, 78003105

Macon County

Decatur and Macon County Welfare Home for Girls, 736 S. Martin Luther King Jr. Dr., Decatur, 99000982

[FR Doc. 04–16995 Filed 7–26–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before July 10, 2004. Pursuant to § 60.13 of 36 CFR

part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by August 11, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

CALIFORNIA

Santa Clara County

Green Gables, Channing Ave., Ivy Ln., Greer Rd., Wildwood Ln., Palo Alto, 04000863
Greenmeadow (Units I and II), Nelson Dr., El Capitan Pl., Adobe Pl., Creekside Dr., Palo Alto, 04000862

ILLINOIS

Cook County

South Water Market, Bounded by 14th Place, the 16th St. rail embankment, Racine Ave., and Morgan St., Chicago, 04000870
Washington Park, (Chicago Park District MPS) 5531 S. King Dr., Chicago, 04000871

Henry County

Henry County Courthouse, 307 W. Center St., Cambridge, 04000869

Kendall County

Farnsworth House, 14520 River Rd., Plano, 04000867

Madison County

Collinsville City Hall and Fire Station, 125 S. Center St., Collinsville, 04000865

Pike County

Massie Variety Store, 110 S. Main St., New Canton, 04000864

Stephenson County

People's State Bank, 300 W. High St., Orangeville, 04000868

Will County

Ninth Street Seven Arch Stone Bridge, Ninth St. spanning Deep Run Creek, Lockport, 04000866

NEBRASKA

Keith County

Standard Oil Red Crown Service Station, 220 N. Spruce St., Ogallala, 04000897

NEW YORK

Delaware County

Delaware and Northern Railroad Station, Cabin Hill Rd., Andes, 04000872

Queens County

Maple Grove Cemetery, 83–15 Kew Gardens Rd., Kew Gardens, 04000874

Rensselaer County

Van Alen, John Evert, House, 1744 Washington Ave. Ext., Defreestville, 04000873

Rockland County

Van Houten's Landing Historic District, North Broadway, School St., Ellen St., Castle Heights Ave., Van Houten St., Village of Upper Nyack, 04000877

Washington County

Hartford Baptist Church and Cemetery, 56 NY 23 (Main St.), Hartford, 04000875

Westchester County

Young, Isaac, House, 114 Pinesbridge Rd., Ossining, 04000876

OREGON

Baker County

Superintendent's House, 271 Mill St., Sumpter, 04000879

Multnomah County

Reed—Wells House, 2168 NE Multnomah St., Portland, 04000878

PENNSYLVANIA

Blair County

Downtown Altoona Historic District (Boundary Increase), 1330–1410 and 1409–1431 11th Ave. and 1331–1429 Ave., Altoona, 04000885

Bucks County

Warner, Isaiah, Farmstead, 60 Thompson Mill Rd., Wrightstown Township, 04000883

Lackawanna County

Waverly Historic District, Roughly centered on Academy St. and Abington Rd., inc. Carbondale Rd., Beech, Cole, Church and Dearborn St., Abington, 04000884

Philadelphia County

Beatty's Mills Factory Building, 2446–2468 Coral St., Philadelphia, 04000881
Mulford Building, 640 N. Broad St., Philadelphia, 04000882

TEXAS

Cass County

Pleasant Hill School, (Rosenwald School Building Program in Texas MPS) 2722 Farm Rd. 1399, Linden, 04000891

Comal County

Comal Power Plant, Jct. of Landa Rd. and Landa Park Dr., New Braunfels, 04000895

Dallas County

Dallas Downtown Historic District, Roughly bounded by Federal, N. St. Paul, Pacific, Harwood, S. Pearl, Commerce, S Ervay, Akard, Commerce and Field, Dallas, 04000894

Harris County

Burnett House, (Houston Heights MRA) 219 W. Eleventh St., Houston, 04000880

Hays County

Good, Isham Jones, Homestead, (Rural Properties of Hays County, Texas MPS) 13401 Evergreen Way, Austin, 04000896
Porter, Katherine Anne, House, (Rural Properties of Hays County, Texas MPS) 508 W. Center St., Kyle, 04000893

San Augustine County

San Augustine County Courthouse and Jail, Courthouse Sq., San Augustine, 04000892

Smith County

St. James Colored Methodist Episcopal Church, (Tyler, Texas MPS) 408 N. Border Ave., Tyler, 04000887

Tarrant County

Our Lady of Victory Academy, 801 W. Shaw St., Fort Worth, 04000886

Van Zandt County

Humphries, William H. and Molly P., House, 201 S. Main St., Edgewood, 04000890

VIRGINIA

Fauquier County

Waveland, VA 691, Carter's Run Rd., Marshall, 04000888

Spotsylvania County

Walnut Grove, Address Restricted, Spotsylvania, 04000889

[FR Doc. 04–16996 Filed 7–26–04; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–503]

In the Matter of Certain Automated Mechanical Transmission Systems for Medium-Duty and Heavy-Duty Trucks and Components Thereof; Notice of Commission Decision Not to Review an Initial Determination Terminating the Investigation as to One Patent and as to Certain Claims of Three Other Patents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID")(Order No. 20) terminating the above-captioned investigation as to one asserted patent and as to certain claims of three other asserted patents.

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) 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 January 7, 2004, based on a complaint filed by Eaton Corporation of Cleveland, Ohio. 69 FR 936 (January 7, 2004). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automated mechanical transmissions for medium-duty and heavy-duty trucks, and components thereof, by reason of infringement of claim 15 of U.S. Patent No. 4,899,279 ("the '279 patent"); claims 1–20 of U.S. Patent No. 5,335,566 ("the '566 patent"); claims 2–4 and 6–16 of U.S. Patent No. 5,272,939 ("the '939 patent"); claims 1–13 of U.S. Patent No. 5,624,350 ("the '350 patent"); claims 1, 3, 4, 6–9, 11, 13, 14, 16, and 17 of U.S. Patent No. 6,149,545 ("the '545 patent"); and claims 1–16 of U. S. Patent No. 6,066,071 ("the '071 patent"). The complaint and notice of investigation named three respondents: ZF Meritor LLC, of Maxton, North Carolina; ZF Friedrichshafen AG, of Friedrichshafen, Germany; and ArvinMeritor, Inc., of Troy, Michigan.

On June 4, 2004, pursuant to Commission rule 210.21(a)(1), complainant moved for partial termination of the investigation as to claims 3, 7, and 8 of the '279 patent, claims 2, 3, and 5–20 of the '566 patent, claims 4, 7, and 12 of the '350 patent, claims 4, 8–9, and 14 of the '545 patent, and claims 3–4, 6–7, and 12–14 of the '071 patent. On June 18, 2004, complainant moved for leave to amend and supplement its motion to include partial termination of the investigation as to the '071 patent in its entirety. On June 24, 2004, the ALJ issued the subject ID granting complainant's motion, as amended, except as to claims 3, 7, and 8 of the '279 patent, which he found had not been put in issue in the Commission's notice of investigation. He stated that he was making no decision on complainant's statement that it intended to pursue claim 1 of the '279 patent, the question of pursuit of that claim not being before him. He also stated that he considered respondents' previous summary determination motion relating to the '071 patent to be moot. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: July 21, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–16989 Filed 7–26–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Combating Exploitive Child Labor Through Education in Colombia; Combating Exploitive Child Labor Through Education in Guinea; Combating Exploitive Child Labor Through Education in Niger

July 27, 2004.

AGENCY: Bureau of International Labor Affairs, Department of Labor.

Announcement Type: New. Notice of Availability of Funds and Solicitation for Cooperative Agreement Applications.

Funding Opportunity Number: SGA 04–10.

Catalog of Federal Domestic Assistance (CFDA) Number: Not applicable.

Key Dates: Deadline for Submission of Application is August 26, 2004.

SUMMARY: The U.S. Department of Labor, Bureau of International Labor Affairs, will award up to U.S. $9.5 million through one or more cooperative agreements to an organization or organizations to improve access to quality education programs as a means to combat exploitive child labor in Colombia (up to $3.5 million), Guinea (up to $4 million), and Niger (up to $2 million). The activities funded will complement and expand upon existing projects and programs to improve basic education in these countries, and, where applicable, provide access to basic education to children in areas with a high incidence of exploitive child labor. Applications must respond to the entire Statement of Work outlined in this Solicitation for Cooperative Agreement Applications. In Colombia and Guinea, activities under these cooperative agreements will provide or facilitate the direct delivery of quality basic education to working children and those at risk of entering work. In Niger, activities under this cooperative agreement will support a small-scale project aimed at increasing the knowledge base on child labor and education, facilitating the direct delivery of quality basic education to working children, and building the capacity of government and local actors working in these sectors.

I. Funding Opportunity Description

The U.S. Department of Labor (USDOL), Bureau of International Labor Affairs (ILAB), announces the availability of funds to be awarded by cooperative agreement to one or more qualifying organizations for the purpose of expanding access to and quality of basic education and strengthening government and civil society's capacity to address the education needs of working children and those at risk of entering work in Colombia, Guinea, and Niger. ILAB is authorized to award and administer this program by the Consolidated Appropriations Act, 2004, Pub. L. No. 108–199, 118 Stat. 3 (2004). The cooperative agreement or cooperative agreements awarded under this initiative will be managed by ILAB's International Child Labor Program to assure achievement of the stated goals. Applicants are encouraged to be creative in proposing cost-effective interventions that will have a demonstrable impact in promoting school attendance in areas of those countries where children are engaged in or are most at risk of working in the worst forms of child labor.

1. Background and Program Scope

A. USDOL Support of Global Elimination of Exploitive Child Labor

The International Labor Organization (ILO) estimated that 211 million children ages 5 to 14 were working around the world in 2000. Full-time child workers are generally unable to attend school, and part-time child laborers balance economic survival with schooling from an early age, often to the detriment of their education. Since 1995, USDOL has provided over U.S. $275 million in technical assistance funding to combat exploitive child labor in over 60 countries around the world.

Programs funded by USDOL range from targeted action programs in specific sectors to more comprehensive efforts that target the worst forms of child labor as defined by ILO Convention 182. From FY 2001 to FY 2004, the U.S. Congress has appropriated U.S. $148 million to USDOL for a Child Labor Education Initiative to fund programs aimed at increasing access to quality, basic education in areas with a high incidence of abusive and exploitive child labor. The cooperative agreement(s) awarded under this solicitation will be funded through this initiative.

USDOL's Child Labor Education Initiative seeks to nurture the development, health, safety and enhanced future employability of children around the world by increasing access to basic education for working children and those at risk of entering work. Elimination of exploitive child labor depends in part on improving access to, quality of, and relevance of education.

The Child Labor Education Initiative has four goals:

i. Raise awareness of the importance of education for all children and mobilize a wide array of actors to improve and expand education infrastructures;

ii. Strengthen formal and transitional education systems that encourage working children and those at risk of working to attend school;

iii. Strengthen national institutions and policies on education and child labor; and

iv. Ensure the long-term sustainability of these efforts.

B. Barriers to Education for Working Children, Country Background, and Focus of Solicitation

Throughout the world, there are complex causes of exploitive child labor as well as barriers to education for children engaged in or at risk of entering exploitive child labor. These include: Poverty; education system barriers; infrastructure barriers; legal and policy barriers; resource gaps; institutional barriers; informational gaps; demographic characteristics of children and/or families; cultural and traditional practices; and weak labor markets.

Although these elements and characteristics tend to exist throughout the world in areas with a high incidence of exploitive child labor, they manifest themselves in specific ways in each country of interest in this solicitation. Therefore, specific, targeted interventions are required in each target country. In Colombia, this project must provide or facilitate the direct delivery of education to children working in the flower cutting industry in the Savannah of Bogotá, support the collection of data on this target population, and build the capacity of national institutions to address child labor and education. Lessons from the project's direct interventions should be used to develop broader policies aimed at improving access and quality of education for this target group in Colombia and other countries in the region. In Guinea, this project must aim to provide or facilitate the direct delivery of formal education and/or non-formal, vocational, or technical training to children at risk of or working in the worst forms of child labor. The project must include innovative strategies to promote access to education as well as quality of such education, and should include measures to ensure the sustainability of interventions. And in Niger, activities under this cooperative agreement must support a small-scale project to address gaps in the knowledge base on child labor and education, facilitate access to quality, basic education for children participating in or at risk of entering the worst forms of child labor, and strengthen national institutions and policies in these sectors. For any of these projects, applicants must be able to identify the specific barriers to education and the education needs of specific children targeted in their project (*e.g.*, children withdrawn from work, children at high risk of dropping out into the labor force, and/or children still working in a particular sector) and how direct education service delivery, capacity building and policy change can be used to address particular barriers and needs. Brief background information on education and exploitive child labor in each of the countries of interest is provided below. For additional information on exploitive child labor in these countries, applicants are referred to *The Department of Labor's 2003 Findings on the Worst Forms of Child Labor* available at *http://www.dol.gov/ILAB/media/reports/iclp/tda2003/overview.htm* or in hard copy from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov*.

C. Barriers to Education for Working Children in Colombia

In 2001, the Colombian National Administrative Department of Statistics estimated that 14.5 percent of children, or 2.5 million children, ages 5 to 17 were working. This number represents 23 percent of the total population of 10,833,000 within that age range. Most working children are involved in agriculture-related activities. The majority of these children work in the country's central region, especially in the rural areas surrounding the cities of Medellín, Manizares, Bucaramanga, and in the Savannah of Bogotá.

ILO/IPEC reports that 70 percent of children working in agriculture worldwide are engaged in high-risk activities. There are reports that children illegally employed in Colombia's flower cutting industry are exposed to hazardous working conditions. They handle highly toxic pesticides, mixing them in tanks without gloves, masks or any kind of protection. The long-lasting health effects pesticides cause can be aggravated by malnutrition, which is also endemic among these children. Children also work long hours and at a very fast pace, especially during Christmas and Valentine's Day holidays. Intermediary employment agencies reportedly bring children to work when demand for flowers rise.

Commercial flower cultivation takes place in the Savannah in the outskirts of Bogotá, and it has been reported that most children working in the flower industry live in the localities of Madrid and Funza. Children's participation in the flower industry is difficult to ascertain. As of yet, there is no reliable data on participation, working conditions, or how these children's education and well-being is affected.

Under the Colombian Constitution, basic education is free and compulsory for children ages 5 to 15. In 2003, 86 percent of the total school age population was enrolled in formal basic education. The majority of children attending school reside in urban areas in all regions. Fifty-one percent of children not enrolled in formal education reside in rural areas and are between the ages of 12 and 17. In rural areas, children's work in agriculture has been reported as the main reason for school absenteeism. Studies show that even though rural families recognize the value of reading, writing, and arithmetic, they are less willing to send their children to school—especially to secondary school—because they see them as ready to assume economic responsibilities, or need them to work at home on agricultural tasks. Other factors limiting education in rural areas include proximity to schools, scarcity of teaching materials, and the relevance of the curriculum to rural life.

A USDOL-funded education initiative, funded under this solicitation, will provide or facilitate the direct delivery of education to children working in the flower industry in the

Savannah. Due to the lack of interventions in commercial agriculture in Colombia, project activities must include the collection of data on the nature and extent of child labor in the flower industry of Colombia. The data collection is expected to focus on the availability, quality and extent of education for child laborers in the flower industry. Based on the findings, a project should address the education needs of those children.

Funds provided under this solicitation are expected to supply the seed money to develop effective approaches to provide basic, technical, and vocational education to children involved in the flower industry of Colombia. Education could include basic literacy and numeracy, as well as means to continue the education of children who drop out of school during flower harvesting and other busy periods.

Colombia is currently undergoing a process of decentralization of government activities. In order to maximize impact and ensure sustainability, the project must coordinate with local government efforts. Applicants are encouraged to consult with civil society organizations and government agencies, such as the Ministry of Social Protection, the Ministry of Education, and the Colombian Institute of Family Welfare, in order to avoid replication and strengthen existing efforts to prevent and eliminate child labor. Under this initiative, the local community will play a key role in the schools of the targeted area, linking local culture and needs to the education system. Moreover, lessons learned from projects such as those implemented by the National Coffee Federation-Ministry of Education must be taken into account at the time of proposal development.

The United States is the main importer of flowers from Colombia, accounting for 80 percent of Colombian flower exports. As such, the Colombian flower industry has a keen interest in complying with international labor standards and domestic labor laws. Applicants are encouraged to promote private-public partnerships in order to leverage resources to combat child labor in the flower industry.

Barriers to Education for Working Children in Guinea

In 2001, the ILO estimated that 30.5 percent of children ages 10 to 14 years in Guinea were working. These children begin working beside their parents at a young age, often as early as 5 years in rural areas. The majority of working children are found in the domestic or informal sectors, carrying out activities such as subsistence farming, petty commerce, fishing, and small-scale mining. In urban areas such as Conakry, children work in small businesses, such as restaurants, beg on the streets, sell cheap goods for traders, carry baggage, and shine shoes. Children also work in gold and diamond mines, granite and sand quarries, and as apprentices to mechanics, electricians, and plumbers, and in the commercial sex industry.

Guinea is a source, transit and destination country for trafficking in persons, including children, for sexual exploitation and labor, and internal trafficking occurs from rural to urban areas. In addition, UNICEF estimates that 2,000 Guinean child soldiers, one-fifth of whom are girls, will require demobilization upon their return from Liberia's recent armed conflict.

There are numerous obstacles to education in Guinea, particularly among the country's displaced and war-affected population. Children, particularly girls, may not attend school or may choose to dropout in order to assist their parents with domestic or agricultural work. In general, enrollment rates are substantially lower in rural areas. This is due in part to a lack of transportation to and from schools, a lack of school facilities, and an inadequate number of teachers, many of whom do not receive remuneration for their work. Quality of education is negatively affected by limited government resources and a lack of available school supplies and equipment.

According to various estimates, there are between 100,000 and 150,000 refugees and displaced persons residing in Guinea's forest region. An additional 100,000 people are reported to live in refugee camps in the region. The war-affected, displaced children in this region are reportedly subject to economic exploitation and sexual abuse. In addition, while limited access to education is available within the refugee camps, there is a lack of sufficient educational opportunities for children who are not located near the camps, or do not otherwise have access to camp facilities.

A USDOL-funded education initiative in Guinea is expected to provide or facilitate the direct delivery of formal education and/or non-formal, vocational, or technical training to children engaged in, at risk of, and/or removed from exploitive child labor in a defined sector(s) or geographic region. The project should include innovative strategies to promote access to education as well as quality of such education, and should include measures to ensure the sustainability of interventions.

The project may include some or all of the following activities: awareness-raising; development of multi-sectoral partnerships and networks in support of the education of the target group; development and field testing of learning materials that improve educational quality; development or improvement of pre-vocational and vocational programs; strategies to enhance the relevance of schooling for children and to provide marketable skills for children reaching employable age; targeted teacher training to improve classroom methods and strengthen the capacity of educators to nurture the academic success of children removed from child labor; pre-school and extracurricular/enrichment activities for children removed from work or at risk of entering the workforce; workshops that encourage consultation and joint policy and program planning among national institutions working in education and child labor policy; provision of training and technical assistance to staff of key organizations (*e.g.*, education system and school administrators, teachers' unions, policy units in Guinean ministries) to increase their capacity in areas such as leadership, management, strategic planning, educational finance, implementation of policy change, and outreach to constituencies in order to effectively implement education programs that benefit child laborers; and the development and/or strengthening of monitoring and evaluation of the educational status and performance of children removed from work or at risk of entering the workforce.

Barriers to Education for Working Children in Niger

In 2000, UNICEF estimated that 70.1 percent of children ages 5 to 14 years in Niger were working in paid and unpaid activities. While general information is available about the types of work that children perform, there has not been a comprehensive survey that provides detailed data or information on the extent or nature of child labor in Niger. Studies indicate that children work primarily in the informal and agricultural sectors. Children in rural areas mainly work on family farms gathering water or firewood, pounding grain, tending animals, or working in the fields. Children as young as 6 years old are reported to work on grain farms in the southwest. Children also shine shoes; guard cars; work as apprentices for artisans, tailors, and mechanics; perform domestic work; and work as luggage porters and street beggars.

Children are also engaged in the gold mining and meatpacking, processing and rendering sectors where they are exposed to numerous hazards.

Niger is a source, transit, and destination country for trafficking victims, including children. Victims are trafficked to Niger primarily from Benin, Togo, Nigeria, and Ghana. Most of these children end up either in domestic work or prostitution. Children from Niger are trafficked within the country from rural to urban areas and within the West African region for the purpose of forced labor, particularly in domestic service. It is also reported that some teachers at religious schools exploit their young male students by coercing them to beg in the streets. The commercial sexual exploitation of children for prostitution and pornography is a growing problem in Niger, and sometimes occur with the consent or knowledge of family members.

Primary school attendance rates are low in Niger, particularly for girls. About 60 percent of children who finish primary schools are boys, as the majority of girls rarely attend school for more than a few years. Girls have limited access to education, which may be attributed to traditional practices, conservative religious beliefs and extreme poverty. Many children are forced to work rather than attend school, particularly during planting or harvest periods. In addition, nomadic children in northern parts of the country often do not have the opportunity to attend school.

Among the challenges faced by the Nigerien education system are antiquated primary teaching methodologies; pre-school education that is restricted primarily to urban areas; a reluctance by parents to send their children to school due to inefficiencies in the educational system and mediocre results among students; inadequate infrastructure; lack of motivated teachers due to delayed disbursement of salaries; lack of supplies; and an economic crisis that makes it difficult for parents to cover the costs of schooling.

Under this solicitation, USDOL is seeking proposals for a small-scale project in Niger to increase the knowledge base on child labor and education and to improve government and civil society capacity to initiate activities or national plans of action in these sectors. The project may include limited direct action in a defined sector or geographic region to facilitate access to quality, basic education for children participating in or at risk of entering the worst forms of child labor.

Note to Applicants for All Countries: All applicants must have country presence, or partner with an established and eligible organization within the country. For additional information on exploitive child labor in Colombia, Guinea, and Niger, applicants are strongly encouraged to refer to *The Department of Labor's 2003 Findings on the Worst Forms of Child Labor* available at *http://www.dol.gov/ILAB/media/reports/iclp/tda2003/overview.htm.*

2. Statement of Work

Taking into account the challenges of educating working children in each country of interest, the applicant must facilitate, and implement, as appropriate, creative and innovative approaches to promote policies and services that will enhance the provision of educational opportunities to children involved in or at risk of entering exploitive child labor. The expected outcomes/results of the project are, through improved policies and direct education service delivery, as applicable, to: (1) Increase educational opportunities and access (enrollment) for children who are engaged in, at risk of, and/or removed from exploitive child labor, particularly its worst forms; (2) encourage retention in, and completion of educational programs; and (3) expand the successful transition of children in non-formal education into formal schools or vocational programs.

In the course of implementation, each project must promote the goals of USDOL's Child Labor Education Initiative listed above in Section I(1)(A). Because of the limited available resources under this award, applicants are expected to implement programs that complement existing efforts and, where appropriate, replicate or enhance successful models to serve expanded numbers of children and communities. However, applicants must not duplicate the activities of existing efforts and/or projects and are expected to work within host government child labor and education frameworks. In order to avoid duplication, enhance collaboration, expand impact, and develop synergies, the cooperative agreement awardee (hereafter referred to as "Grantee") must work cooperatively with regional and national stakeholders in developing project interventions. Applicants are expected to consider the economic and social contexts of each country when formulating project strategies and to recognize that approaches applicable in one country may not be relevant to others.

Applicants are strongly encouraged to discuss proposed interventions, strategies, and activities with host government officials and civil society organizations during the preparation of an application for this cooperative agreement solicitation. Applicants are encouraged to include letters of endorsement/acknowledgment from the host government's Ministry of Labor and Ministry of Education with the proposal.

Partnerships between more than one organization are also eligible and encouraged, in particular with qualified, locally-based organizations in order to build local capacity; in such a case, however, a lead organization must be identified. Applicants whose strategies include the direct delivery of education are encouraged to enroll at least one-quarter of the targeted children that the Grantee is attempting to reach in educational activities during the first year of project implementation. Under this cooperative agreement, vocational training for adolescents and income generating alternatives for parents are allowable activities.

Although USDOL is open to all proposals for innovative solutions to address the challenges of providing increased access to education to the children targeted, the applicant must, at a minimum, prepare responses following the outline of a preliminary project design document presented in Appendix A and as discussed in Sections IV(2), V(1)(A), VI(3)(A) and VI(3)(D). This response will be the foundation for the final project document that must be approved after award of the cooperative agreement.

If the application does not propose interventions aimed toward the target group or geographical area as identified, then the application may be considered unresponsive.

Note to All Applicants: Grantees are expected to consult with and work cooperatively with stakeholders in the countries, including the Ministries of Education, Labor, and other relevant ministries, NGOs, national steering/advisory committees on child labor, education, faith and community-based organizations, and working children and their families. Grantees should ensure that their proposed activities and interventions are within those of the countries' national child labor and education frameworks and priorities, as applicable. Grantees are strongly encouraged to collaborate with existing projects, particularly those funded by USDOL, including Timebound Programs and other projects implemented by ILO/IPEC. As discussed in Section V(1)(D), up to five (5) extra points will be given to applications that include non-Federal resources that significantly expand the project's scope. However, applicants are instructed that the project budget submitted with the

application must include all necessary and sufficient funds, without reliance on other contracts, grants, or awards, to implement the applicant's proposed project activities and to achieve proposed project goals and objectives under this SGA. USDOL will not provide additional funding to cover costs not included in the project budget, for example, if anticipated funding from another contract, grant, or award fails to materialize.

II. Award Information

Type of assistance instrument: Cooperative agreement. USDOL's involvement in project implementation and oversight is outlined in Section VI(2). The duration of the projects funded by this solicitation is four (4) years. The start date of program activities will be negotiated upon awarding of the cooperative agreement, but will be no later than September 30, 2004.

Up to U.S. $9.5 million will be awarded under this solicitation, with up to $3.5 million for Colombia, up to $4 million for Guinea, and up to $2 million for Niger. USDOL may award one or more cooperative agreements to one, several, or a partnership of more than one organization(s) that may apply to implement the program. A Grantee must obtain prior USDOL approval for any sub-contractor before award of the cooperative agreement.

III. Eligibility Information

1. Eligible Applicants

Any commercial, international, educational, or non-profit organization, including any faith-based, community-based, or public international organization, capable of successfully developing and implementing education programs for working children or children at risk of entering exploitive work in the countries of interest is eligible to apply. Partnerships of more than one organization are also eligible, and applicants are strongly encouraged to work with organizations already undertaking projects in the countries of interest, particularly local NGOs, including faith-based and community-based organizations. In the case of partnership applications, a lead organization must be identified. An applicant must demonstrate a country presence, independently or through a relationship with another organization(s) with country presence, which gives it the ability to initiate program activities upon award of the cooperative agreement. Applicants applying for more than one Cooperative Agreement must submit a separate application for each country. If applications for more than one of the Cooperative Agreements (Colombia, Guinea, Niger) are combined, they will not be considered. (All applicants are requested to complete the Survey on Ensuring Equal Opportunity for Applicants (OMB No. 1225–0083), which is available online at *http://www.dol.gov/ILAB/grants/sga0410/bkgrdSGA0410.htm).* The capability of an applicant or applicants to perform necessary aspects of this solicitation will be determined under the criteria outlined in the Application Review Information section of this solicitation (Section V(1)).

Please note that to be eligible, Cooperative Agreement applicants classified under the Internal Revenue Code as a 501(c)(4) entity (see 26 U.S.C. 501(c)(4)), may not engage in lobbying activities. According to the Lobbying Disclosure Act of 1995, as codified at 2 U.S.C. 1611, an organization, as described in Section 501(c)(4) of the Internal Revenue Code of 1986, that engages in lobbying activities will not be eligible for the receipt of Federal funds constituting an award, grant, cooperative agreement, or loan.

2. Cost Sharing or Matching

This solicitation does not require applicants to share costs or provide matching funds. However, the leveraging of resources and in-kind contributions is strongly encouraged and is a ranking factor worth five additional points.

3. Other Eligibility Criteria

In accordance with 29 CFR Part 98, entities that are debarred or suspended shall be excluded from Federal financial assistance and are ineligible to receive funding under this solicitation. In judging organizational capacity, USDOL will take into account not only information provided by an applicant, but also information from the Department regarding past performance of organizations that have implemented or are implementing Child Labor Education Initiative projects or activities for USDOL (see Section V(1)(B)). Past performance will be rated by the timeliness of deliverables, and the responsiveness of the organization and its staff to USDOL communications regarding deliverables and cooperative agreement or contractual requirements. Lack of past experience with USDOL projects, cooperative agreements, grants, or contracts is not a bar to eligibility or selection under this Solicitation.

With regard to legal rules pertaining to inherently religious activities by organizations that receive Federal Financial Assistance, neutral, non-religious criteria that neither favor nor disfavor religion will be employed in the selection of cooperative agreement recipients. Neutral, non-religious criteria that neither favor nor disfavor religion must be employed by Grantees in the selection of project beneficiaries and subawardees.

In addition, the U.S. Government is generally prohibited from providing direct financial assistance for inherently religious activities. Funds awarded under this solicitation may not be used for religious instruction, worship, prayer, proselytizing or other inherently religious activities.

IV. Application and Submission Information

1. Address To Request Application Package

This solicitation contains all of the necessary information and forms needed to apply for cooperative agreement funding. This solicitation is published as part of this **Federal Register** notice. Additional copies of the **Federal Register** may be obtained from your nearest U.S. Government office or public library or online at *http://www.archives.gov/federal_register/index.html.*

2. Content and Form of Application Submission

One (1) blue ink-signed original, complete application in English plus two (2) copies of the application, must be submitted to the U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference Solicitation 04–10, Washington, DC 20210, not later than 4:45 p.m. Eastern Time, August 26, 2004. Applicants may submit applications for one or more countries. In the case where an applicant is interested in applying for a cooperative agreement in more than one country, a separate application must be submitted for each country. If applications for multiple countries are combined, they will not be considered.

The application must consist of two (2) separate parts, as well as a table of contents and an abstract summarizing the application in not more than two (2) pages. The table of contents and an abstract are *not* included in the 45-page limit for Part II.

Part I of the application, the cost proposal, must contain the Standard Form (SF) 424, Application for Federal Assistance and Sections A–F of the Budget Information Form SF 424A, available from ILAB's Web site at *http://www.dol.gov/ILAB/grants/sga0410/bkgrdSGA0410.htm.* Copies of these forms are also available online from the General Services

Administration Web site at *http://contacts.gsa.gov/webforms.nsf/0/B835648D66D1B8F985256A72004C58C2/$file/sf424.pdf* and *http://contacts.gsa.gov/webforms.nsf/0/5AEB1FA6FB3B832385256A72004C8E77/$file/Sf424a.pdf*. The individual signing the SF 424 on behalf of the applicant must be authorized to bind the applicant. The budget/cost proposal must be written in 10–12 pitch font size.

Part II, the technical proposal, must provide a technical application that identifies and explains the proposed program and demonstrates the applicant's capabilities to carry out that proposal. The technical application must identify how it will carry out the Statement of Work (Section I(2) of this solicitation) and address each of the Application Evaluation Criteria found in Section V(1). The Part II technical application must not exceed 45 single-sided (8½″ x 11″), double-spaced, 10 to 12 pitch typed pages for each country, and must include responses to the application evaluation criteria outlined in Section V(1) of this solicitation. Part II must include a preliminary project design document submitted in the format shown in Appendix A and discussed further in Section VI(3)(A). The application must include the name, address, telephone and fax numbers, and e-mail address (if applicable) of a key contact person at the applicant's organization in case questions should arise.

Applications will only be accepted in English. To be considered responsive to this solicitation, the application must consist of the above-mentioned separate parts. *Any applications that do not conform to these standards may be deemed non-responsive to this solicitation and may not be evaluated.* Standard forms and attachments are not included in the 45-page limit for Part II. However, additional information *not* required under this solicitation will not be considered.

3. Submission Dates, Times, and Address

Applications must be delivered by 4:45 p.m., Eastern Time, August 26, 2004, to: U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Attention: Lisa Harvey, Reference: Solicitation 04–10, Washington, DC 20210. Applications sent by e-mail, telegram, or facsimile (FAX) will not be accepted. Applications sent by other delivery services, such as Federal Express, UPS, will be accepted; however, the applicant bears the responsibility for timely submission. The application package must be received at the designated place by the date and time specified or it will not be considered. Any application received at the Procurement Services Center after 4:45 p.m. Eastern Time, August 26, 2004, will not be considered unless it is received before the award is made and:

A. It is determined by the Government that the late receipt was due solely to mishandling by the Government after receipt at USDOL at the address indicated; and/or

B. It was sent by registered or certified mail not later than the fifth calendar day before 30 days from the date of publication in the **Federal Register;** or

C. It was sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee, not later than 5 p.m. at the place of mailing two (2) working days, excluding weekends and Federal holidays, prior to August 26, 2004.

The only acceptable evidence to establish the date of mailing of a late application sent by registered or certified mail is the U.S. Postal Service postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. If the postmark is not legible, an application received after the above closing time and date shall be processed as if mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (not a postage meter machine impression) that is readily identifiable without further action as having been applied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service Express Mail Next Day Service-Post Office to Addressee is the date entered by the Post Office clerk on the "Express Mail Next Day Service-Post Office to Addressee" label and the postmark on the envelope or wrapper on the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, applicants should request that the postal clerk place a legible hand cancellation "bull's-eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the time of receipt at USDOL is the date/time stamp of the Procurement Service Center on the application wrapper or other documentary evidence of receipt maintained by that office.

Confirmation of receipt can be obtained from Lisa Harvey, U.S. Department of Labor, Procurement Services Center, telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov*. All applicants are advised that U.S. mail delivery in the Washington DC area can be slow and erratic due to concerns involving contamination. All applicants must take this into consideration when preparing to meet the application deadline.

4. Intergovernmental Review

This funding opportunity is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

5. Funding Restrictions

A. In addition to those specified under OMB Circular A–122, the following costs are also unallowable:

i. Construction with funds under this cooperative agreement should not exceed 10 percent of the project budget's direct costs and is expected to be limited to improving existing school infrastructure and facilities in the project's targeted communities. USDOL encourages applicants to cost-share and/or leverage funds or in-kind contributions from local partners when proposing construction activities in order to ensure sustainability.

ii. Under these cooperative agreements, vocational training for adolescents and income generating alternatives for parents are allowable activities. However, Federal funds under these cooperative agreements cannot be used to provide micro-credits, revolving funds, or loan guarantees.

iii. Awards will not allow reimbursement of pre-award costs.

B. The following activities are also unallowable under this solicitation:

i. Under these cooperative agreements, awareness raising and advocacy activities cannot include lobbying or fund-raising (see OMB Circular A–122).

ii. The U.S. Government is opposed to prostitution and related activities, which are inherently harmful and dehumanizing, and contribute to the phenomenon of trafficking in persons. U.S. non-governmental organizations, and their sub-awardees, cannot use U.S. Government funds to lobby for, promote or advocate the legalization or regulation of prostitution as a legitimate form of work. Foreign non-governmental organizations, and their sub-awardees, that receive U.S. Government funds to fight trafficking in persons cannot lobby for, promote or advocate the legalization or regulation of prostitution as a

legitimate form of work. It is the responsibility of the primary Grantee to ensure its sub-awardees meet these criteria. (The U.S. Government is currently developing language to specifically address Public International Organizations' implementation of the above anti-prostitution prohibition. If a project under this SGA is awarded to such an organization, appropriate substitute language for the above prohibition will be included in the project's cooperative agreement.)

FOR FURTHER INFORMATION CONTACT: Lisa Harvey. E-mail address: *harvey.lisa@dol.gov*.

V. Application Review Information

1. Application Evaluation Criteria

Technical panels will review applications written in the specified format (see Section I, Section IV(2) and Appendix A) against the various criteria on the basis of 100 points. Up to five additional points will be given for the inclusion of non-Federal leveraged resources as described below in Section V(1)(D). Applicants are requested to prepare their technical proposal (45 page maximum) on the basis of the following rating factors, which are presented in the order of emphasis that they will receive, and the maximum rating points for each factor.

Program Design/Budget-Cost Effectiveness—45 points
Organizational Capacity—30 points
Management Plan/Key Personnel/Staffing—25 points
Leveraging Resources—5 extra points

A. Project/Program Design/Budget-Cost Effectiveness (45 Points)

This part of the application constitutes the preliminary project design document described in Section VI(3)(A), and outlined in Appendix A. The applicant's proposal must describe in detail the proposed approach to comply with each requirement.

This component of the application must demonstrate the applicant's thorough knowledge and understanding of the issues, barriers and challenges involved in providing education to children engaged in or at risk of engaging in exploitive child labor, particularly its worst forms; best-practice solutions to address their needs; and the policy and implementing environment in the selected country. When preparing the project document outline, the applicant must at minimum include a description of:

i. *Children Targeted*—The applicant must identify which and how many children are expected to benefit from the project, including the sectors in which they work, geographical location, and other relevant characteristics. Children are defined as persons under the age of 18 who have been engaged in the worst forms of child labor as defined by ILO Convention 182, or those under the legal working age of the country and who are engaged in other hazardous and/or exploitive activities.

ii. *Needs/Gaps/Barriers*—The applicant must describe the specific gaps/educational needs of the children targeted that the project will address.

iii. *Proposed Strategy*—The applicant must discuss the proposed strategy to address gaps/needs/barriers of the children targeted and its rationale.

iv. *Description of Activities*—The applicant must provide a detailed description of proposed activities that relate to the gaps/needs/barriers to be addressed, including training and technical assistance to be provided to project staff, host country nationals, and community groups involved in the project. The proposed approach is expected to build upon existing activities, government policies, and plans, and avoid needless duplication.

v. *Work Plan*—The applicant must provide a detailed work plan and timeline for the proposed project, preferably with a visual such as a Gantt chart. Applicants whose strategies include the provision of direct delivery of education are also encouraged to enroll one-quarter of the targeted children in educational activities during the first year of project implementation.

vi. *Program Management and Performance Assessment*—The applicant must describe: (1) How management will ensure that the goals and objectives will be met; (2) how information and data will be collected and used to demonstrate the impacts of the project; and (3) what systems will be put in place for self-assessment, evaluation and continuous improvement. **Note to All Applicants:** USDOL has already developed common indicators and a database system for monitoring children's educational progress that can be used and adapted by Grantees after award so that they do not need to set up this type of system from scratch. For more information on the Child Labor Education Initiative's common indicators, please visit *http://www.clear-measure.com*. Further guidance on common indicators will be provided after award, thus applicants should focus their program management and performance assessment responses toward the development of their project's monitoring strategy in support of the four goals of the Child Labor Education Initiative set out in Section I(1)(A).

vii. *Budget/Cost Effectiveness*—The applicant must show how the budget reflects program goals and design in a cost-effective way to reflect budget/performance integration. The budget must be linked to the activities and outputs of the implementation plan listed above. This section of the application must explain the costs for performing all of the requirements presented in this solicitation, and for producing all required reports and other deliverables. Costs must include labor, equipment, travel, annual audits, evaluations, and other related costs. Applications are expected to allocate sufficient resources to proposed studies, assessments, surveys, and monitoring and evaluation activities. When developing their applications, applicants are also expected to allocate the largest proportion of resources to educational activities aimed at targeted children, rather than direct administrative costs. Preference may be given to applicants with low administrative costs and with a budget breakdown that provides a larger amount of resources to project activities. All projected costs should be reported, as they will become part of the cooperative agreement upon award. In their cost proposal (Part I of the application), applicants must reflect a breakdown of the total administrative costs into direct administrative costs and indirect administrative costs. This section will be evaluated in accordance with applicable Federal laws and regulations. The budget must comply with Federal cost principles (which can be found in the applicable OMB Circulars). An example of an Outputs Based Budget has been provided as Annex B.

Applicants are encouraged to discuss the possibility of exemption from customs and Value Added Tax (VAT) with host government officials during the preparation of an application for this cooperative agreement. While USDOL encourages host governments to not apply custom or VAT taxes to USDOL-funded programs, some host governments may nevertheless choose to assess such taxes. USDOL may not be able to provide assistance in this regard. Applicants should take into account such costs in budget preparation. If major costs are omitted, a Grantee may not be allowed to include them later.

B. Organizational Capacity (30 Points)

Under this criterion, the applicant must present the qualifications of the organization(s) implementing the program/project. The evaluation criteria in this category are as follows:

i. *International Experience*—The organization applying for the award has international experience implementing basic, transitional, non-formal or vocational education programs that address issues of access, quality, and policy reform for vulnerable children including children engaged in or at risk of exploitive child labor, preferably in the countries of interest.

ii. *Country Presence*—An applicant, or its partners, must be formally recognized by the host government(s) using the appropriate mechanism, *e.g.*, Memorandum of Understanding, local registration of organization. An applicant must also demonstrate a country presence, independently or through a relationship with another organization(s) with country presence, which gives it the ability to initiate program activities upon award of the cooperative agreement, as well as the capability to work directly with government ministries, educators, civil society leaders, and other local faith-based or community organizations. For applicants that do not have independent country presence, documentation of the relationship with the organization(s) with such a presence must be provided. Applicants are strongly encouraged to work collaboratively with local partners and organizations.

iii. *Fiscal Oversight*—The organization shows evidence of a sound financial system. The results of the most current independent financial audit must accompany the application as an attachment, and applicants without one will not be considered. This attachment will not count toward the page limit.

iv. *Coordination*—If two or more organizations are applying for the award in the form of a partnership, they must demonstrate an approach to ensure the successful collaboration including clear delineation of respective roles and responsibilities. The applicants must also identify the lead organization, which must bear legal liability for the project, and submit the partnership or sub-contract agreement as an attachment (which will not count toward the page limit).

v. *Experience*—The application must include information about previous grant, cooperative agreements, or contracts of the applicant with USDOL and other entities that are relevant to this solicitation including:

(a) The organizations for which the work was done;

(b) A contact person in that organization with his/her current phone number;

(c) The dollar value of the grant, contract, or cooperative agreement for the project;

(d) The time frame and professional effort involved in the project;

(e) A brief summary of the work performed; and

(f) A brief summary of accomplishments.

This information on previous grants, cooperative agreements, and contracts held by the applicant must be provided in appendices and will not count against the maximum page requirement.

Note to All Applicants: In judging organizational capacity, USDOL will take into account not only information provided by an applicant, but also information from the Department regarding past performance of organizations already implementing Child Labor Education Initiative projects or activities for USDOL. Past performance will be rated by such factors as the timeliness of deliverables, and the responsiveness of the organization and its staff to USDOL communications regarding deliverables and cooperative agreement or contractual requirements. Lack of past experience with USDOL projects, cooperative agreements, grants, or contracts is not a bar to eligibility or selection under this Solicitation.

C. Management Plan/Key Personnel/Staffing (25 Points)

Successful performance of the proposed work depends heavily on the management skills and qualifications of the individuals committed to the project. Accordingly, in its evaluation of each application, USDOL will place emphasis on the applicant's management approach and commitment of personnel qualified for the work involved in accomplishing the assigned tasks. This section of the application must include sufficient information to judge management and staffing plans, and the experience and competence of program staff proposed for the project to assure that they meet the required qualifications.

Note that management and professional technical staff members comprising the applicant's proposed team should be individuals who have prior experience with organizations working in similar efforts, and who are fully qualified to perform work specified in the Statement of Work. Where sub-contractors or outside assistance are proposed, organizational lines of authority and responsibility should be clearly delineated to ensure responsiveness to the needs of USDOL.

Note to All Applicants: USDOL strongly recommends that key personnel allocate at least 50 percent of their time to the project and be present within the country. Except in Niger, USDOL prefers that key personnel positions not be combined unless the applicant can propose a cost-effective strategy that ensures that all key management and technical functions (as identified in this solicitation) are clearly defined and satisfied. In Niger, key personnel functions may be combined. Key personnel must sign letters of agreement to serve on the project, and indicate availability to commence work within three weeks of cooperative agreement award. Applicants must submit these letters as an attachment to the application. (These will not count toward the page limit).

i. *Key personnel*—The applicant must identify all key personnel proposed to carry out the requirements of this solicitation. "Key personnel" are staff (Project Director, Education Specialist, and Monitoring and Evaluation Officer) who are essential to the successful operation of the project and completion of the proposed work and, therefore, may not be replaced or have hours reduced without the approval of the Grant Officer. If key personnel are not designated, the application will not be considered.

(a) A *Project Director* to oversee the project and be responsible for implementation of the requirements of the cooperative agreement. The Project Director must have a minimum of three years of professional experience in a leadership role in implementation of complex basic education programs in developing countries in areas such as: Education policy; improving educational quality and access; educational assessment of disadvantaged students; development of community participation in the improvement of basic education for disadvantaged children; and monitoring and evaluation of basic education projects. Consideration will be given to candidates with additional years of experience including experience working with officials of ministries of education and/or labor. Preferred candidates must also have knowledge of exploitive child labor issues, and experience in the development of transitional, formal, and vocational education of children removed from exploitive child labor and/or victims of the worst forms of child labor. Fluency in English is required and working knowledge of the official language(s) spoken in the target country is preferred.

(b) An *Education Specialist* who will provide leadership in developing the technical aspects of this project in collaboration with the Project Director. This person must have at least three years experience in basic education projects in developing countries in areas including student assessment, teacher training, educational materials development, educational management, and educational monitoring and information systems. This person must have experience in working successfully

with ministries of education, networks of educators, employers' organizations and trade union representatives or comparable entities. Additional experience with exploitive child labor/education policy and monitoring and evaluation is an asset. A working knowledge of English is preferred, as is a similar knowledge of the official language(s) spoken in the target country.

(c) A *Monitoring and Evaluation Officer* who will serve at least part-time and oversee the implementation of the project's monitoring and evaluation strategies and requirements. This person should have at least three years progressively responsible experience in the monitoring and evaluation of international development projects, preferably in education and training or a related field. Related experience can include strategic planning and performance measurement, indicator selection, quantitative and qualitative data collection and analysis methodologies, and knowledge of the Government Performance and Results Act (GPRA). Individuals with a demonstrated ability to build capacity of the project team and partners in these domains will be given special consideration.

Information provided on key personnel must include the following:

- The educational background and experience of all key personnel to be assigned to the project.
- The special capabilities of key personnel that demonstrate prior experience in organizing, managing and performing similar efforts.
- The current employment status of key personnel and availability for this project. The applicant must also indicate whether the proposed work will be performed by persons currently employed or is dependent upon planned recruitment or sub-contracting.

ii. *Other Personnel*—The applicant must identify other program personnel proposed to carry out the requirements of this solicitation.

iii. *Management Plan*—The management plan must include the following:

(a) A description of the functional relationship between elements of the project's management structure; and

(b) The responsibilities of project staff and management and the lines of authority between project staff and other elements of the project.

iv. *Staff Loading Plan*—The staff loading plan must identify all key tasks and the person-days required to complete each task. Labor estimated for each task must be broken down by individuals assigned to the task, including sub-contractors and consultants. All key tasks should be charted to show time required to perform them by months or weeks.

v. *Roles and Responsibilities*—The applicant must include a resume and description of the roles and responsibilities of all personnel proposed. Resumes must be included as an attachment that will not count toward the page limit. At a minimum, each resume must include: the individual's current employment status and previous work experience, including position title, duties, dates in position, employing organizations, and educational background. Duties must be clearly defined in terms of role performed, e.g., manager, team leader, and/or consultant. Indicate whether the individual is currently employed by the applicant, and (if so) for how long.

D. Leverage of Grant Funding (5 Points)

USDOL will give up to five (5) additional rating points to applications that include non-Federal resources that significantly expand the dollar amount, size and scope of the application. These programs will not be financed by the project, but can complement and enhance project objectives. Applicants are also encouraged to leverage activities, such as micro-credit, revolving funds, or loan guarantees, which are not directly allowable under the cooperative agreement. To be eligible for the additional points, the applicant must list the source(s) of funds, the nature, and possible activities anticipated with these funds under this cooperative agreement and any partnerships, linkages or coordination of activities, cooperative funding, etc.

2. Review and Selection Process

USDOL will screen all applications to determine whether all required elements are present and clearly identifiable. Each complete application will be objectively rated by a technical panel against the criteria described in this announcement. Applicants are advised that panel recommendations to the Grant Officer are advisory in nature. The Grant Officer may elect to select a Grantee on the basis of the initial application submission; or, the Grant Officer may establish a competitive or technically acceptable range from which qualified applicants will be selected. If deemed appropriate, the Grant Officer may call for the preparation and receipt of final revisions of applications, following which the evaluation process described above may be repeated, in whole or in part, to consider such revisions. The Grant Officer will make final selection determinations based on panel findings and consideration of factors that represent the greatest advantage to the government, such as cost, the availability of funds, and other factors. The Grant Officer's determinations for awards under this solicitation are final.

Note to All Applicants: Selection of an organization as a cooperative agreement recipient does not constitute approval of the cooperative agreement application as submitted. Before the actual cooperative agreement is awarded, USDOL may enter into negotiations about such items as program components, funding levels, and administrative systems in place to support cooperative agreement implementation. If the negotiations do not result in an acceptable submission, the Grant Officer reserves the right to terminate the negotiation and decline to fund the application. Award may also be contingent upon an exchange of project support letters between USDOL and the relevant ministries in target countries.

3. Anticipated Announcement and Award Dates

Designation decisions will be made, where possible, within 45 days after the deadline for submission of proposals. USDOL is not obligated to make any awards as result of this solicitation, and only the Grant Officer can bind USDOL to the provision of funds under this solicitation. Unless specifically provided in the cooperative agreement, USDOL's acceptance of a proposal and/or award of Federal funds does not waive any cooperative agreement requirements and/or procedures.

VI. Award Administration Information

1. Award Notices

The Grant Officer will notify applicants of designation results as follows:

Designation Letter: The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The designation letter will be accompanied by a cooperative agreement and USDOL/ILAB's Management Procedures and Guidelines (MPG).

Non-Designation Letter: Any organization not designated will be notified formally of the non-designation and given the basic reasons for the determination.

Notification by a person or entity other than the Grant Officer that an organization has or has not been designated is not valid.

2. Administrative and National Policy Requirements

A. General

Grantee organizations are subject to applicable U.S. Federal laws (including provisions of appropriations law) and

the applicable Office of Management and Budget (OMB) Circulars. If during project implementation a Grantee is found in violation of U.S. government laws and regulations, the terms of the cooperative agreement awarded under this solicitation may be modified by USDOL, costs may be disallowed and recovered, the cooperative agreement may be terminated, and USDOL may take other action permitted by law. Determinations of allowable costs will be made in accordance with the applicable U.S. Federal cost principles. Grantees must also submit to an annual independent audit, and costs for such an audit should be included in direct or indirect costs, whichever is appropriate.

The cooperative agreements awarded under this solicitation are subject to the following administrative standards and provisions, and any other applicable standards that come into effect during the term of the cooperative agreement, if applicable to a particular Grantee:

i. 29 CFR Part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor— Effectuation of Title VI of the Civil Rights Act of 1964.

ii. 29 CFR Part 32—Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance.

iii. 29 CFR Part 33—Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Labor.

iv. 29 CFR Part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor.

v. 29 CFR Part 36—Federal Standards for Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance.

vi. 29 CFR Part 93—New Restrictions on Lobbying.

vii. 29 CFR Part 95—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations Under the Jurisdiction of Foreign Governments and International Organizations.

viii. 29 CFR Part 96—Federal Standards for Audit of Federally Funded Grants, Contracts and Agreements.

ix. 29 CFR Part 98—Federal Standards for Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

x. 29 CFR Part 99—Federal Standards for Audits of States, Local Governments, and Non-Profit Organizations.

Applicants are reminded to budget for compliance with the administrative requirements set forth. This includes the cost of performing administrative activities such as annual financial audits, closeout, mid-term and final evaluations, document preparation, as well as compliance with procurement and property standards. Copies of all regulations referenced in this solicitation are available at no cost, on-line, at *http://www.dol.gov.*

Grantees should be aware that terms outlined in this solicitation, the cooperative agreement, and the MPGs are applicable to the implementation of projects awarded under this solicitation.

B. Sub-Contracts

Sub-contracts must be awarded in accordance with 29 CFR 95.40–48. In compliance with Executive Orders 12876, as amended, 13230, 12928 and 13021, as amended, Grantees are strongly encouraged to provide sub-contracting opportunities to Historically Black Colleges and Universities, Hispanic-Serving Institutions and Tribal Colleges and Universities. To the extent possible, sub-contracts granted after the cooperative agreement is signed must be awarded through a formal competitive bidding process, unless prior written approval is obtained from USDOL/ILAB.

C. Key Personnel

As noted in Section V(1)(C), the applicant must list the individual(s) who has/have been designated as having primary responsibility for the conduct and completion of all project work. The applicant must submit written proof that key personnel (Project Director, Education Specialist, and Monitoring and Evaluation Officer) will be available to begin work on the project no later than three weeks after award. Grantees agree to inform the Grant Officer's Technical Representative (GOTR) whenever it appears impossible for this individual(s) to continue work on the project as planned. A Grantee may nominate substitute key personnel and submit the nominations to the GOTR; however, a Grantee must obtain prior approval from the Grant Officer for all changes to key personnel. If the Grant Officer is unable to approve the key personnel change, he/she reserves the right to terminate the cooperative agreement or disallow costs.

D. Encumbrance of Cooperative Agreement Funds

Cooperative agreement funds may not be encumbered/obligated by a Grantee before or after the period of performance. Encumbrances/obligations outstanding as of the end of the cooperative agreement period may be liquidated (paid out) after the end of the cooperative agreement period. Such encumbrances/obligations may involve only specified commitments for which a need existed during the cooperative agreement period and that are supported by approved contracts, purchase orders, requisitions, invoices, bills, or other evidence of liability consistent with a Grantee's purchasing procedures and incurred within the cooperative agreement period. All encumbrances/obligations incurred during the cooperative agreement period must be liquidated within 90 days after the end of the cooperative agreement period, if practicable.

All equipment purchased with project funds must be inventoried and secured throughout the life of the project. At the end of the project, USDOL and the Grantees are expected to determine how to best allocate equipment purchased with project funds in order to ensure sustainability of efforts in the projects' implementing areas.

E. Site Visits

USDOL, through its authorized representatives, has the right, at all reasonable times, to make site visits to review project accomplishments and management control systems and to provide such technical assistance as may be required. If USDOL makes any site visit on the premises of a Grantee or a sub-contractor(s) under this cooperative agreement, a Grantee shall provide and shall require its sub-contractors to provide all reasonable facilities and assistance for the safety and convenience of government representatives in the performance of their duties. All site visits and evaluations are expected to be performed in a manner that will not unduly delay the implementation of the project.

3. Reporting and Deliverables

In addition to meeting the above requirements, a Grantee is expected to monitor the implementation of the program, report to USDOL on a quarterly basis, and undergo evaluations of program results. Guidance on USDOL procedures and management requirements will be provided to Grantees in the MPGs with the cooperative agreement. The project budget must include funds to: plan, implement, monitor, and evaluate programs and activities (including mid-term and final evaluations and annual audits); conduct studies pertinent to

project implementation; establish education baselines to measure program results; and finance travel by field staff and key personnel to meet annually with USDOL officials in Washington, DC. Applicants based both within and outside the United States should also budget for travel by field staff and other key personnel to Washington, DC, at the beginning of the project for a post-award meeting with USDOL. Indicators of project performance will also be proposed by a Grantee and approved by USDOL in the Performance Monitoring Plan, as discussed in Section VI(3)(D) below. Unless otherwise indicated, a Grantee must submit copies of all required reports to ILAB by the specified due dates.

Note to All Applicants: USDOL provides its Grantees with training and technical assistance to refine the quality of deliverables. This assistance includes workshops to refine project design and improve performance monitoring plans, and reporting on Child Labor Education Initiative common indicators.

Exact timeframes for completion of deliverables will be addressed in the cooperative agreement and the MPGs.

Specific deliverables are the following:

A. *Project design document.* As stated in Sections I(2) and IV(2), applications must include a preliminary project design document in the format described in Appendix A, with design elements linked to a logical framework matrix. (Note: The supporting logical framework matrix will not count in the 45-page limit but should be included as an annex to the project document. To guide applicants, a sample logical framework matrix for a hypothetical Child Labor Education Initiative project is available at *http://www.dol.gov/ILAB/grants/sga0410/bkgrdSGA0410.htm.).* The preliminary project document must include a background/justification section, project strategy (goal, purpose, outputs, activities, indicators, means of verification, assumptions), project implementation timetable, and project budget. The narrative must address the criteria/themes described in the Program Design/Budget-Cost Effectiveness section (Section V(1)(A) above).

Within six months after the time of the award, the Grantee must deliver the final project design document, based on the application written in response to this solicitation, including the results of additional consultation with stakeholders, partners, and ILAB. The final project design document must also include sections that address coordination strategies, project management and sustainability.

B. *Progress and financial reports.* The format for the progress reports will be provided in the MPG distributed after the award. Grantees must furnish a typed technical progress report and a financial report (SF 269) to USDOL/ILAB on a quarterly basis by 31 March, 30 June, 30 September, and 31 December of each year during the cooperative agreement period. Also, a copy of the Federal Cash Transactions Report (PSC 272) should be submitted to ILAB upon submission to the Health and Human Services—Payment Management System (HHS–PMS).

C. *Annual work plan.* Grantees must develop an annual work plan within six months of project award for approval by ILAB so as to ensure coordination with other relevant social actors throughout the country. Subsequent annual work plans must be delivered no later than one year after the previous one.

D. *Performance monitoring and evaluation plan.* Grantees must develop a performance monitoring and evaluation plan in collaboration with USDOL/ILAB, including beginning and ending dates for the project, indicators and methods and cost of data collection, planned and actual dates for mid-term review, and final end of project evaluations. The performance monitoring plan must be developed in conjunction with the logical framework project design and common indicators for reporting selected by ILAB. The plan must include a limited number of key indicators that can be realistically measured within the cost parameters allocated to project monitoring. Baseline data collection are expected to be tied to the indicators of the project design document and the performance monitoring plan. A draft monitoring and evaluation plan will be submitted to ILAB within six months of project award.

E. *Project evaluations.* Grantees and the GOTR will determine on a case-by-case basis whether mid-term evaluations will be conducted by an internal or external evaluation team. All final evaluations must be external and independent in nature. A Grantee must respond in writing to any comments and recommendations provided in the mid-term evaluation report. The budget must include the projected cost of mid-term and final evaluations.

VII. Agency Contacts

All inquiries regarding this solicitation should be directed to: Ms. Lisa Harvey, U.S. Department of Labor, Procurement Services Center, 200 Constitution Avenue, NW., Room N–5416, Washington, DC 20210; telephone (202) 693–4570 (this is not a toll-free-number) or e-mail: *harvey.lisa@dol.gov.*

VIII. Other Information

1. Materials Prepared Under the Cooperative Agreement

Grantees must submit to USDOL/ILAB, for approval, all media-related, awareness-raising, and educational materials developed by the Grantee or its sub-contractors before they are reproduced, published, or used. USDOL/ILAB considers such materials to include brochures, pamphlets, videotapes, slide-tape shows, curricula, and any other training materials used in the program. USDOL/ILAB will review materials for technical accuracy.

In addition, USDOL/ILAB reserves a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use for Federal purposes, and authorize others to do so, all materials that are developed or for which ownership is purchased by the Grantee under an award.

2. Acknowledgment of USDOL Funding

USDOL has established procedures and guidelines regarding acknowledgment of funding. USDOL requires, in most circumstances, that the following be displayed on printed materials:

"Funding provided by the United States Department of Labor under Cooperative Agreement No. E–9–X–X–XXXX."

With regard to press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part under this cooperative agreement, all Grantees are required to consult with USDOL/ILAB on: acknowledgment of USDOL funding; general policy issues regarding international child labor; and informing USDOL, to the extent possible, of major press events and/or interviews. More detailed guidance on acknowledgement of USDOL funding will be provided upon award to the Grantee(s) in the cooperative agreement and the MPG. In consultation with USDOL/ILAB, USDOL will be acknowledged in one of the following ways:

A. The USDOL logo may be applied to USDOL-funded material prepared for worldwide distribution, including posters, videos, pamphlets, research documents, national survey results, impact evaluations, best practice reports, and other publications of global interest. A Grantee must consult with USDOL/ILAB on whether the logo may be used on any such items prior to final draft or final preparation for

distribution. In no event will the USDOL logo be placed on any item until USDOL/ILAB has given a Grantee written permission to use the logo on the item.

B. The following notice must appear on all documents: "This document does not necessarily reflect the views or policies of the U.S. Department of Labor, nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Government."

3. Privacy and Freedom of Information

Any information submitted in response to this solicitation will be subject to the provisions of the Privacy Act and the Freedom of Information Act, as appropriate.

Signed at Washington, DC, this 21st day of July, 2004.

John Huotari,

Acting Grant Officer.

Appendix A: Project Document Format

Executive Summary

1. Background and Justification.
2. Target Groups.
3. Program Approach and Strategy.
3.1 Narrative of Approach and Strategy (linked to Logical Framework matrix in Annex A).
3.2 Project Implementation Timeline (Gantt Chart of Activities linked to Logical Framework matrix in Annex A).
3.3 Budget (with cost of Activities linked to Outputs for Budget Performance Integration in Annex B).
4. Project Monitoring and Evaluation.
4.1 Indicators and Means of Verification.
4.2 Baseline Data Collection Plan.
5. Institutional and Management Framework.
5.1 Institutional Arrangements for Implementation.
5.2 Collaborating and Implementing Institutions (Partners) and Responsibilities.
5.3 Other Donor or International Organization Activity and Coordination.
5.4 Project Management Organizational Chart.
6. Inputs.
6.1 Inputs provided by USDOL.
6.2 Inputs provided by the Grantee.
6.3 National and/or Other Contributions.
7. Sustainability
Annex A: Full presentation of the Logical Framework matrix.
Annex B: Outputs Based Budget example.
(A worked example of a Logical Framework matrix, an Outputs Based Budget, and other background documentation for this solicitation are available from the USDOL/ILAB Web site at *http://www.dol.gov/ILAB/grants/sga0410/bkgrdSGA0410.htm.*)

[FR Doc. 04–17043 Filed 7–26–04; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0121 (2004)]

Powered Platforms for Building Maintenance Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its request for an extension of the information-collection requirements contained in the Powered Platforms for Building Maintenance Standard (29 CFR 1910.66).

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by September 27, 2004.

Facsimile and electronic transmission: Your comments must be received by September 27, 2004.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0121 (2004), by any of the following methods:

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). The OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., ET.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov/*. Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I–Form, and attachments), go to OSHA's Web page at *http://OSHA.gov*. Comments, submissions and the ICR are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Theda Kenney or Todd Owen at the address below to obtain a copy of the ICR.

(For additional information on submitting comments, please see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this document.)

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this document by (1) hard copy, (2) FAX transmission (facsimile), or (3) electronically through the OSHA Web page.

Because of security related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Webpage are available at *http://www.OSHA.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Webpage.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes

information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The requirements of the Powered Platforms for Building Maintenance Standard include written emergency action plans and work plans for training; affixing load-rating plates to each suspended unit, labeling emergency electric-operating devices with instructions for their use, and attaching a tag to one of the fastenings holding a suspension wire rope; the inspection and testing of, and written certification for, building-support structures, components of powered platforms, powered platform facilities, and suspension wire ropes; and training employees and the preparation and maintenance of written training certification records.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information collection requirements contained in the Powered Platforms for Building Maintenance Standard (29 CFR 1910.66). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of the information-collection requirement.

Type of Review: Extension of currently approved information-collection requirements.

Title: Powered Platforms for Building Maintenance (29 CFR 1910.66).

OMB Number: 1218–0121.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 900.

Frequency of Response: Varies from 2 minutes (.03 hour) to disclose certification records to 10 hours to inspect/test both a powered platform facility and its suspension wire ropes, and to prepare the certification record.

Total Responses: 36,598.

Estimated Total Burden Hours: 135,476.

Estimated Cost (Operation and Maintenance): $0.

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on July 22, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–17059 Filed 7–26–04; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under Section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on August 19, in Room N3437 (A–C), U.S. Department of Labor, located at 200 Constitution Avenue NW., Washington, DC. The Meeting is open to the public and will begin at 9 a.m. on August 18 and end at approximately 4:15 p.m.

Agenda items will include updates on activities of both the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH). Presentations will also be made on the following subjects: Enforcement Indicators, VPP and Partnerships, Regulatory Issues, Hispanic Summit, and NIOSH's Steps to a Healthier U.S. Workforce Initiative.

Written data, vies, or comments for consideration by the committee may be submitted, preferably with 20 copies, to Wilfred Epps at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the committee and will be included in the record of the meeting. because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Veneta Chatmon (phone: 202–693–1912; fax: 202–693–1634) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 at the Department of Labor Building (202–693–2350). For additional information contact: Wilfred Epps, Occupational Safety and Health Administration (OSHA); Room N3641, 200 Constitution Avenue NW., Washington, DC 20210 (phone: 202–693–1857; fax: 202–693–1641; email: *Epps.Wil@dol.gov*); or check the National Advisory Committee on Occupational Safety and Health Information pages located at *http://www.osha.gov/dop/nacosh/nacosh.html*.

Signed at Washington, DC this 20th day of July 2004.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 04–17044 Filed 7–26–04; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME: 9:30 a.m., Tuesday, August 3, 2004.

PLACE: NTSB Conference Center; 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The two items are Open to the public.

MATTERS TO BE CONSIDERED:

7649 Highway Accident Report—Rear-end Collision and Subsequent Vehicle Intrusion into Pedestrian Space at Certified Farmers' Market, Santa Monica, California, July 16, 2003.

6413C Proposed Disposition of A–95–51—Safety Recommendation to the

Federal Aviation Administration (FAA) to Require that All Occupants in Airplanes be Restrained.

NEWS MEDIA CONTACT: Telephone (202) 314–6100

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, July 30, 2004.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *www.ntsb.gov.*

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: July 23, 2004.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 04–17181 Filed 7–23–04; 1:41 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Entergy Nuclear Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–59 issued to Entergy Nuclear Operations, Inc. (the licensee) for operation of the James A. FitzPatrick Nuclear Power Plant located in Oswego County, New York.

The proposed amendment would revise Technical Specification Section 5.5.6, "Primary Containment Leakage Rate Testing Program," to allow a one-time extension of the interval between the Type A, integrated leakage rate tests (ILRTs), from 10 years to no more than 15 years.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously analyzed?

The change does not involve a significant increase in the probability or consequences of an accident previously analyzed.

The proposed revision to Technical Specifications adds a one time extension to the current interval for Type A testing. The current test interval of ten years, based on past performance, would be extended on a one time basis to fifteen years from the last Type A test. The proposed extension to Type A testing cannot increase the probability of an accident previously evaluated since the containment Type A testing extension is not a modification and the test extension is not of a type that could lead to equipment failure or accident initiation.

The proposed extension to Type A testing does not involve a significant increase in the consequences of an accident since research documented in NUREG–1493 has found that, generically, very few potential containment leakage paths are not identified by Type B and C tests. The NUREG concluded that reducing the Type A (ILRT) testing frequency to one per twenty years was found to lead to an imperceptible increase in risk. These generic conclusions were confirmed by a plant specific risk analysis performed using the current FitzPatrick Individual Plant Examination (IPE) internal events model.

Testing and inspection programs in place at FitzPatrick also provide a high degree of assurance that the containment will not degrade in a manner detectable only by Type A testing. The last four Type A tests show leakage to be below acceptance criteria, indicating a very leak tight containment. Type B and C testing required by Technical Specifications will identify any containment opening such as valves that would otherwise be detected by the Type A tests. Inspections, including those required by the ASME [C]ode [American Society of Mechanical Engineers Boiler and Pressure Vessel Code] and the maintenance rule are performed in order to identify indications of containment degradation that could affect that leak tightness.

These factors in part and in aggregate show that a Type A test extension of up to five years will not represent a significant increase in the consequences of an accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously analyzed?

The change does not create the possibility of a new or different kind of accident from any accident previously analyzed. The proposed revision to Technical Specifications adds a one time extension to the current interval for Type A testing. The current test interval of ten years, based on past performance, would be extended on a one time basis to fifteen years from the last Type A test. The proposed extension to Type A testing cannot create the possibility of a new or different [kind] of accident since there are no physical changes being made to the plant and there are no changes to the operation of the plant that could introduce a new failure mode creating an accident or affecting the mitigation of an accident.

3. Does the change involve a significant reduction in [a] margin of safety?

The change does not involve a significant reduction in [a] margin of safety. The proposed revision to Technical Specifications adds a one time extension to the current interval for Type A testing. The current test interval of ten years, based on past performance, would be extended on a one time basis to fifteen years from the last Type A test. The proposed extension to Type A testing will not significantly reduce the margin of safety. The NUREG 1493 generic study of the effects of extending containment leakage testing found that a 20 year extension in Type A leakage testing resulted in an imperceptible increase in risk to the public. NUREG–1493 found that, generically, the design containment leakage rate contributes about 0.1 percent to the individual risk and that the decrease in Type A testing frequency would have a minimal affect on this risk since 95% of the potential leakage paths are detected by Type C testing. This was further confirmed by a plant specific risk assessment using the current FitzPatrick Individual Plant Examination (IPE) internal events model that concluded the risk associated with this change is negligibly small and/or non-risk significant.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility.

Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestors/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to Mr. David E. Blabey, 1633 Broadway, New York, New York 10019, attorney for the licensee.

For further details with respect to this action, see the application for amendment dated July 28, 2003, as supplemented on May 20, 2004, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available

records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 21st day of July 2004.

For the Nuclear Regulatory Commission.

Patrick D. Milano,

Senior Project Manager, Section I, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–17035 Filed 7–26–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Exelon Generation Company, Inc. and MidAmerican Energy Company, Quad Cities Nuclear Power Station, Units 1 and 2; Notice of Withdrawal of Environmental Assessment

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of MidAmerican Energy Company (the licensee) to withdraw its November 21, 2003, application for exemption for the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

The proposed exemption would have allowed the licensee to delay meeting the requirements of 10 CFR 50.75(h)(2) past the effective date of December 24, 2003.

The Commission had previously issued an Environmental Assessment and Finding of No Significant Impact published in the **Federal Register** on December 19, 2003 (68 FR 70843), and December 22, 2003 (68 FR 71173), for the proposed exemption as required by 10 CFR 51.21. However, by letter dated December 18, 2003, the licensee withdrew the proposed change. Therefore, the Commission is withdrawing its previously issued Environmental Assessment and Finding of No Significant Impact.

For further details with respect to this action, see the request for exemption dated November 21, 2003, and the licensee's letter dated December 18, 2003, which withdrew the request for exemption. Documents may be examined, and/or copied for a fee, at the Nuclear Regulatory Commission's (NRC) Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 20th day of July 2004.

For the Nuclear Regulatory Commission.

Lawrence Rossbach,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–17034 Filed 7–26–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of July 26, August 2, 9, 16, 23, 30, 2004

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of July 26, 2004

There are no meetings scheduled for the Week of July 26, 2004.

Week of August 2, 2004—Tentative

There are no meetings scheduled for the Week of August 2, 2004.

Week of August 9, 2004—Tentative

There are no meetings scheduled for the Week of August 9, 2004.

Week of August 16, 2004—Tentative

Tuesday, August 17, 2004

9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–2308)

This meeting will be webcast live at the Web address—*http.//www.nrc.gov*

1 p.m. Discussion of Security Issues (Closed—Ex. 1)

Wednesday, August 18, 2004.

9:30 a.m. Discussion of Security Issues (Closed—Ex. 1)

Week of August 23, 2004—Tentative

There are no meetings scheduled for the Week of August 23, 2004.

Week of August 30, 2004—Tentative

There are no meetings scheduled for the Week of August 30, 2004.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

SUPPLEMENTARY INFORMATION: By a vote of 3–0 on July 15, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Security Issues (Closed—Ex.1)" be held July 15, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, August Spector at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: July 22, 2004.
Dave Gamberoni,
Office of the Secretary.
[FR Doc. 04–17139 Filed 7–23–04; 9:38 am]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50038; File No. SR–NASD–2004–106]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program Modifying Fees and Credits for Orders and Quotes Executed in the Nasdaq Closing Cross

July 19, 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 July 12, 2004, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the rule effective upon Commission receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing this proposed rule change to waive, for a pilot period of three months, the execution fees and credits for those quotes and orders executed in the Nasdaq Closing Cross. The pilot program will continue the pilot program already in place for the Closing Cross.

The text of the proposed rule change is below. New text is in *italics*. Deleted text is in [brackets].[5]

* * * * *

Rule 7010. System Services

(a)–(h) No Change.

(i) Nasdaq Market Center order execution

(1) and (2) No Change.

(3) Pilot—Closing Cross

For a period of three months commencing on [the date Nasdaq implements its Closing Cross (as described in Rule 4709)] *July 12, 2004*, members shall not be charged Nasdaq Market Center execution fees, or receive Nasdaq Market Center liquidity provider credits, for those quotes and orders executed in the Nasdaq Closing Cross *described in Rule 4709.*

(j)–(u) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently approved the Nasdaq Closing Cross, which is a new process for determining the Nasdaq Official Closing Price for the most liquid Nasdaq stocks.[6] The Nasdaq Closing Cross is designed to create a more robust close that allows for price discovery, and an execution that results in an accurate, tradable closing price. Nasdaq established a three-month pilot program, commencing with the launch of the Closing Cross, during which no execution charges were charged, and no liquidity provider credits were offered, for those quotes and orders executed in the Nasdaq market center as part of the Nasdaq Closing Cross.[7]

Nasdaq is proposing to extend the pilot program for an additional three months in order to continue evaluating the effectiveness of the Closing Cross in establishing the NOCP by eliminating any pricing disincentives that could arise as a result of a price schedule not established on the basis of actual trading data. During the pilot program, Nasdaq staff will study the behavior and participation in the Closing Cross to determine the optimum pricing schedule.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general, and with Section 15A(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposal to extend the pilot program is an equitable allocation of fees because the program will apply equally to all members whose quotes and orders are executed as part of the Nasdaq Closing Cross. Furthermore, the program is reasonable because it will allow Nasdaq, for a limited period of time, to analyze participation in the process and use the results to create an optimum fee schedule based on actual trading data.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[10] and subparagraph (f)(2) of Rule 19b–4

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A)(ii).
[4] 17 CFR 240.19b–4(f)(2).
[5] The proposed rule change is marked to show changes to Rule 7010(i) as currently reflected in the NASD Manual available at *www.nasd.com*, as amended by SR–NASD–2004–076 (filed May 5, 2004, and amended on July 2, 2004). There are no other pending or recently approved rule filings that would affect the text of Rule 7010(i).
[6] See Securities Exchange Act Release No. 49406 (March 11, 2004); 69 FR 12879 (March 18, 2004); *see also* Securities Exchange Act Release No. 49534 (April 7, 2004), 69 FR 19584 (April 13, 2004), amending the Closing Cross.
[7] Securities Exchange Act Release No. 49576 (April 16, 2004); 69 FR 22112 (April 23, 2004).
[8] 15 U.S.C. 78*o*–3.
[9] 15 U.S.C. 78*o*–3(b)(5).
[10] 15 U.S.C. 78s(b)(3)(a)(ii).

thereunder,[11] because it establishes or changes a due, fee, or other charge imposed by Nasdaq. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov. Please include File Number SR–NASD–2004–106 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–NASD–2004–106. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–106 and should be submitted on or before August 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17001 Filed 7–26–04; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50037; File No. SR–NASD–2004–102]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the National Association of Securities Dealers, Inc. To Establish a Fee for Company Profile Reports of OTCBB Issuers

July 19, 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 July 1, 2004, the National Association of Securities Dealers, Inc. ("NASD") through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to add a fee for the Company Profile Report to the fee schedule for OTC Bulletin Board ("OTCBB") historical trading activity reports. Nasdaq will implement the proposed fee as soon as practicable after Commission approval.

The text of the proposed rule change is available from the principal office of Nasdaq and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change seeks to modify the fee schedule for the OTCBB historical trading activity reports to add a fee of $26 for a Company Profile Report for OTCBB issuers. The Company Profile Reports are research reports produced, maintained, and owned by a third-party vendor.[3] The proposal seeks to provide OTCBB.com users with the convenience of ordering third-party research reports for OTCBB issuers directly from the OTCBB.com website. Nasdaq believes that this will enable OTCBB.com users to obtain relevant information about OTCBB issuers without having to search the Internet or visit multiple Web sites.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act[4] in general and with Section 15A(b)(5) of the Act[5] in particular, in that the proposed fee would provide for the equitable allocation of reasonable charges among the persons ordering a Company Profile Report from OTCBB.com.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current third-party vendor for the Company Profile Reports is Knobias, LLC ("Knobias"). Knobias receives much of its historical trading data from Tradeline, Inc. ("Tradeline"). Tradeline subscribes to a number of Nasdaq data feed services. Telephone conversation among Eric Lai, Office of General Counsel, Nasdaq; Tim Fox, Attorney, Division of Market Regulation ("Division"), Commission; and Ross Hurwitz, Summer Honors Intern, Division, Commission on July 14, 2004.

[4] 15 U.S.C. 78o–3.

[5] 15 U.S.C. 78o–3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Nasdaq 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–NASD–2004–102 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–102. 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 Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–102 and should be submitted on or before August 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17010 Filed 7–26–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50040; File No. SR–NYSE–2004–32]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Relating to NYSE Liquidity Quote℠ Exhibit C

July 20, 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 June 24, 2004, the New York Stock Exchange, Inc. ("NYSE" 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. On July 16, 2004, the NYSE filed an amendment to the proposed rule change.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 16, 2004 ("Amendment No. 1"). In Amendment No. 1, the NYSE clarified that the entire proposed Exhibit C represents new text.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to include additional display requirements to the existing terms and conditions pursuant to which vendors may distribute to their customers NYSE Liquidity Quote℠ information that the Exchange makes available. The Exchange has set forth the additional requirements in an Exhibit C (the "Liquidity Quote Exhibit C") to the standard form of "Agreement for the Receipt and Use of Market Data." The text of the proposed Liquidity Quote Exhibit C appears below in italics.

* * * * *

EXHIBIT C

AGREEMENT FOR RECEIPT AND USE OF MARKET DATA: ADDITIONAL PROVISIONS

21. NYSE LIQUIDITY QUOTE℠

(a) DEFINITIONS

(i) "Liquidity Quote Information" means any depth-market information and other information that NYSE makes available pursuant to the NYSE Liquidity Quote℠ Service, including Liquidity Quote bids and offers, and any modified version of that information and any information derived from that information.

(ii) "Other Bids and Offers" means bids and offers other than Liquidity Quote bids and offers. For example, Other Bids and Offers include the NYSE best bid or offer, another market center's best bid or offer and a national best bid or offer.

(b) AUTHORIZATION—Exhibit A describes Customer's receipt of Liquidity Quote Information. Liquidity Quote Information shall constitute "NYSE Market Information" for all purposes of the Agreement and its exhibits. Customer may use Liquidity Quote Information, and may provide displays of Liquidity Quote Information to Subscribers, but may do so:

(i) only as and to the extent described, and in the manner specified, in Exhibit A; and

(ii) only for so long as the Agreement and this Exhibit C are in effect.

Customer's provision of displays of Liquidity Quote Information to Subscribers shall constitute "Subscriber Services" under the Agreement. Each display of Liquidity Quote Information that Customer provides to Subscribers shall indicate that NYSE is the source of the information included in the display.

(c) DISPLAY SERVICES—As an additional Subscriber Service

requirement under clause (iii) of Paragraph 5(b) of the Agreement, Customer shall not commence to provide displays of Liquidity Quote Information to a Subscriber unless:

(i) Customer has first presented the Subscriber with such form of notice or agreement as NYSE may specify; and

(ii) if NYSE specifies that the Subscriber must acknowledge its receipt of that notice, or manifest its assent to that agreement, the Subscriber has first complied with that requirement in such manner as NYSE may direct.

(d) LIQUIDITY QUOTE DISPLAY RULES

(i) AGGREGATED DISPLAYS—Insofar as Customer aggregates Liquidity Quote bids and offers with Other Bids and Offers in its displays (an "Aggregated Display"), Customer shall cause the Aggregated Display to indicate the number of shares attributable to the Liquidity Quote bids and offers.

(ii) MONTAGES—If Customer includes a Liquidity Quote bid or offer in a montage that includes an NYSE best bid or offer (a "Montage"), Customer shall exclude the size of the NYSE best bid or offer from any calculation of cumulative size within the Montage.

(iii) ATTRIBUTION—Customer shall associate the identifier "NYSE Liquidity Quote" or "NYLQ" with each element or line of Liquidity Quote Information that it includes in an Aggregated Display, Montage or other integrated display.

(iv) LIQUIDITY QUOTE-ONLY DISPLAYS—Customer may integrate Liquidity Quote Information with other market information as the Agreement, as modified by this Exhibit C, may provide. However, Customer shall also make Liquidity Quote Information available as a product that is separate and apart from information products that include other market centers' information (a "Non-integrated NYSE Liquidity Quote Product"). Customer may include other NYSE market data in Non-integrated Liquidity Quote Products, subject to compliance with such contract and fee requirements as may apply to that other NYSE market data. Customer shall make its subscribers aware of the availability of the Non-integrated Liquidity Quote Product in the same manner and to the same extent as it makes its subscribers aware of the integrated product.

(v) SCREEN SHOTS—No later than at the time that Customer commences to provide to others displays of Liquidity Quote Information, or modifies those displays, Customer shall submit to NYSE for inclusion in Exhibit A sample screen shots that demonstrate each manner of display and each modification.

(e) INTERNAL DISPLAYS—The Liquidity Quote display requirements set forth in Paragraph 21(d) shall not apply insofar as Customer provides displays to its officers, partners and employees or to those of its Customer Affiliates.

ACCEPTED AND AGREED

[NAME OF VENDOR]

By: _____

Name:
Title:
Date:

NEW YORK STOCK EXCHANGE, INC. acting solely on its own behalf as Paragraph 12 describes

By: _____

Name:
Title:
Date:

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 2, 2003, the Commission approved NYSE Liquidity Quote, a product that provides investors with "liquidity bids" and "liquidity offers." The NYSE Liquidity Quote represents the aggregated Exchange trading interest at a specific price interval below the best bid (in the case of a liquidity bid) or at a specific price interval above the best offer (in the case of a liquidity offer).[4] The specific price interval above or below the best bid and offer, as well as the minimum size of the liquidity bid or offer, is established by the specialist in the subject security. Liquidity bids and offers include orders on the limit order book, trading interest of brokers in the trading crowd, and the specialist's dealer interest, at prices ranging from the best bid (offer) down to the liquidity bid (up to the liquidity offer).

The Liquidity Quote Contract and Exhibit C

Pursuant to the Commission's April Order, the Exchange has made NYSE Liquidity Quote information available to vendors and others since June 13, 2003. As of December 31, 2003, the Exchange had entered into agreements with approximately 50 vendors that distribute NYSE Liquidity Quote information displays to approximately 12,000 end-user terminals. In order for a vendor to receive NYSE Liquidity Quote information from the Exchange for redistribution to its customers, the Exchange requires the vendor to enter into its standard form of "Agreement for Receipt and Use of Market Data." This form (the "Consolidated Vendor Form") is the same form that vendors must enter into in order to receive market data under the Consolidated Tape Association "CTA" Plan and the Consolidated Quotation "CQ" Plan. The participants in the CTA and CQ Plans first submitted the Consolidated Vendor Form to the Commission for immediate effectiveness in 1990[5] and the Commission approved a revised version of it in 1996 in conjunction with the participants' restatement of the CTA and CQ Plans.[6]

The Exchange designed the Consolidated Vendor Form as a generic, one-size-fits-all form of agreement that consists of a standard set of basic provisions that apply to all data recipients. Accordingly, the Consolidated Vendor Form accommodates a number of different types of market data, a number of different means of receiving access to market data, and a number of different uses of market data. Because it was recognized that the Consolidated Vendor Form could not anticipate every aspect of a vendor's receipt and use of market data or future advances in technology or new product offerings, Paragraph 19(a) of the Form provides that "Exhibit C, if any, contains additional provisions applicable to any non-standard aspects of Customer's Receipt and Use of Market Data." The Liquidity Quote Exhibit C contains certain display requirements that are not standard to the receipt and use of other

[4] *See* Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (SR–NYSE–2002–55) ("April Order").

[5] *See* Securities Exchange Act Release No. 28407 (September 6, 1990), 35 FR 37276 (September 10, 1990) (File No. 4–281).

[6] *See* Securities Exchange Act Release No. 37191 (May 9, 1996), 61 FR 24842 (May 16, 1996) (File No. SR–CTA/CQ–96–1).

types of market data under the Consolidated Vendor Form (the "Display Requirements").

The January Order

The Exchange has required vendors to enter into the Liquidity Quote Exhibit C since the June 13, 2003 inception of NYSE Liquidity Quote. However, the Commission issued an order[7] in January that set aside five of the Display Requirements after determining that those Display Requirements constitute Exchange rules that are required to be filed and approved pursuant to Section 19(b) of the Act.

The Exchange has reviewed both the January Order and its experience with the NYSE Liquidity Quote product. It has determined that some Display Requirements that were essential at the product's commencement in order to familiarize investors with the product are no longer necessary. It has also considered the oral comments of vendors regarding other Display Requirements, has weighed those comments against those Display Requirements' contribution to clarity and the Exchange's attribution needs, and has determined to eliminate them. As a result, the Exchange has determined to submit as the proposed rule change a Liquidity Quote Exhibit C that carries forward only one of the five Display Requirements that the January Order set aside, that requiring indication of the number of shares attributable to NYSE Liquidity Quote data. In addition, in response to oral comments of vendors and the January Order's discussion regarding the Display Requirements that required NYSE's prior approval of screen shots and changes to them, Exhibit C now requires vendors to submit screen shots and changes contemporaneously with their first use. According to the Exchange, this will facilitate the NYSE's monitoring of compliance with the Display Requirements. Prior approval is not required.

Number-of-Shares Requirement

Where a vendor integrates NYSE Liquidity Quote bids and offers with "best bid and offer" data, the quote's display must indicate the number of shares attributable to NYSE Liquidity Quote data (the "Number-of-Shares Requirement"). A compliant example of such a screen would be as follows:

Exchange or market maker	Size	Bid
N	8	79.50
B	5	79.49
T	2	79.48
NYLQ 50* P 2	52	79.47
C	1	79.30

In this example, "N," "B," "T," "P," and "C" refer to the best bid available on the Exchange, the Boston Stock Exchange, Inc., the Nasdaq Stock Market, Inc., the Pacific Exchange, Inc., and the Chicago Stock Exchange, Inc., respectively, and NYLQ refers to the NYSE Liquidity Quote bid. The left-hand column shows attribution to NYSE Liquidity Quote and the size of the NYSE Liquidity Quote and NYSE best bids. According to the Exchange, if one were to omit that column from the display, the NYSE Liquidity Quote would lose its attribution to NYSE. The Exchange represents that this requirement also alerts investors that a part of the aggregated quote's size at $79.47 is attributable to NYSE Liquidity Quote, and therefore:

(i) That part is a depth quote, not a "best" quote;

(ii) The aggregated quote's size includes the size of the NYSE best bid; and

(iii) Other, higher NYSE bids may also be included in its size.

Thus, if the left-hand column were omitted, investors would have no way of knowing that:

(i) Of the 5,200 shares bid at $79.47, (i) 5,000 shares represent a liquidity bid, and (ii) 800 of those 5,000 shares can be traded at NYSE's best bid of $79.50; and

(ii) Other higher-priced bids that are included among the 5,000 Liquidity Quote shares may be available for execution on NYSE.

2. Statutory Basis

The Exchange believes that the proposal to include an additional display requirement to the existing terms and conditions pursuant to which vendors may distribute NYSE Liquidity Quote information is consistent with Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received unsolicited written comments from members or other interested parties. The Exchange represents that it has taken into account the matters addressed by the Commission in the proceeding that gave rise to the January Order.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment for (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–32 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.

[7] *See* Securities Exchange Act Release No. 49076 (January 14, 2004), (Admin. Proc. File 3–11129) ("January Order").

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

• All submissions should refer to File Number SR–NYSE–2004–32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSYE–2004–32 and should be submitted on or before August 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–17002 Filed 7–26–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3597]

Commonwealth of Pennsylvania

Centre County and the contiguous counties of Blair, Cambria, Clearfield, Clinton, Huntingdon, Mifflin, and Union in the Commonwealth of Pennsylvania constitute a disaster area as a result of a fire that occurred on July 14, 2004. The fire destroyed the Academy Apartments in Bellefonte, Pennsylvania. Applications for loans for physical damage as a result of the disaster may be filed until the close of business on September 20, 2004, and for economic injury until the close of business on April 20, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	5.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.750
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 359705 and for economic injury is 9ZK900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 20, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–17037 Filed 7–26–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3596]

Commonwealth of Northern Mariana Islands; Island of Saipan

The Island of Saipan in the Commonwealth of the Northern Mariana Islands constitutes a disaster area as a result of damages caused by Typhoon Tingting that began on June 27 and continued through June 28, 2004. The typhoon caused structural damages throughout the Island of Saipan from wind, wind driven rain, and flooding in low-lying areas. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on September 20, 2004, and for economic injury until the close of business on April 20, 2005, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 419004, Sacramento, CA 95841–9004.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.750
Homeowners without Credit Available Elsewhere	2.875
Businesses with Credit Available Elsewhere	5.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.750
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 359606 and for economic damage is 9ZK800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 20, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–17036 Filed 7–26–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4787]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the seventeen letters.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Berry, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202–663–2700).

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

[10] 17 CFR 200.30–3(a)(12).

Dated: July 19, 2004.

Peter J. Berry,

Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

May 19, 2004

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 83 M60 7.62 x 51mm machine guns and associated minor equipment to the Colombian Ministry of National Defense for use by the Colombian Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 130–03

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 19, 2004

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to the United Kingdom and Norway for the manufacture of Talon Very High Frequency and Ultra High Frequency Radio Receiver Transmitters for end-use in the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 025–04

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 19, 2004

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Canada to support the manufacture of the Micro Silicon Coriolis Inertial Rate and Acceleration Sensor (μSCIRAS) Micro Electromechanical System and TruGuide Inertial Measurement Units (IMUs) for sales in the United States to support various military weapon systems.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 027–04

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 19, 2004

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of various F–16A/B aircraft parts for the Mid-Life Upgrade (MLU) Program to the governments of Belgium, The Netherlands, Norway, Denmark, and Portugal and U.S.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 028–04

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 19, 2004

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Japan for the manufacture of Talon Radios for use in Cargo Transport Aircraft (C–X) and Maritime Patrol Aircraft (P–X) for end-use by the Japan Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 030–04

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 19, 2004

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to South Korea and Germany of technical data, defense services and hardware for the integration of the Korean Electro-Optical Tracking System into the Korean Flying Tiger Vehicles for end-use by the Republic of Korea Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,

Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 032–04

The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 24, 2004

Dear Mr. Speaker: Pursuant to Sections 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction described in the attached certification involves the transfer of technical

data, assistance and defense articles to Japan for the manufacture of the ARROWHEAD Modernized TADS/PNVS for the AH–64D Apache and the Japanese AH–X Attack Helicopter.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 033–04
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 24, 2004

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of Vertical Launch Anti-Submarine Rocket (VLA) components to Japan for assembly and end-use by Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 034–04
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 24, 2004

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of production, manufacturing hardware and services to Japan to add one additional ship set, additional modules, parts and MK41 Vertical Launching System (VLS) components for the new Japanese Navy Guided Missile Destroyer, DDG2317.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 036–04
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

May 25, 2004

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Pakistan of technical data, defense services and spare parts to support the short-term 2-year lease of 26 modified Bell model 412EP Helicopters. The transaction will be funded by the Department of Defense under the authority of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108–11) and the Emergency Supplemental Appropriations Act for Defense and for the Reconstructing of Iraq and Afghanistan (Public Law 108–106), in order to reimburse the Government of Pakistan for support to be provided to U.S. military operations in connection with the global war on terrorism. The Department of Defense will conclude a Memorandum of Understanding with the Pakistan Ministry of Defense stating that the helicopters will be used to support the global war on terrorism consistent with this funding authority. In addition, the Government of Pakistan will be required to be a party to the Technical Assistance Agreement.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 014–04
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

June 10, 2004

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Germany for the manufacture of lasers for the TOW Missile's Improved Target Acquisition System (ITAS) for end-use in the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DTC 004–04
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

June 10, 2004

Dear Mr. Speaker: Pursuant to Sections 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Israel to support the manufacture and assembly of F–16 components and parts. The technical data and defense articles will then be re-transferred to Belgium, Greece, Turkey, Poland and the Republic of Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 024–04
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

June 10, 2004

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of major defense equipment sold commercially under a contract in the amount of $14,000,000 or more.

The transaction contained in the attached certification involves the export of five Goalkeeper Gun Mounts (including 30mm gun), warranty replacement parts for the Goalkeeper Gun Mounts and nine Timing Verification Gear Modkits to South Korea for anti-ship missile defense on Korean Navy KDX and LPX ships.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 043–04
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

June 10, 2004

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and hardware to Sweden for the development, test, supply and integration of two Active Electronically Scanned Array (AESA) Antenna Subsystems for the Swedish NORA III Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 045–04
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

June 10, 2004

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5,300 Model 37 .38 caliber revolvers for use by the Japanese National Police Agency in Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 053–04
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

June 18, 2004

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to France for the manufacture of Global Positioning Satellite (GPS) Guided Munitions (GGM) for End-Use in France and Germany.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 037–04
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

June 24, 2004

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to the Republic of Korea for the manufacture of selected components and the assembly of the Korean Electro-Optical Tracking System for End-Use by the Republic of Korea Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,

Paul V. Kelly,
Assistant Secretary Legislative Affairs.

Enclosure: Transmittal No. DDTC 044–04
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

[FR Doc. 04–17067 Filed 7–26–04; 8:45 am]
BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Transfer of Airport and Requests To Release Airport Property at the North Bend Municipal Airport, North Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of transfer of airport and request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the transfer of the airport and release of land at North Bend Municipal Airport under the provisions of 49 U.S.C. 47107(h).

DATES: Comments must be received on or before August 26, 2004.

ADDRESSES: Comments on this application may be mailed or delivered, by appointment, to the FAA at the following address: Mr. J. Wade Bryant, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gary LeTellier, Airport Manager, Coos County Airport District at 2348 Colorado Avenue, North Bend, Oregon 97459–2079.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Roberts, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

The request to transfer the airport and release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to transfer the Airport and release property at the North Bend Municipal Airport under the provisions of 49 USC 47107(h).

On July 2, 2004, the FAA determined that the request to transfer the Airport and release property at North Bend Municipal Airport submitted by the City of North Bend and the Coos County Airport District met the procedural requirements of the Federal Aviation Airport Compliance Requirements

Order 5190.6A. The FAA may approve the request, in whole or in part, no later than November 30, 2004.

The following is a brief overview of the request: The City of North Bend Oregon plans to transfer all assets and liabilities associated with the North Bend Municipal Airport, including surplus government land and AIP Grant obligations, to the Coos County Airport District. After the transfer, the Coos County Airport District will sell 6.92 acres of airport land to the City of North Bend. The City's sewage treatment plant is currently located on this parcel. The land is non-aeronautical property and will be sold at fair market value with proceeds used for airport capital improvement projects.

Any person may inspect the request in person, by appointment, at the FAA office listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Roberts, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Seattle Airports District Office, 1601 Lind Avenue, SW., Suite 250, Renton, Washington 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at North Bend Municipal Airport, 2348 Colorado Ave., North Bend, OR 97459–2079.

Issued in Renton, Washington on July 19, 2004.

J. Wade Bryant,

Manager, Seattle Airports District Office.

[FR Doc. 04–17018 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Fort Lauderdale Executive Airport, Fort Lauderdale, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Fort Lauderdale Executive Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the City of Fort Lauderdale. This program was submitted subsequent to a determination by FAA that the associated noise exposure maps submitted under 14 CFR part 150 for Fort Lauderdale Executive Airport were in compliance with applicable requirements effective February 19, 2004. The proposed noise compatibility program will be approved or disapproved on or before January 16, 2005.

EFFECTIVE DATE: The effective date of the start of FAA's review of the associated noise compatibility program is July 20, 2004. The public comment period ends September 20, 2004.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Baskin, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando Florida 32822, (407) 812–6331, Extension 130. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Fort Lauderdale Executive Airport which will be approved or disapproved on or before January 16, 2005. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Fort Lauderdale Executive Airport, effective on July 20, 2004. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 16, 2005.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Orlando, Florida July 20, 2004.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 04–17019 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Approval of Noise Compatibility Program; Lincoln Airport, Lincoln, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Lincoln Airport Authority under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On September 26, 2003, the FAA determined that the noise exposure maps submitted by the Lincoln Airport Authority under part 150 were in compliance with applicable requirements. On June 7, 2004, the FAA approved the Lincoln Airport noise compatibility program.

Seventeen measures were included in the Lincoln Airport Noise Compatibility Plan. Of the seventeen measures, fourteen were approved; one measure was approved in part and disapproved in part for the purposes of part 150; and two measures were disapproved pending submission of addition information. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

EFFECTIVE DATE: The effective date of the FAA's approval of the Lincoln Airport noise compatibility program is June 7, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Schenkelberg, 901 Locust, Kansas City, Missouri, 64106. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Lincoln Airport, effective June 7, 2004.

Under section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, governmental agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Regional Office in Kansas City, Missouri.

Lincoln Airport submitted to the FAA on February 18, 2003, the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from February 2002 through February 2003. The Lincoln Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on September 26, 2003. Notice of this determination was published in the **Federal Register** on October 8, 2003 (68 FR 58162).

The Lincoln Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2009. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 47504 of the Act. The FAA began its review of the program on December 10, 2003, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained five Noise Abatement Elements, eight Land Use Management Elements, and four Program Management Elements. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective June 7, 2004.

Outright approval was granted for all the Land Use Management Elements and Program Management Elements and for two of the Noise Abatement Elements. One Noise Abatement Element was approved in part and disapproved in part for purposes of part 150. Two Noise Abatement Elements were disapproved pending submission of additional information to make an informed analysis.

These determinations are set forth in detail in a Record of Approval signed by the FAA Associate Administrator of Airports on June 7, 2004. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Lincoln Airport. The Record of Approval also will be available on-line at *http://www.faa.gov/arp/environmental/14cfr150/index14.cfm.*

Issued in Central Region, July 15, 2004.

George A. Hendon,

Manager, Airports Division.

[FR Doc. 04–17020 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–11–U–00–MKE To Use the Revenue From a Passenger Facility Charge (PFC) at General Mitchell International Airport, Milwaukee, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at General Mitchell International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before August 26, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to C. Barry Bateman, Airport Director of the General Mitchell International Airport, Milwaukee, Wisconsin at the following address: 5300 South Howell Avenue, Milwaukee, Wisconsin 53207–6189.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Milwaukee under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager. Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450, 612–713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at General Mitchell International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On July 8, 2004 the FAA determined that the application to use the revenue from a PFC submitted by the County of Milwaukee was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than October 13, 2004.

The following is a brief overview of the application.

Level of the PFC: $3.00.

Actual charge effective date: March 1, 2017.

Estimated charge expiration date: September 1, 2017.

Total approved PFC revenue: $825,000.

Brief description of proposed project: E concourse aircraft ramp.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Air taxi/commercial operators filing FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Milwaukee.

Issued in Des Plaines, Illinois on July 19, 2004.

Elliott Black,

Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 04–17017 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application No. 04–04–C–00–SUX To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Sioux Gateway Airport, Sioux City, IA

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 Sioux Gateway 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 August 26, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locus, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed delivered to Mr. Glenn S. Januska, Airport Director, Sioux Gateway Airport, at the following address: Sioux Gateway Airport/Col. Bud Day Field, 2403 Aviation Boulevard, Sioux City, Iowa 51111.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Sioux Gateway Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 901 Locust, Kansas City, MO 64106 (816) 329–2641. 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 the Sioux Gateway 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).

On July 19, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Sioux Gateway Airport, Sioux City Iowa, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 12, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: November, 2004.

Proposed charge expiration date: May, 2006.

Total estimated PFC revenue: $258,095.

Brief description of proposed project(s): Rehabilitate Taxiway Bravo; Reconstruct Taxiway Charlie, the air carrier ramp, Taxiway Alpha (south), and Taxiway Echo; update the airport master plan, and replace a snow plow.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Sioux Gateway Airport.

Issued in Kansas City, Missouri on July 19, 2004.

Michael J. Faltermeier,

Acting Manager, Airports Division, Central Region.

[FR Doc. 04–17021 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

FTA Fiscal Year 2004 Apportionments, Allocations and Program Information; Notice of Supplemental Information and Corrections

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice.

SUMMARY: This notice announces that FTA will make available the entire amount of the annual apportionments and allocations when Congress extends

the transit program authorization through September 30, 2004. The Surface Transportation Extension Act of 2004, Part III (Pub. L. 108–263) extended transit programs only through July 31, 2004. FTA has published three previous documents identifying total annual apportionments and funds available for obligation based on extensions of the authorization through February 29, April 30, and June 30, 2004. The previously announced available allocations remain available. This notice also identifies reductions to the previously published fiscal year (FY) 2004 full year bus and bus-related allocations to correct an administrative error.

FOR FURTHER INFORMATION CONTACT: The appropriate FTA Regional Administrator (see list at end of notice: note change of contact information for Region 8) or Mary Martha Churchman, Director, Office of Resource Management and State Programs, (202) 366–2053.

ADDRESSES: Address, telephone, and facsimile information for the FTA Regional Offices is listed at the end of this notice in Appendix A.

I. Funds Available for Obligation

The "Surface Transportation Extension Act of 2004, Part III" (Pub. L. 108–263) was signed into law by President Bush on June 30, 2004. The Act provides an extension of programs funded under the Transportation Equity Act for the 21st Century (TEA–21), pending enactment of a law reauthorizing TEA–21, and provides available funding for transit programs from October 1, 2003, through July 31, 2004.

Due to the short duration of the extension, and because Congress is expected to make the remainder of the annual funding available after July 31, FTA is not making additional funding available for immediate obligation at this time. The available amounts published in the supplemental **Federal Register** notice on June 3, 2004, remain available. The tables are posted on the FTA Web site at [*http://www.fta.dot.gov/25_ENG_HTML.htm*], together with that notice, and have been distributed to grantees by each FTA Regional Office.

II. Changes to Bus and Bus-Related Project Allocations

In the previously published tables of FY 2004 bus and bus-related projects, FTA failed to include two projects that Congress designated to receive annual funding in TEA–21 and its subsequent extensions: the Altoona Bus Testing Facility, and the fuel cell bus project conducted by Georgetown University. These projects were not listed in the conference report accompanying the Consolidated Appropriations Act, 2004, but should have been included in the allocation of funds under the FY 2004 bus and bus-related program. The addition of these two projects to FY 2004 bus and bus-related projects and activities to which the appropriated funds must be distributed results in a reduction to the annual allocation for each of the other projects. FTA regrets any inconvenience resulting from this necessary administrative correction. When the full year allocation becomes available for obligation, it will be at the reduced level listed in the Revised Table 9 in this Notice.

Issued on: July 21, 2004.

Jennifer L. Dorn,

Administrator.

BILLING CODE 4910–57–P

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

(Note: Available allocation is based on program funding level authorized by the Surface Transportation Extension Act of 2004, Public Law 108-224.)

STATE	PROJECT	Revised Allocations	Available
AK	Alaska Mobility Coalition Bus Replacement	$485,437	$368,749
AK	Anchorage Ship Creek Intermodal Facility, Alaska	1,941,747	1,474,997
AK	Arctic Winter Games buses and bus facilities, Alaska	1,456,311	1,106,248
AK	Coffman-Cove Inner Island Ferry/Bus Terminal, Alaska	1,456,311	1,106,248
AK	Girdwood Transportation Center, Alaska	970,874	737,499
AK	Port McKenzie Intermodal Facility, Alaska	970,874	737,499
AK	Port of Anchorage Intermodal Facility, Alaska	2,912,620	2,212,495
AK	Sawmill Creek Intermodal Facility, Alaska	1,941,747	1,474,997
AL	Alabama A&M University Transit Loop, Alabama	1,456,311	1,106,248
AL	Alabama Area Agencies on Aging Senior Van Replacement	970,874	737,499
AL	Alabama State Docks Intermodal Facility	9,223,299	7,006,235
AL	Birmingham Downtown Intermodal Facility phase II, Alabama	3,398,058	2,581,244
AL	Cummings Research Park Commercial Center Intermodal Facility, Alabama	1,941,747	1,474,997
AL	Huntsville Airport Phase III Intermodal Facility, Alabama	3,398,058	2,581,244
AL	Jasper Bus Replacement, Alabama	38,834	29,500
AL	Mobile Waterfront Terminal and Maritime Center of the Gulf, Alabama	4,368,931	3,318,743
AL	Northwest Shoals Community College Transportation Modernization, Alabama	436,894	331,874
AL	Orange Beach Senior Activity Center buses, Alabama	97,088	73,750
AL	Troy State University Bus Shuttle Program, Troy, Alabama	1,456,311	1,106,248
AR	Arkansas Statewide buses and bus facilities	4,611,649	3,503,118
AR	Fort Smith Transit Facility, Arkansas	728,156	553,124
AR	Southeast Arkansas Area Agencies on Aging buses and bus facilities, Arkansas	310,680	235,999
AZ	Alternative Fuel Replacement Buses for Sun Tran, Arizona	485,437	368,749
AZ	Coconino County buses and bus facilities, Arizona	1,359,223	1,032,498
AZ	Mesa Operating Facility, Arizona	1,941,747	1,474,997
AZ	Phoenix/Glendale West Valley Operating Facility, Arizona	4,854,368	3,687,492
AZ	Phoenix/Regional Heavy Maintenance Facility, Arizona	970,874	737,499
AZ	Ronstadt Transit Center Modifications, Arizona	2,912,620	2,212,495
AZ	Tempe Downtown Transit Center, Arizona	485,437	368,749
AZ	Tempe/Scottsdale East Valley Facilities, Arizona	3,883,494	2,949,994
AZ	Tucson Alternative Fuel Replacement Buses, Arizona	3,495,144	2,654,994
CA	AC Transit Expansion Buses, California	970,874	737,499
CA	Access Enhancements to Sierra Madre Villa Gold Line Station, California	582,524	442,499
CA	Alameda Point Areil Transit Project, California	485,437	368,749
CA	Anaheim Resort Transit (ART), California	485,437	368,749
CA	Antelope Valley Transit Authority Operations and Maintenance Facility, California	1,213,592	921,873
CA	Baldwin Park Downtown/Metrolink Parking Improvements, California	242,718	184,375
CA	Burbank Empire Area Transit Canter, California	728,156	553,124
CA	Calexico Transit System, California	291,262	221,250
CA	Cerone Operating Complex Improvements, California	485,437	368,749
CA	Cerritos Circulator Buses, California	291,282	221,250
CA	Claremont Intermodal Transit Village Expansion Project, California	1,213,592	921,873
CA	Collegian Busway Improvements, California	194,174	147,500
CA	Corona Transit Center, California	879,812	518,249
CA	Davis Intermodal Facility, California	194,174	147,500
CA	Eastern Contra Costa County Park and Ride Lots, California	582,524	442,499
CA	Ed Roberts Campus transit center, California	388,350	294,999
CA	El Gerces Intermodal Station, Needles, California	1,844,660	1,401,247
CA	Escondido Bus Maintenance Facility, California	485,437	368,749
CA	Eureka Intermodal Depot, California	242,718	184,375
CA	Foothill Transit Transit Oriented Neighborhood Program, California	2,427,184	1,843,746
CA	Fresno FAX Buses, Equipment, and Facilities, California	1,165,048	884,998
CA	Golden Empire Transit Traffic Signal Priority, California	242,718	184,375
CA	Hemet Transit Center/Bus Facility, California	302,912	230,099
CA	Interstate 15 Managed Lanes BRT Capital Purchase, California	970,874	737,499
CA	Long Beach Transit buses and bus facilities, California	970,874	737,499
CA	South Whittier Circulator Buses, California	388,350	294,999 a/
CA	Los Angeles MTA buses, California	3,883,494	2,949,994
CA	Mammoth Lakes Bus Purchase, California	778,699	589,999
CA	Modesto Bus Facility, California	970,874	737,499
CA	Monterey-Salinas Transit Buses, California	1,456,311	1,106,248

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

(Note: Available allocation is based on program funding level authorized by the Surface Transportation Extension Act of 2004, Public Law 108-224.)

STATE	PROJECT	Revised Allocations	Available
CA	Omnitrans - Paratransit Vehicles, California	291,262	221,250
CA	Orange County Transit Center Improvements, California	315,534	239,687
CA	Orange County Bus Rapid Transit, California	2,184,466	1,659,372
CA	Orange County Fare Collection System, California	970,874	737,499
CA	Orange County Inter-County Express Bus Service, California	1,067,961	811,248
CA	Palmdale Intermodal Facility Parking Lot Expansion, California	291,262	221,250
CA	Palo Alto Intermodal Transit Center, California	728,158	553,124
CA	Redondo Beach Catalina Transit Terminal, California	778,699	589,999
CA	Reseda Boulevard Bus Rapid Transit Project Capital Improvement, California	242,718	184,375
CA	Riverside Transit Agency, Automatic Traveler Information System (ATIS), California	72,815	55,312
CA	Riverside Transit Agency, Bus Rapid Transit Investment, California	485,437	368,749
CA	Riverside Transit Agency, Transit Center, California	970,874	737,499
CA	Roseville Multitransit Center, California	485,437	368,749
CA	Sacramento Regional Bus Expansion, Enhancement, and Coordination Program, City of Auburn, California	97,088	73,750
CA	Sacramento Regional Bus Expansion, Enhancement, and Coordination Program, City of Lincoln, California	485,437	368,749
CA	Sacramento Regional Transit District, Bus Maintenance Facility, California	485,437	368,749
CA	San Fernando Local Transit System, California	291,262	221,250
CA	San Francisco Muni buses and bus facilities, California	3,883,494	2,949,994
CA	San Joaquin RTD buses and bus facilities, California	242,718	184,375
CA	San Mateo County Transit District Zero-Emission buses, California	873,786	663,749
CA	Santa Barbara Metropolitan Transit District Electric Bus Investment, California	291,262	221,250
CA	Santa Clara Valley Transportation Authority Zero-Emission Buses, California	291,262	221,250
CA	Sonoma County Transit CNG Buses, California	485,437	368,749
CA	South San Fernando Valley Park and Ride facility expansion, California	291,262	221,250
CA	Spring Valley Multi-Modal Center, California	582,524	442,499
CA	SunLine Transit Agency Clean Fuels Mall Facility and Hydrogen Infrastructure Expansion, California	436,894	331,874
CA	Temecula Transit Center, California	778,699	589,999
CA	Transit First Implementation, Chula Vista, California	388,350	294,999
CA	Truckee Replacement Buses, California	72,815	55,312
CA	Ventura County CNG Fueling Station and Facility Pavement Replacement, California	388,350	294,999
CA	Visalia Bus Operations and Maintenance Facility, California	970,874	737,499
CO	Colorado Transit Coalition buses and bus facilities, Colorado	13,592,214	10,324,966
CT	Bridgeport Intermodal Transport Center, Connecticut	3,883,494	2,949,994
CT	Connecticut Statewide buses and bus facilities	2,912,620	2,212,495
CT	East Haddam Mobility Improvement Project, Connecticut	2,912,620	2,212,495
CT	Greater New Haven Transit District Fuel Cell and Electric Bus Funding, Connecticut	1,458,311	1,106,248
CT	Hartford Downtown Circulator, Connecticut	1,334,951	1,014,060
CT	Pulse Point Joint Development and Safety Improvements, Norwalk, Connecticut	485,437	368,749
DC	Georgetown University Fuel Cell Transit Bus Program (TEA-21)	4,788,842	0 k/
DC	WMATA Bus Fleet, Washington, DC	728,156	553,124
DE	Delaware Statewide bus and bus facilities	970,874	737,499
DE	University of Delaware Fuel Cell Bus Project, Delaware	1,699,029	1,290,623
FL	Citrus County Enhancement Project for the Transportation Disadvantaged, Florida	121,359	92,187
FL	Flagler Senior Services Transit Coaches, Florida	121,359	92,187
FL	Florida International University/University of Miami University Transportation Center, Florida	388,350	294,999
FL	Fort Lauderdale Tri-County Transit Authority fare collection system, Florida	778,899	589,999
FL	HART Bus Purchase, Florida	485,437	368,749
FL	Jacksonville Transportation Authority, Bus and Bus Facilities, Florida	970,874	737,499
FL	Key West bus and bus facilities, Florida	1,067,961	811,248
FL	Lakeland Area Mass Transit District Citrus Connection, Florida	533,980	405,624
FL	Lee County LeeTran Bus Replacement, Florida	194,174	147,500
FL	Levy County Improvement Project for the Transportation Disadvantaged, Florida	194,174	147,500
FL	Miami Dade County System Enhancements, Florida	970,874	737,499
FL	Miami-Dade County buses, Florida	970,874	737,499
FL	North Florida and West Coast Bus Procurement, Florida	3,883,494	2,949,994
FL	NW 7th Avenue Transit HUB Improvements, Florida	970,874	737,499
FL	Palm Beach County and Broward County Regional Buses, Florida	970,874	737,499
FL	Palm Beach Gardens Mass Transit Bus Shelters, Florida	19,418	14,750
FL	Putnam County Transit Coaches for Ride Solutions, Florida	1,165,048	884,998
FL	St. Augustine Intermodal Transportation and Parking Facility, Florida	533,980	405,624
FL	St. Johns County Council on Aging Administrative Facility, Florida	194,174	147,500

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

(Note: Available allocation is based on program funding level authorized by the Surface Transportation Extension Act of 2004, Public Law 108-224.)

STATE	PROJECT	Revised Allocations	Available
FL	St. Johns County Council on Aging Passenger Amenities, Florida	38,834	29,500
FL	St. Johns County Council on Aging Transit Coaches, Florida	339,806	258,125
FL	TalTran buses and bus facilities, Florida	679,612	516,249
FL	TalTran Intermodal Facility, Florida	485,437	368,749
FL	VOTRAN Public Transit System Buses, Florida	726,156	553,124
FL	West Palm Beach Trolley Buses, Florida	776,699	589,999
FL	Winter Haven Transit Terminal, Florida	339,806	258,125
GA	Athens Clarke County Park Ride Project, Georgia	2,669,902	2,026,120
GA	Chatham Area Transit Authority buses and bus facilities, Georgia	5,625,241	4,424,991
GA	City of Macon Alternative Fuel Vehicle Purchase, Georgia	291,262	221,250
GA	Dekalb County BRT Improvements, Georgia	1,456,311	1,106,248
GA	Georgia Statewide buses and bus facilities, Albany & Rome	970,874	737,499
GA	GRTA buses and bus facilities, Georgia	4,854,368	3,687,492
GA	Hamilton Clean Fuels Bus Facility, Georgia	970,674	737,499
GA	Leesburg Train Depot Renovation and Restoration, Georgia	291,262	221,250
GA	Macon and Athens Multimodal Station, Georgia	1,553,398	1,179,998
GA	Macon Multi-Modal Terminal Station, Georgia	1,456,311	1,106,248
GA	MARTA Automated Fare Collection/Smart Card System, Georgia	3,883,494	2,949,994
GA	MARTA Buses, Georgia	5,825,241	4,424,991
GA	Regional Transit Project for Quitman, Clay, Randolph and Stewart Counties, Georgia	485,437	368,749
GA	Terminal Station Multi-Modal Roof Rehabilitation, Georgia	328,158	249,275
HI	Hawaii Statewide Rural Bus Program	3,883,494	2,949,994
HI	Honolulu Bus and Paratransit Replacement Program, Hawaii	9,706,736	7,374,984
HI	Honolulu Middle Street Intermodal Center, Hawaii	2,912,620	2,212,495
IA	Ames Maintenance Facility improvement, Iowa	970,674	737,499
IA	Coralville Intermodal Facility, Iowa	485,437	368,749
IA	Iowa Statewide buses and bus facilities	6,407,766	4,867,490
IA	UNI Multimodal Project, Iowa	3,398,058	2,581,244
ID	Idaho Transit Coalition buses and bus facilities	3,883,494	2,949,994
IL	Illinois Statewide buses and bus facilities	6,796,116	5,162,489
IL	Lincoln Park Museum Trolleys, Illinois	582,524	442,499
IL	Normal Multimodal Transportation Center and public facilities, Illinois	726,158	553,124
IL	Peoria Bus Purchase, Illinois	291,262	221,250
IL	Rock Island County Mass Transit District (Metrolink) transit facility, Illinois	485,437	368,749
IL	Springfield Bus Purchase, Illinois	291,262	221,250
IN	Bloomington Transit, Bloomington, Indiana	899,028	530,999
IN	Cherry Street Multi-Modal Facility, Terre Haute, Indiana	1,844,660	1,401,247
IN	Fort Wayne Citilink Bus Purchase, Indiana	388,350	294,999
IN	Indiana University Bloomington, Indiana	776,699	589,999
IN	Indianapolis Downtown Transit Center, Indiana	3,398,058	2,581,244
IN	Muncie Transit System, Indiana	679,612	516,249
IN	South Bend TRANSPO Bus Facilities, Indiana	970,874	737,499
KS	City of Wichita Transit Authority System Upgrades, Kansas	242,718	184,375
KS	Johnson County Nolte Transit Center, Kansas	242,716	184,375
KS	Johnson County Transit Equipment and Transit Coach Improvement, Kansas	97,088	73,750
KS	Kansas City Area Transit Authority buses and bus facilities, Kansas	1,650,485	1,253,748
KS	Kansas Statewide buses and bus facilities	2,912,620	2,212,495
KS	Topeka Transit buses and bus facilities, Kansas	485,437	368,749
KS	Unified Government of Kansas City bus replacement, Kansas	339,806	258,125
KY	Audubon Area Community Services, Kentucky	97,088	73,750
KY	Danville Hub-Gilcher Transit Facility / Parking Structure, Kentucky	1,899,029	1,290,623
KY	Daviess County Parking Garage and Intra-County Transit Facility, Kentucky	1,941,747	1,474,997
KY	Fulton County Transit Authority, Kentucky	145,632	110,625
KY	Henderson Area Rapid Transit Authority, Kentucky	14,564	11,063
KY	Kentucky Transportation Cabinet/Community Action Groups	388,350	294,999
KY	Paducah Area Transit Authority, Kentucky	38,834	29,500
KY	Perry County Intermodal Facility, Kentucky	1,941,747	1,474,997
KY	Red Cross Wheels, Kentucky	77,670	59,000
KY	Senior Services of Northern Kentucky buses and bus facilities, Kentucky	242,716	184,375
KY	Southern and Eastern Kentucky buses and bus facilities	1,504,854	1,143,123
KY	Transit Authority of Northern Kentucky Bus Replacement, Kentucky	1,941,747	1,474,997

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

(Note: Available allocation is based on program funding level authorized by the Surface Transportation Extension Act of 2004, Public Law 108-224.)

STATE	PROJECT	Revised Allocations	Available
KY	Transit Authority of River City buses and bus facilities, Kentucky	2,427,184	1,843,748
KY	Transportation Authority of the River City (TARC) bus/trolley replacement, Kentucky	2,427,184	1,843,746
KY	Transportation Authority of the River City (TARC) expansion facility, Kentucky	778,899	589,999
KY	Western Kentucky University Bus Shuttle System, Kentucky	2,427,184	1,843,746
LA	Greater Ouachita Port and Intermodal Facility, Louisiana	1,213,592	921,873
LA	Intermodal Transit Facility for ULM, Louisiana	970,874	737,499
LA	Louisiana Statewide buses and bus facilities	5,339,805	4,056,241
LA	Shreveport Intermodal Bus Facility, Louisiana	879,812	516,249
LA	St. Bernard Perish Intermodal Facilities, Louisiana	485,437	368,749
LA	St. Tammany Park and Ride, Louisiana	388,350	294,999
MA	Berkshire Regional Transit Authority (BRTA) Buses and Fare Boxes, Massachusetts	160,194	121,687 b/
MA	Brockton Intermodal Transportation Centre, Massachusetts	970,874	737,499
MA	Bus Replacement, Brockton Area Transit Authority, Massachusetts	1,941,747	1,474,997
MA	Franklin Regional Transit Authority (FRTA) Bus, Massachusetts	145,632	110,625
MA	Lowell Regional Transit Authority Gallagher Intermodal Transportation Center, Massachusetts	970,874	737,499
MA	Montachusett Area Regional Transit (MART) buses and bus facilities, Massachusetts	1,941,747	1,474,997
MA	Newton Rapid Transit Handicap Access Improvements, Massachusetts	291,262	221,250
MA	Pioneer Valley Transit Authority (PVTA) buses, Massachusetts	2,330,096	1,769,996 c/
MA	Pittsfield Intermodal Transportation Center, Massachusetts	597,088	453,582
MA	Springfield Union Station Intermodal facility redevelopment, Massachusetts	4,368,931	3,318,743
MD	Baltimore.Center Plaza, Maryland	582,524	442,499
MD	Maryland Statewide buses and bus facility	7,281,551	5,531,238
MD	Southern Maryland Commuter Bus Initiative	4,368,931	3,318,743
MD	WMATA Buses, Maryland	582,524	442,499
ME	Cranberry Isles Intermodal Transportation Facility, Maine	242,718	184,375
ME	Curtis Ferry, Maine	728,156	553,124
ME	Maine Statewide buses and bus facilities	1,213,592	921,873
ME	Portland Bayside Parking Garage / Intermodal Facility, Maine	242,718	184,375
MI	Allegan County Transportation Services, Michigan	38,834	29,500 d/
MI	Ann Arbor Fuel Cell Bus Project, Michigan	1,941,747	1,474,997
MI	Ann Arbor Transit Authority Transit Center, Michigan	728,156	553,124
MI	Barry County Transit replacement maintenance equipment, Michigan	19,418	14,750
MI	Bay Area Metropolitan Transportation Authority New and Replacement Buses, Michigan	242,718	184,375
MI	Bay Area Transportation Authority Downtown Transfer Center Construction and Bus Purchase, Grand Traverse County, Michigan	970,874	737,499
MI	Belding bus replacement and communication equipment, Michigan	38,834	29,500
MI	Berrien County Public Transportation, Michigan	97,088	73,750 e/
MI	Cadillac/Wexford Transit Authority buses, Michigan	72,815	55,312
MI	Cadillac/Wexford Transit Authority Intermodal Facility, Michigan	582,524	442,499
MI	CATA, Lansing, Michigan	970,874	737,499
MI	Clare County Transit Corporation Replacement Buses, Michigan	97,088	73,750
MI	Clinton Transit Bus Purchase, Michigan	38,834	29,500
MI	County Connection L.L.C., Midland County, Michigan	72,815	55,312
MI	Detroit Bus Replacement, Michigan	2,427,184	1,843,746
MI	Detroit Downtown Transit Center, Michigan	8,796,118	5,162,489
MI	Detroit Timed Transfer Center Phase II, Michigan	970,874	737,499
MI	Flint buses and bus facilities, Michigan	2,427,184	1,843,746
MI	Grand Rapids Metropolitan Area multimodal surface transportation center, Michigan	1,504,854	1,143,123
MI	Harbor Transit Bus Replacement, Michigan	194,174	147,500
MI	Holland Macatawa Area Express (MAX), Michigan	582,524	442,499
MI	Intelligent Transportation System for ITP The Rapid, Michigan	582,524	442,499
MI	Isabella County Transportation Commission Vehicle Replacement, Michigan	242,718	184,375
MI	Kalamazoo County Human Services Care-A-Van, Michigan	72,815	55,312
MI	Kalamazoo Metro Transit, Michigan	912,622	693,249 f/
MI	Lake Erie Transit Bus Storage Facility and Maintenance Facility Expansion, Michigan	970,874	737,499
MI	Lansing Fixed Route Bus Replacement, ADA Para transit Small Bus Replacement, Maintenance, Administration and Storage Facility Renovation and Expansion, CATA/MSU Bus Way, Rural Small Bus Replacement, Michigan	1,456,311	1,106,246
MI	LETS Bus Replacement, Michigan	87,378	66,375
MI	Ludinton Mass Transportation Authority Bus Facility, Michigan	242,718	184,375
MI	Manistee County Transportation, Inc. Replacement Buses, Michigan	29,126	22,125
MI	Marquette County, Phase II - Transit Administrative, Operations, Maintenance & Storage Facility, Michigan	970,874	737,499

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

(Note: Available allocation is based on program funding level authorized by the Surface Transportation Extension Act of 2004, Public Law 108-224.)

STATE	PROJECT	Revised Allocations	Available
MI	Mecosta Osceola County Area Transit Vehicle Replacement, Michigan	194,174	147,500
MI	Michigan Statewide buses and bus facilities	970,874	737,499
MI	Northern Michigan buses and bus facilities	485,437	368,749
MI	Sanilac County bus facility, Michigan	97,088	73,750
MI	Shiawassee Transportation Center and replacement buses, Michigan	38,834	29,500
MI	St. Joseph County Transit, Michigan	33,980	25,812
MI	Suburban Mobility Authority for Regional Transportation (SMART) buses and bus facilities, Michigan	4,368,931	3,318,743
MI	VanBuren Public Transit, Michigan	17,476	13,275
MN	Metro Transit buses and bus facilities, Minnesota	4,271,844	3,244,993
MN	Minnesota District 8 Transit Vehicles and Transit Bus Facilities	778,699	589,999
MN	Minnesota Transit buses and bus facilities, Minnesota	1,823,300	1,233,097
MN	Northwest Corridor Busway, Minnesota	2,912,620	2,212,495
MN	Southern Minnesota Transit Facilities	29,128	22,125
MN	Southern Minnesota Transit Vehicles	364,077	276,562
MN	St. Cloud Buses, Minnesota	97,088	73,750
MN	Union Depot Multi-modal Transportation Hub, Minnesota	728,156	553,124
MO	City of Columbia Transit Replacement, Missouri	97,088	73,750
MO	Clinton Transit Office, Missouri	242,718	184,375
MO	Jefferson City Transit System, Missouri	291,262	221,250
MO	KCATA buses and bus facilities, Missouri	2,912,620	2,212,495 g/
MO	Missouri Bus & Peratransit Vehicles- Rolling Stock	778,699	589,999
MO	Missouri Statewide buses and bus facilities	7,766,989	5,899,987
MO	OATS buses and bus facilities, Missouri	1,456,311	1,106,248
MO	Oats Transportation Service of Southwest Missouri	67,961	51,625
MO	Ray County Transportation vehicle replacement, Missouri	77,670	59,000
MO	Southeast Missouri Bus Service Capital Improvements	1,456,311	1,106,248
MO	Southwest Missouri State University Transfer Facility, Missouri	2,427,184	1,843,746
MO	St. Louis Downtown Shuttle/Trolley Equipment, Missouri	242,718	184,375
MO	St. Louis METRO buses and bus facilities, Missouri	1,213,592	921,873
MS	Coast Transit Authority, Mississippi	485,437	368,749
MS	Harrison County multi-modal facilities and shuttle service, Mississippi	970,874	737,499
MS	Hattiesburg Intermodal Facility, Mississippi	2,912,620	2,212,495
MS	Intermodal Facility, JIA, Mississippi	1,941,747	1,474,997
MS	JATRAN vehicles for disabled and elderly, Mississippi	242,718	184,375
MT	Billings Downtown Bus Transfer Facility, Montana	1,456,311	1,106,248
MT	Great Falls Transit Authority Bus Replacement and Facility Improvement, Montana	291,262	221,250
MT	Helena Transit Facility, Montana	485,437	368,749
MT	Liberty County COA Bus Facility, Montana	48,544	36,875
MT	Mountain Line Bus Replacement and Facility Improvements, Montana	194,174	147,500
NC	Asheville Transit System Fleet Replacement, North Carolina	291,262	221,250
NC	Chapel Hill Bus Maintenance Facility, North Carolina	970,874	737,499
NC	Charlotte Area Transit System Transit Maintenance and Operations Center, North Carolina	4,854,368	3,687,492
NC	Durham Multimodal Transportation Facility, North Carolina	1,456,311	1,106,248
NC	High Point Project Terminals, North Carolina	776,699	589,999
NC	Intermodal Transportation Hub Project, North Carolina	145,632	110,625
NC	North Carolina Statewide buses and bus facilities	8,067,981	4,609,365
NC	Piedmont Authority for Regional Transportation (PART) multimodal transportation center, North Carolina	1,067,961	811,248
NC	Winston-Salem Union Station, North Carolina	1,262,136	958,748
ND	North Dakota Statewide buses and bus facilities	2,912,620	2,212,495
ND	Small Urban and Rural Transit Center, North Dakota	388,350	294,999
NE	Kearney RYDE Transit, Nebraska	970,874	737,499
NE	Metro Area Transit (MAT) buses and bus facilities, Omaha, Nebraska	1,941,747	1,474,997
NE	Nebraska Statewide Rural Automatic Vehicle Locating & Comms System	728,156	553,124
NH	New Hampshire Statewide buses and bus facilities	4,368,931	3,318,743
NJ	Harrison Intermodal Project, New Jersey	728,156	553,124
NJ	Howard Boulevard Intermodal Park & Ride, New Jersey	2,135,923	1,622,497
NJ	Hunterdon County Intermodel Stations and Park & Rides, New Jersey	388,350	294,999
NJ	Montclair State University Campus and Community Bus System, New Jersey	879,812	518,249
NJ	Morris County Intermodal Facilities and Park & Rides, New Jersey	2,912,620	2,212,495
NJ	Newark Penn Station Intermodal Improvements, New Jersey	2,912,620	2,212,495
NJ	Old Bridge Intermodal Stations and Park & Rides, New Jersey	485,437	368,749

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

(Note: Available allocation is based on program funding level authorized by the Surface Transportation Extension Act of 2004, Public Law 108-224.)

STATE	PROJECT	Revised Allocations	Available
NJ	South Amboy Regional Intermodal Transportation Initiative, New Jersey	970,874	737,499
NJ	Trenton Intermodal Station, New Jersey	728,156	553,124
NM	Farmington buses and bus facilities, New Mexico	97,088	73,750
NM	Las Cruces buses and bus facilities, New Mexico	364,077	278,562
NM	West Side Transit Facilty Albuquerque Transit Department, New Mexico	1,941,747	1,474,997
NV	Bus Rapid Transit Project, Virginia Street, Reno, Nevada	970,874	737,499
NV	Construction of new Intermodal Terminals in Downtown Reno and Sparks, Nevada	5,825,241	4,424,991
NV	Nevada Rural Transit Vehicles and Facilities	485,437	368,749
NV	RTC Central City Intermodal Transportation Terminal, Las Vegas, Nevada	485,437	368,749
NV	Sparks and Reno Bus and Bus Facilities, Nevada	145,632	110,625
NY	Broome County Hybrid Buses, New York	582,524	442,499 h/
NY	Capital District Transportation Authority (CDTA), Rensselaer Intermodal Station, New York	242,718	184,375
NY	Central New York Regional Transportation Authority	2,233,009	1,696,247
NY	Fort Edward Intermodal Station Interior Restoration/Rehabilitation Project, New York	291,262	221,250
NY	Jacobi Transportation Facility, New York	778,699	589,999
NY	Jamaica Intermodal Facilties, Queens, New York	388,350	294,999
NY	Livingston County Transportation Center, New York	388,350	294,999
NY	Main Street project for downtown Buffalo, New York	631,068	479,374
NY	Montgomery Buses, New York	38,834	29,500
NY	MTA/Long Island Bus clean fuel cell bus purchase, New York	970,874	737,499
NY	Myrtle Avenue Business Improvement District's Myrtle/Wyckoff/Palmetto Transit Hub Enhancement, New York	485,437	368,749
NY	Nassau County, Hub Enhancements, New York	1,165,048	884,998
NY	Niagra Frontier Transportation Authority Metro buses and bus facilities, New York	1,553,398	1,179,998
NY	Oneont Bus Replacement, New York	194,174	147,500
NY	Orange County Bus Replacement, New York	1,213,592	921,873
NY	Over the Road Bus Accessibility, Intercity Bus Accessibility Consortium, New York	2,912,620	2,212,495
NY	Rochester Central Bus Terminal, New York	5,339,805	4,056,241
NY	Rome Intermodal Station Restoration, New York	1,213,592	921,873
NY	Smithtown Senior Citizen Center Bus Replacement, New York	194,174	147,500
NY	St. George Ferry Terminal Reconstruction, New York	2,184,466	1,659,372
NY	Suffolk County Transit Buses, New York	1,844,660	1,401,247
NY	Tompkins County Bus Facilities, New York	388,350	294,999
NY	Ulster County Area Transit Buses, New York	38,834	29,500
NY	Union Station Renovations, Utica, New York	728,156	553,124
NY	Village of Pleasantville, Handicapped Ramp, New York	46,601	35,400
NY	Village of Pleasantville, Memorial Plaza, New York	194,174	147,500
NY	Westchester County Bee Line Bus Replacement, New York	2,669,902	2,026,120
NY	Western Gateway Transportation Center Intermodal Facility, Schenectady, New York	388,350	294,999
NY	Whitehall Inter-Modal Terminal of the Staten Island Ferry Reconstruction, New York	778,899	589,999
NY	Wyandanch Intermodal Transit Facility, New York	388,351	295,000
OH	Central Ohio Transit Authority Facility	436,894	331,874
OH	East Side Transit Center, Cleveland, Ohio	970,874	737,499
OH	Greater Dayton Regional Transit Authority, Ohio	728,156	553,124
OH	Kent State University Intermodal Facility, Ohio	364,077	278,562
OH	Lorain Port Authority Lighthouse Shuttle and Black River Water Taxi Project, Ohio	194,174	147,500
OH	Ohio Statewide buses and bus facilities	4,854,368	3,687,492
OH	The Banks Intermodal Facility, Cincinnati, Ohio	3,398,056	2,581,244
OH	Wright Stop Plaza, Dayton, Ohio	1,456,311	1,106,248
OH	Zanesville Bus System Improvements, Ohio	19,416	14,750
OK	Central Oklahoma Transportation and Parking Authority	1,768,990	1,342,247
OK	Kibois Area Transit System (KATS) maintenance facility and vehicles, Oklahoma	631,068	479,374
OK	Multi-Modal Transportation Facility and Transit System at Oklahoma State University, Oklahoma	2,184,466	1,659,372
OK	Norman buses and bus facilities, Oklahoma	2,912,620	2,212,495
OK	Northern Oklahoma Regional Multimodal Transportation System	2,427,184	1,843,746
OK	Oklahoma City Buses, Oklahoma	2,184,466	1,659,372
OK	Oklahoma Department of Transportation Transit Programs Division	6,067,961	4,609,365
OK	Tulsa Transit Bus Replacement Program, Oklahoma	4,368,931	3,318,743
OK	Tulsa Transit Paratransit Buses, Oklahoma	728,156	553,124
OR	City of Canby Transit Center, Oregon	145,632	110,625
OR	City of Corvallis Bus Replacement, Oregon	242,718	184,375
OR	Lane Transit District, BRT Phase II, Coburg Road Phase III, Oregon	1,941,747	1,474,997

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

(Note: Available allocation is based on program funding level authorized by the Surface Transportation Extension Act of 2004, Public Law 108-224.)

STATE	PROJECT	Revised Allocations	Available
OR	Lincoln County Transportation, Bus Garage Facility, Oregon	194,174	147,500
OR	Salem Area Transit, Bus Replacement, Oregon	582,524	442,499
OR	South Clackamas Transit, Molalla, Oregon	97,088	73,750
OR	Springfield Station, Oregon	3,883,494	2,949,994
OR	Tillamook County Transit, Maintenance Facility, Oregon	194,174	147,500
OR	Tri-Met Regional Bus Replacement, Oregon	631,068	479,374
OR	Wilsonville Park and Ride, Oregon	291,262	221,250
OR	Yamill County buses and bus facilities, Oregon	97,088	73,750 l/
PA	Adams County Transit Authority (ACTA) buses and bus facilities, Pennsylvania	19,418	14,750
PA	Allentown Intermodal Facility, Pennsylvania	2,427,184	1,843,748
PA	Altoona Bus Testing (TEA-21)	2,962,170	0 k/
PA	AMTRAN Buses and Transit System Improvements, Pennsylvania	194,174	147,500
PA	Area Transit Authority buses and bus equipment, Pennsylvania	2,427,184	1,843,746
PA	BARTA Fixed Route Bus and Paratransit Vehicle Replacement, Pennsylvania	2,524,270	1,917,496
PA	BARTA Transit Facilities, Pennsylvania	631,068	479,374
PA	Beaver County Transit Authority replacement buses and equipment, Pennsylvania	242,718	184,375
PA	Butler Multi-Modal Transit Center, Pennsylvania	970,874	737,499
PA	Cambria County Transit buses and facilities, Pennsylvania	873,786	663,749
PA	Capital Area Transit Buses, Pennsylvania	1,553,398	1,179,998
PA	Centre Area Transit Authority, Advanced Public Transportation Systems Initiative, Pennsylvania	582,524	442,499
PA	Church Street Transportation Center, Williamsport, Lycoming County, Pennsylvania	242,718	184,375
PA	City Bus, Williamsport Bureau of Transportation, Lycoming County, Pennsylvania	970,874	737,499
PA	Endless Mountain Transportation Authority, Bradford County, Pennsylvania	9,709	7,375
PA	Erie Metropolitan Transit Authority Bus Acquisition, Pennsylvania	97,088	73,750
PA	Fayette County Intermodal Transit Facility, Pennsylvania	388,350	294,999
PA	Harrisburg CorridorONE, Pennsylvania	1,941,747	1,474,997
PA	Harrisburg Intermodal Airport Multi-Modal Transportation Facility, Pennsylvania	970,874	737,499
PA	Hazleton Intermodal Public Transit Center, Pennsylvania	1,699,029	1,290,623
PA	Indiana County Transit Authority/Bus Facility Expansion and Renovation, Pennsylvania	388,350	294,999
PA	Lebanon County Transit Authority, buses and bus related facilities, Pennsylvania	436,894	331,874
PA	Mid County Transit Authority Kittanning, Pennsylvania	388,350	294,999
PA	Mid Mon Valley Transit Authority, Charleroi, Pennsylvania	582,524	442,499
PA	New Castle Transit Authority replacement buses, Pennsylvania	97,088	73,750
PA	Paoli Transportation Center, Pennsylvania	485,437	368,749
PA	Pittsburgh Water Taxi, Pennsylvania	970,874	737,499

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

(Note: Available allocation is based on program funding level authorized by the Surface Transportation Extension Act of 2004, Public Law 108-224.)

STATE	PROJECT	Revised Allocations	Available
PA	Port Authority of Allegheny County Buses, Pennsylvania	2,669,902	2,026,120
PA	Port Authority of Allegheny County Clean Fuel Buses, Pennsylvania	2,213,582	1,681,496
PA	Schlow Library Bus Depot, State College, Pennsylvania	776,699	589,999
PA	Schuylkill Transportation System, buses and bus facilities, Pennsylvania	970,874	737,499
PA	SEPTA Bucks County Intermodal Facility Improvements, Pennsylvania	3,398,058	2,581,244
PA	SEPTA Hybrid Buses, Pennsylvania	776,699	589,999
PA	SEPTA Norristown Intermodal Facility, Pennsylvania	2,912,620	2,212,495
PA	Somerset County Transportation System Maintenance Facility, Pennsylvania	155,340	118,000
PA	Transit Authority of Warren County Intermodal Bus Facility, Pennsylvania	1,456,311	1,106,248
PA	Union County Union/Snyder Transportation Alliance (USTA), Pennsylvania	485,437	368,749
PA	Westmoreland County Transit Authority (WCTA) Bus Replacement, Pennsylvania	873,786	663,749
PA	York County Transit Authority (YCTA) buses and bus facilities, Pennsylvania	97,088	73,750
PR	Puerto Rico Metropolitan Bus Authority Replacement	485,437	368,749
RI	RIPTA Buses and Vans, Rhode Island	3,883,494	2,949,994
RI	RIPTA Facilities Upgrade, Rhode Island	388,350	294,999
SC	City of Greenville Multimodal Transportation Center Improvements, South Carolina	194,174	147,500
SC	Lowcountry Regional Transit Authority, South Carolina	291,262	221,250
SC	Medical University of South Carolina Intermodal Facility, South Carolina	3,883,494	2,949,994
SC	Myrtle Beach Regional Multimodal Transit Center, South Carolina	194,174	147,500
SC	North Charleston Regional Intermodal Transportation Center, South Carolina	1,213,592	921,673
SC	South Carolina Statewide Transit Facilities Construction Project	970,874	737,499
SC	South Carolina Statewide Transit Vehicles	3,883,494	2,949,994
SD	Cheyenne River Sioux Tribe public buses and bus facilities, South Dakota	2,184,466	1,659,372
SD	South Dakota Statewide buses and bus facilities	1,941,747	1,474,997
TN	Downtown Transit Center, Nashville, Tennessee	1,941,747	1,474,997
TN	Knoxville Electric Transit Intermodal Center, Tennessee	1,941,747	1,474,997
TN	Memphis International Airport Intermodal Facility, Tennessee	2,669,902	2,026,120
TN	Nashville replacement of aged buses, Tennessee	485,437	368,749
TN	Tennessee Statewide buses and bus facilities	6,310,679	4,793,740
TN	UCHRA Capital Improvements, Tennessee	582,524	442,499
TX	Austin Capital Metro buses and bus facilities, Texas	2,912,620	2,212,495
TX	Brazos County Bus Replacement Program, Texas	194,174	147,500
TX	Capital Metro Hybrid Electric Buses, Texas	485,437	368,749
TX	CityLink van and technology replacement, Abilene, Texas	485,437	368,749
TX	Corpus Christi buses and bus facilities, Texas	1,941,747	1,474,997
TX	El Paso Sun Metro Bus Replacement, Texas	970,874	737,499
TX	Ft. Worth Transportation Authority Fleet Modernization and Bus Transfer Centers, Texas	1,456,311	1,106,248
TX	Galveston Maintenance Facility Renovations, Texas	776,699	589,999
TX	Grapevine Bus Purchase, Texas	155,340	118,000
TX	Hunt County Committee on Aging Transportation Facility, Texas	388,350	294,999
TX	Laredo Bus Facility, Texas	825,243	626,874
TX	Lubbock/Citibus Buses, Texas	1,456,311	1,106,248
TX	Nacogdoches Vehicle Replacement, Texas	776,699	589,999
TX	North Side Transfer Center Brownsville Urban System (BUS), Texas	339,806	258,125
TX	Public Transportation Management, Tyler/Longview, Texas	339,806	258,125
TX	San Antonio VIA Metropolitan Transit buses and bus facilities, Texas	4,854,368	3,687,492
TX	South East Texas Transit Facility Improvements and Bus Replacements	242,718	184,375
TX	The District-Bryan Intermodal Transit Terminal/Parking Facility & Pedestrian Improvements, Texas	388,350	294,999
TX	The Woodlands Capital Costs, Texas	339,806	258,125
TX	The Woodlands Park and Ride Expansion, Texas	266,990	202,812
UT	UTA Transit ITS, Upgrades, Utah	242,716	184,375
UT	Utah Statewide buses and bus facilities	5,825,241	4,424,991
UT	Utah Statewide Intermodal Centers	3,883,494	2,949,994
VA	Alexandria After School Bus program, Virginia	72,815	55,312
VA	Clean Fleet Bus Purchase and Facilities, Virginia	970,874	737,499
VA	Danville Trolley Buses, Virginia	189,902	129,962
VA	Fairfax County, Richmond Highway Transit Improvements, Virginia	879,612	516,249
VA	Hampton Roads Transit Southside Bus Facility, Virginia	1,941,747	1,474,997
VA	Main Street Station Multimodal Transportation Center, Virginia	1,456,311	1,106,248
VA	Potomac and Rappahannock Transportation Commission, Virginia	485,437	368,749
VA	Richmond Highway Public Transportation Initiative, Virginia	2,912,620	2,212,495

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

(Note: Available allocation is based on program funding level authorized by the Surface Transportation Extension Act of 2004, Public Law 108-224.)

STATE	PROJECT	Revised Allocations	Available
VI	Virgin Islands Transit (VITRAN) Buses	485,437	368,749
VT	Brattleboro Multimodal, Vermont	1,941,747	1,474,997
VT	Burlington Transit Facilities, Vermont	2,427,184	1,843,746
VT	Vermont Alternative Fuel Station and Buses, Varmont	485,437	368,749
VT	Vermont, Bus Upgrades	776,699	589,999
WA	Clallam Transit Buses, Washington	242,718	184,375
WA	Clark County Transit, Bus Replacement Project, Washington	2,912,620	2,212,495
WA	Community Transit Bus and Van Replacement, Washington	970,874	737,499
WA	Edmonds Crossing Multimodal Transportation Terminal, Washington	1,941,747	1,474,997
WA	Everett Transit, Bus Replacement, Washington	970,874	737,499
WA	Grant Transit Authority, Bus Facility, Washington	485,437	368,749
WA	Grays Harbor Transportation Authority Capital Improvement, Washington	72,815	55,312
WA	Intercity Transit Bus Expansion and Replacement, Washington	970,874	737,499
WA	Jefferson Transit bus purchase, Washington	194,174	147,500
WA	Jefferson Transit Facilities, Washington	970,874	737,499
WA	King County Metro Clean Air Buses, Washington	4,854,368	3,687,492
WA	Kitsap Transit Bus Replacement, Washington	970,874	737,499
WA	Link Transit Vehicle Replacement, Wenatchee, Washington	776,699	589,999
WA	Mason County Transportation Authority Capital Improvements, Washington	194,174	147,500
WA	Metro Transit Turn Around at Taylor Landing Park, Washington	38,834	29,500
WA	Mukilteo Lane Park and Ride, Washington	970,874	737,499
WA	North Bend Park and Ride, Washington	582,524	442,499
WA	Pierce Transit Maintenance and Operations facility, Washington	970,874	737,499
WA	Snohomish County Community Transit Park and Ride Lot Expansion Program, Washington	1,941,747	1,474,997
WA	Sound Transit Regional Express Transit Hubs, Washington	1,941,747	1,474,997
WA	Washington State Small Bus System Program of Projects		
WA	Clallam Transit	662,728	503,424
WA	Columbia County Public Transportation (CCPT)	99,217	75,367
WA	Grays Harbor Transportation Authority	138,710	105,368
WA	Island Transit	1,053,813	800,501
WA	Jafferson Transit	400,719	304,396
WA	Mason County Transportation Authority	482,368	351,226
WA	Pullman Transit	84,787	64,392
WA	Twin Transit	104,032	79,028
WA	Valley Transit	681,993	518,058
WI	Wisconsin, Statewide buses and bus facilities	14,563,093	11,062,428
WV	West Virginia Statewide buses and bus facilities	3,883,494	2,949,994
WY	Wyoming Statewide buses and bus facilities	1,941,747	1,474,997
	TOTAL ALLOCATION	**$668,660,587**	**$502,042,468**

a/ Conferees clarification stipulates that the project designation be changed from "Los Angles County, Circulator Busas, California" to "South Whittier Circulator Buses, California."

b/ Conferees clarification stipulates that $600,000 of the amount initially provided for the project should go to the "Broome County Hybrid Buses, New York" project.

c/ Conferees clarification stipulates that $100,000 of the amount initially provided for the project should go to the "Yamill County buses and bus facilities, Oregon" project.

d/ Conferees clarification resulted in redistribution of funds initially made available to the project to other projects.

e/ Conferees clarification resulted in additional funding being made available for this project.

f/ Conferees clarification resulted in addition of this project. Funds were derived from a portion of the funding previously identified for the "Allergan County Transportation Services, Michigan" project.

g/ Conferees clarification changed the State designation for this project from Kansas to Missoun.

h/ Conferees clarification resulted in addition of this project Funds were derived from a portion of the funding previously identified for the "Berkshire Regional Transit Authority (BRTA) Buses and Fare Boxes, Massachusetts" project.

i/ Conferees clarification resulted in addition of this project. Funds were derived from a portion of the funding previously identified for the "Pioneer Valley Transit Authority (PVTA) buses, Massachusetts" project.

k/ Full funding for Georgetown University Fuel Cell Transit Bus Program and Altoona Bus Testing will be available upon extension of TEA-21 through September 30, 2004.

Appendix A—FTA Regional Offices

Region 1

Richard H. Doyle, Regional Administrator, Cambridge, MA 02142–1093, Tel. 617–494–2055, Fax 617–494–2865.

Region 2

Letitia Thompson, Regional Administrator, New York, NY 10004–1415, Tel. No. 212–668–2170, Fax 212–668–2136.

Region 3

Herman Shipman, Deputy Regional Administrator, Philadelphia, PA 19103–4124, Tel. 215–656–7100, Fax 215–656–7100.

Region 4

Hiram J. Walker, Regional Administrator, Atlanta, GA 30303, Tel. 404–562–3500, Fax 404–562–3505.

Region 5

Joel P. Ettinger, Regional Administrator, Chicago, IL 60606, Tel. 312–353–2789. Fax 312–886–0351.

Region 6

Robert C. Patrick, Regional Administrator, Fort Worth, TX 76102, Tel. 817–978–0550, Fax 817–978–0575.

Region 7

Mokhtee Ahmad, Regional Administrator, Kansas City, MO 64106, Tel. 816–329–3920, Fax 816–329–3921.

Region 8

Lee O. Waddleton, Regional Administrator, Denver, CO 80228–2583, Tel. 720–963–3300, Fax 720–963–3333.

Region 9

Leslie T. Rogers, Regional Administrator, San Francisco, CA 94105–1926, Tel. 415–744–3133, Fax 414–744–2726.

Region 10

Rick Krochalis, Regional Administrator, Seattle, WA 98174–1002, Tel. 206–220–7954, Fax 206–220–7959.

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BILLING CODE 4910–57–C

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 *et 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 April 16, 2004. No comments were received.

DATES: Comments must be submitted on or before August 26, 2004.

FOR FURTHER INFORMATION CONTACT: Joe Strassburg, Maritime Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–4156; FAX: (202) 366–7901; or e-mail: *joe.strassburg@marad.dot.gov*. Copies of this collection also can be obtained from that office.

SUPPLEMENTARY INFORMATION: Maritime Administration (MARAD).

Title: War Risk Insurance.

OMB Control Number: 2133–0011.

Type of Request: Extension of currently approved collection.

Affected Public: Vessel owners or charterers interested in participating in MARAD's war risk insurance program.

Forms: MA–355; MA–528; MA–742; MA–828, and MA–942.

Abstract: As authorized by Section 1202, Title XII, Merchant Marine Act, 1936, as amended, the Secretary of the U.S. Department of Transportation may provide war risk insurance adequate for the needs of the waterborne commerce of the United States if such insurance cannot be obtained on reasonable terms from qualified insurance companies operating in the United States. This collection is required for the program.

Annual Estimated Burden Hours: 768 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.

Authority: 49 CFR 1.66.

Issued in Washington, DC, on July 21, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–17004 Filed 7–26–04; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. 2004–18686]

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 BITE ME.

SUMMARY: As authorized by Public Law 105–383 and Public Law 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 2004–18686 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 Public Law 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 August 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 18686. 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 BITE ME is:

Intended Use: Commercial Charter Boat fishing in Lake Erie 6 passenger or less.

Geographic Region: Lake Erie, Port Clinton, OH.

Dated: July 21, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–17005 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: 2004–18689]

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 DOLPHIN WATCHER.

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 2004–18689 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 August 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–18689. 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 *DOLPHIN WATCHER* is:

Intended Use: Private charter, nature and sightseeing cruises.

Geographic Region: The Gulf of Mexico including the coastal and inland waterways of the Gulf.

Dated: July 21, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–17008 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. 2004–18687]

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 PANIC.

SUMMARY: As authorized by Public Law 105–383 and Public Law 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 2004–18687 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 Public Law 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 August 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 18687. 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 PANIC is:

Intended Use: "Sailing and fishing charters."

Geographic Region: "Great Lakes, East Coast U.S., Florida."

Dated: July 21, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–17007 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. 2004–18688]

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 RHUMB PUNCH.

SUMMARY: As authorized by Public Law 105–383 and Public Law 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 2004–18688 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 Public Law 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 August 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 18688. 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 RHUMB PUNCH is:

Intended Use: "Training (Boat Handling, Navigational, Seamanship), fishing."

Geographic Region: "California."

Dated: July 21, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–17006 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: 2004–18691]

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 SEANAGHI.

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 2004–18691 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 August 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2001–18691. 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 SEANAGHI is:

Intended Use: "Passenger Coastline tours plus recreation."

Geographic Region: "Gulf of Maine."

Dated: July 21, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–17003 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. 2004–18690]

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 Titan XIV.

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 2004–1860 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 August 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–18690. 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 Titan XIV is:

Intended Use: Yacht Charter.

Geographic Region: East and West Coast of U.S. and U.S. Virgin Islands, excluding Southeastern Alaska and Washington State.

Dated: July 21, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–17009 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition To Modify an Exemption of a Previously Approved Antitheft Device; General Motors Corporation

AGENCY: National Highway Traffic Safety Administration (NHTSA) Department of Transportation (DOT).

ACTION: Grant of a petition to modify an exemption from the Parts Marking Requirements of a previously approved antitheft device.

SUMMARY: On May 15, 1995, this agency granted in full General Motors Corporation's (GM) petition for exemption from the parts-marking requirements of the vehicle theft prevention standard for the Buick Regal vehicle line. This notice grants in full GM's petition to modify the exemption of the previously approved antitheft device for that line. NHTSA is granting GM's petition to modify the exemption because it has determined, based on substantial evidence, that the modified antitheft device described in GM's petition to be placed on the vehicle line as standard equipment, is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements. This notice also acknowledges GM's notification that the nameplate for the Buick Regal vehicle line will be changed to the Buick LaCrosse vehicle line beginning with model year (MY) 2005.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: On May 15, 1995, NHTSA published in the **Federal Register** a notice granting a petition from GM for an exemption from the parts-marking requirements of the vehicle theft prevention standard for the Buick Regal vehicle line beginning with the 1996 model year (See 60 FR 25938). On March 19, 2004, GM submitted a petition to modify an exemption of its existing MY 1987 antitheft device. GM's submission is a complete petition, as required by 49 CFR Part 543.9(d), in that it meets the general requirements contained in 49 CFR Part 543.5 and the specific content requirements of 49 CFR Part 543.6. GM's petition provides a detailed description of the identity, design and location of the components of the antitheft system proposed for installation beginning with the 2005 model year.

GM's petition also informed the agency of its planned nameplate change for the Buick Regal to the Buick LaCrosse nameplate beginning with the 2005 model year. GM stated that the vehicle will continue to be built on the existing "W" car platform from which the Buick Century/Regal line is currently built.

The current antitheft device ("PASS-Key II") installed on the Buick Century/Regal line utilizes an ignition key, an ignition lock cylinder and a decoder module and is passively activated. Before the vehicle can be operated, a key whose shank contains the correct electrical resistance of the key must be inserted in the ignition. The resistance value measured in the key pellet is compared to a fixed resistance in the vehicle's decoder module. If the key pellet's resistance matches that in the decoder module, the starter enable relay is energized and a signal is transmitted to the engine control module (ECM). Recognition of that signal by the ECM permits fuel to flow. If a key other than the one with proper resistance for the vehicle is inserted, the decoder module will shut down for three minutes plus or minus eighteen seconds.

In GM's petition to modify the exemption, it stated that for MY 2005, the Buick Regal/LaCrosse vehicle line will be equipped with the PASS-Key III theft deterrent system. The PASS-Key III will continue to provide protection against unauthorized starting and fueling of the vehicle engine. Components of the modified antitheft device include an electronically coded ignition key, body control module and engine control module. The PASS-Key III system uses a special ignition key and decoder module. The conventional mechanical code of the key unlocks and releases the transmission lever. The ignition key contains electronics molded into the key head. These electronics receive energy from the

controller module. Upon energization, the key will transmit its unique code via low frequency transmission. The controller module translates the low frequency signal received from the key into a digital signal and transmits the signal to the Body Control Module (BCM). The BCM compares the received signal to an internally stored value. If the values match, the key is recognized as valid, and a Vehicle Security Password, is transmitted via serial data link to the ECM to enable fuel and starting. If an invalid key code is received, the BCM will send a disable password to the ECM and starting, ignition, and fuel will be inhibited. The PASS-Key III system will provide protection against unauthorized starting and fueling of the vehicle engine. The antitheft device is designed to be active at all times without direct intervention by the vehicle operator. No intentionally specific or discrete security system action is necessary to achieve protection. The system is fully functional (armed) immediately after the vehicle has been turned off.

GM stated that its modified antitheft device does not provide any visible or audible indication of unauthorized entry by means of flashing vehicle lights or sounding of the horn. To substantiate its belief that an alarm system is not a necessary feature to effectively deter the theft of a vehicle, GM compared the reduction in theft rates of Chevrolet Corvettes using a passive theft deterrent system ("VATS/PASS-Key") along with an audible/visible alarm system to the reduction in theft rates for Chevrolet Camaro and Pontiac Firebird vehicles equipped with a passive theft-deterrent system ("PASS-Key") without an alarm. GM finds that the lack of an alarm or attention attracting device does not compromise the theft deterrent performance of a system such as the modified antitheft device system. Based on the declining theft rate experience of other vehicles equipped with devices that do not have an audio or visual alarm for which NHTSA has already exempted from the parts-marking requirements, the agency has concluded that the absence of a visual or audio alarm has not prevented these antitheft devices from being effective protection against theft.

In order to ensure the reliability and durability of the device, GM conducted tests based on its own specified standards. GM provided a detailed list of tests conducted and believes that its device is reliable and durable since the device complied with its specified requirements for each test. The tests conducted included high and low temperature storage, thermal shock, humidity frost, salt fog, flammability, altitude, drop, shock, random vibration, dust, potential contaminants, connector retention/strain relief, terminal retention, connector insertion, crush, ice, immersion and tumbling.

GM compared the MY 2005 device with devices which NHTSA has already determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. To substantiate its beliefs as to the effectiveness of the new device, GM compared the MY 2005 modified device to its "PASS-Key"-like systems. GM indicated that the theft rates, as reported by the Federal Bureau of Investigation's National Crime Information Center, are lower for GM models equipped with the "PASS-Key"-like systems which have exemptions from the parts-marking requirements of 49 CFR Part 541, than the theft rates for earlier models with similar appearance and construction which were parts-marked. Based on the performance of the PASS-Key, PASS-Key II, and PASS-Key III systems on other GM models, and the advanced technology utilized by the modification, GM believes that the MY 2005 modified antitheft device will be more effective in deterring theft than the parts-marking requirements of 49 CFR Part 541.

On the basis of this comparison, GM believes that the antitheft system (PASS-Key III) for model years 2005 and later will provide essentially the same functions and features as found on its MY 1987–2004 system and therefore, its modified system will provide at least the same level of theft prevention as parts-marking. GM believes that the antitheft system proposed for installation on its MY 2005 Buick Regal/LaCrosse vehicle line is likely to be as effective in reducing thefts as compliance with the parts-marking requirements of Part 541.

The agency has evaluated GM's MY 2005 petition to modify the exemption for the Buick Regal/LaCrosse vehicle line from the parts-marking requirements of 49 CFR Part 541, and has decided to grant it. It has determined that the PASS-Key III system is likely to be as effective as parts-marking in preventing and deterring theft of these vehicles, and therefore qualifies for an exemption under 49 CFR Part 543. The agency believes that the modified device will continue to provide four of the five types of performance listed in Section 543.6(b)(3): promoting activation; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: July 21, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–17023 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17339]

Data Integrated Project Team (IPT) Report

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the availability of a planning document describing the agency's current and planned activities and recommendations to improve traffic safety data. The agency is seeking public review and comment on the document.

DATES: Comments must be received no later than September 10, 2004.

ADDRESSES: Interested persons may obtain a copy of the plan by downloading a copy of the document from the Docket Management System, U.S. Department of Transportation, at the address provided below, or from NHTSA's Web site at *http://www.nhtsa.dot.gov.* Alternatively, interested persons may obtain a copy of the document by contacting the agency officials listed in the section titled, "For Further Information Contact," immediately below.

Submit written comments to the Docket Management System, U.S. Department of Transportation, PL 401, 400 Seventh Street, SW., Washington, DC 20590–0001. Comments should refer to the Docket Number (NHTSA–2004–17339) and be submitted in two copies. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard.

Comments may also be submitted to the docket electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on "Help & Information" to obtain

instructions for filing comments electronically. In every case, the comment should refer to the docket number (NHTSA–2004–17339).

The Docket Management System is located on the Plaza level of the Nassif Building at the Department of Transportation at the above address. You can review public dockets there between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You can also review comments on-line at the DOT Docket Management System Web site at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Carra, National Highway Traffic Safety Administration, Room 6125, 400 Seventh Street, SW., Washington, DC 20590, Telephone: 202–366–5375.

SUPPLEMENTARY INFORMATION: Despite significant gains since the enactment of Federal motor vehicle and highway safety legislation in the mid 1960's, the annual toll of traffic crashes remains tragically high. In 2003, 43,220 people were killed on the nation's highways and an additional 2.89 million people suffered serious injuries. Motor vehicle crashes are responsible for 95 percent of all transportation-related deaths and 99 percent of all transportation-related injuries, and are the leading cause of death for Americans age 2 and every age 4 through 33. Furthermore, traffic crashes are not only a grave public health problem for our nation, but also a significant economic burden. In 2000, traffic crashes cost our economy approximately $230 billion, or 2.3 percent of the U.S. Gross Domestic Product. The average cost for a critically injured survivor of a motor vehicle crash is estimated at $1.1 million over a lifetime.

Therefore, in order to address these safety problems, good data are required. Traffic safety data is the primary source of knowledge about the traffic safety environment, human behavior and vehicle performance. NHTSA has made improving traffic safety data one of the agency's highest priorities.

In the fall of 2003, NHTSA formed a multidisciplinary integrated project team (IPT) to address the role of data in achieving U.S. DOT's Safety Strategic Objective: "Enhance public health and safety by working toward the elimination of transportation-related deaths and injuries." The team—composed of representatives from NHTSA headquarters and the regions, the Bureau of Transportation Statistics, Federal Highway Administration, and the Federal Motor Carrier Safety Administration—was to recommend priorities to NHTSA's Administrator on the best methods for obtaining the information needed to promote traffic safety and to identify how data could be improved to address the increasing complexity of traffic safety and vehicle issues. The report focuses on data that are routinely collected, accessible, and widely used to meet traffic safety data needs. Improving these data will benefit the traffic safety community and the public at large.

The effectiveness of informed decision making at the national, state and local levels, involving sound research, programs and policies, is directly dependent on data availability and quality. Accurate and comprehensive, standardized data provided in a timely manner, would allow the agency or decision-making entities at the state or local levels to:

- Determine the causes of crashes and their outcomes
- Evaluate strategies for preventing crashes and improving crash outcomes
- Support traffic safety data operations
- Measure progress in reducing crash frequencies and severities
- Update traffic safety policies

This report presents an in-depth look at routinely collected and accessible traffic safety data and provides initiatives and recommendations for federal and state stakeholders to improve traffic safety data needed to reduce deaths, injuries, injury severity and costs. The recommendations were grouped into the following categories:

1. Coordination and Leadership
2. Data Quality and Availability
3. Electronic Technologies and Methods
4. Uniform and Integrated Data
5. Facilitated Data Use (including training)

NHTSA believes its own initiatives, the Report's recommendations for both a U.S. DOT Highway Safety Traffic Records Coordinating Committee and for the States, will lead to both short term and long term solutions to improve data and maximize its use to achieve key DOT safety objectives.

NHTSA also assembled IPTs to address four other highway safety programs of special interest: safety belt use; impaired driving; vehicle rollover and vehicle compatibility. For each program of special interest, the agency is seeking public review and comment. Each of the four planning documents can be found on NHTSA's Web site at *http://www.nhtsa.dot.gov/IPTReports.html* and also on DOT's docket management system (DMS) at *http://dms.dot.gov/.* The docket numbers for each of the respective reports are as follows:

- Safety Belt Use—NHTSA–2003–14620;
- Impaired Driving—NHTSA–2003–14621;
- Rollover Mitigation—NHTSA–2003–14622;
- Vehicle Compatibility—NHTSA–2003–14623; and
- Data—NHTSA–2004–17339

Each document describes the safety problem and provides strategies the agency plans to pursue in addressing vehicle compatibility, increasing safety belt use, reducing impaired driving, and mitigating vehicle rollover, and improving traffic safety data. While the first four are closed, comments received about the Data document will be evaluated and incorporated, as appropriate, into planned agency activities.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2004–17339) in your comments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. If you submit your comments electronically, log onto the Docket Management System Web site at *http://dms.dot.gov* and click on "Help & Information" or "Help/Info" to obtain instructions.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW., Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

Will the Agency Consider Late Comments?

In our response, NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, the agency will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, NHTSA recommends that you periodically check the Docket for new material.

How Can I Read the Comments Submitted by Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW., Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

- Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).
- On that page, click on "search."
- On the next page ((*http://dms.dot.gov/search/*) type in the five-digit Docket number shown at the beginning of this document (17339). Click on "search."
- On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30117, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Noble N. Bowie,

Associate Administrator for Planning, Evaluation & Budget.

[FR Doc. 04–16902 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 647]

Class Exemption for Expedited Abandonment Procedure for Class II and Class III Railroads

AGENCY: Surface Transportation Board.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public hearing on Wednesday, August 11, 2004, at its offices in Washington, DC, to provide interested persons an opportunity to express their views on the subject of the Board's abandonment regulations for Class II and Class III rail carriers.[1] Persons wishing to speak at the hearing should notify the Board in writing.

DATES: The public hearing will take place on Wednesday, August 11, 2004. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than July 26, 2004. Each speaker should also file with the Board any written testimony by August 3, 2004.

ADDRESSES: All notices of intent to participate and testimony may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the instructions found on the Board's *http://www.stb.dot.gov* Web site, at the "E-FILING" link. Any person submitting a filing in the traditional paper format should send an original and 10 paper copies of the filing (referring to STB Ex Parte No. 647) to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Joseph Dettmar, (202) 565–1609. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On May 15, 2003, sixty-five short-line and regional carriers (petitioners)[2] filed a petition to institute a proceeding under 49 U.S.C. 10502 to exempt a class of small carriers from the prior approval abandonment requirements of 49 U.S.C. 10903. Petitioners included a detailed proposal including revised rules for 49 CFR 1152.50 (exempt abandonments) and 1152.27 (offers of financial assistance). The Board will hold a public hearing to provide a forum for the expression of views by rail shippers, railroads, and other interested persons, on this and other proposed changes to the Board's abandonment regulations as they relate to Class II and Class III rail carriers. This hearing will provide a forum for the oral discussion of the proposed class exemption and any proposals that interested persons might wish to offer to amend the abandonment regulations.

Date Of Hearing. The hearing will begin at 10 a.m. on Wednesday, August 11, 2004, in the 7th floor hearing room at the Board's headquarters in Washington, DC, and will continue, with short breaks if necessary, until every person scheduled to speak has been heard.

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[1] The Board's regulations divide railroads into three classes based on annual carrier operating revenues. Class I railroads are those with annual carrier operating revenues of $250 million or more (in 1991 dollars); Class II railroads are those with annual carrier operating revenues of more than $20 million but less than $250 million (in 1991 dollars); and Class III railroads are those with annual carrier operating revenues of $20 million or less (in 1991 dollars). *See* 49 CFR Part 1201, General Instruction 1–1(a).

[2] The sixty-five carriers are: Allegheny & Eastern Railroad, Inc.; Bradford Industrial Rail, Inc.; Buffalo & Pittsburgh Railroad, Inc.; Carolina Coastal Railway, Inc.; Commonwealth Railway, Inc.; Chicago SouthShore & South Bend Railroad; Chattahoochee & Gulf Railroad Co., Inc.; Connecuh Valley Railroad Co., Inc.; Corpus Christi Terminal Railroad, Inc.; The Dansville & Mount Morris Railroad Company; Eastern Idaho Railroad, Inc.; Genesee & Wyoming Railroad Company; Golden Isles Terminal Railroad, Inc.; H&S Railroad Co., Inc.; Illinois Indiana Development Company, LLC; Illinois & Midland Railroad Company, Inc.; Kansas & Oklahoma Railroad, Inc.; Knoxville & Holston River Railroad Co., Inc.; Lancaster and Chester Railway Company; Laurinburg & Southern Railroad Co., Inc.; Louisiana & Delta Railroad, Inc.; Louisville & Indiana Railroad Company; Minnesota Prairie Line, Inc.; Montana Rail Link, Inc.; New York & Atlantic Railway Company; Pacific Harbor Line, Inc.; Palouse River & Coulee City Railroad, Inc.; Pennsylvania Southwestern Railroad, Inc.; Piedmont & Atlantic Railroad Inc.; Pittsburgh & Shawmut Railroad, Inc.; Portland & Western Railroad, Inc.; Rochester & Southern Railroad, Inc.; Rocky Mount & Western Railroad Co., Inc.; St. Lawrence & Atlantic Railroad Company; Salt Lake City Southern Railroad Company; Savannah Port Terminal Railroad, Inc.; South Buffalo Railway Company; South Kansas & Oklahoma Railroad Company; Stillwater Central Railroad; Talleyrand Terminal Railroad, Inc.; Three Notch Railroad Co., Inc.; Timber Rock Railroad, Inc.; Twin Cities & Western Railroad Company; Utah Railway Company; Willamette & Pacific Railroad, Inc.; Wiregrass Central Railroad Company, Inc.; York Railway Company; AN Railway, LLC; Atlantic and Western Railway, Limited Partnership; Bay Line Railroad, LLC; Central Midland Railway; Copper Basin Railway, Inc.; East Tennessee Railway, L.P.; Galveston Railroad, L.P.; Georgia Central Railway, L.P.; The Indiana Rail Road Company; KWT Railway, Inc.; Little Rock & Western Railway, L.P.; M & B Railroad, L.L.C.; Tomahawk Railway, Limited Partnership; Valdosta Railway, L.P.; Western Kentucky Railway, LLC; Wheeling & Lake Erie Railway Company; Wilmington Terminal Railroad, L.P.; and Yolo Shortline Railroad Company.

Notice Of Intent To Participate. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should indicate a requested time allotment, as soon as possible but no later than July 26, 2004.

Testimony. Each speaker should file with the Board any written testimony by August 3, 2004.

Board Releases And Live Audio Available Via The Internet. Decisions and notices of the Board, including this notice and the proposed class exemption, are available on the Board's Web site at *http://www.stb.dot.gov.* This hearing will be available on the Board's Web site by live audio streaming. To access the hearing, click on the "Live Audio" link under "Information Center" at the left side of the home page beginning at 10 a.m. on August 11, 2004.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: July 21, 2004.

Vernon A. Williams,

Secretary.

[FR Doc. 04–17055 Filed 7–26–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 213X)]

Union Pacific Railroad Company—Abandonment Exemption—in Dallas County, IA (Perry Subdivision)

On July 7, 2004, Union Pacific Railroad Company (UP), filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a line of railroad known as the Perry Subdivision extending from milepost 296.8 near Waukee, IA, to milepost 275.9 (Equation milepost 275.9 = 361.8) near Perry, IA, and from milepost 361.8 to milepost 369.0 near Dawson, IA, a total distance of 28.1 miles in Dallas County, IA. The line traverses U.S. Postal Service Zip Codes 50063, 50066, 50167, 50220, and 50263 and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by October 25, 2004.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than August 16, 2004. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 213X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the UP petition are due on or before August 16, 2004.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: July 19, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–16822 Filed 7–26–04; 8:45 am]

BILLING CODE 4910–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 19, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000,1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 26, 2004, to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0059.

Form Number: SF 5510.

Type of Review: Extension.

Title: Authorization Agreement for Preauthorized Payment.

Description: Preauthorized payment is used by remitters (individuals and corporations) to authorize electronic funds transfers from the bank accounts maintained at financial institutions for government agencies to collect monies.

Respondents: Business or other for-profit, Individuals or households, Federal Government.

Estimated Number of Respondents: 100,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 25,000 hours.

Clearance Officer: Jiovannah L. Diggs, Financial Management Service, Administrative Programs Division, Records and Information Management Program, 3700 East West Highway, Room 144, Hyattsville, MD 20782, (202) 874–7662.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office

Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–17057 Filed 7–26–04; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

July 19, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before August 26, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0010.

Form Number: IRS Form W–4.

Type of Review: Extension.

Title: Employee's Withholding Allowance Certificate.

Description: Employees file this form to tell employers (1) the number of withholding allowances claimed, (2) additional dollar amounts they want withheld each pay period and (3) if they are entitled to claim exemption from withholding. Employers use the information to figure the correct tax to withhold from the employee's wages.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit Institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents/ Recordkeepers: 54,209,079.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—45 min.
Learning about the law or the form—12 min.
Preparing the form—58 min.
Sending the form to the IRS–11 min.

Frequency of response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 116,007,430 hours.

OMB Number: 1545–0187.

Form Number: IRS Form 4835.

Type of Review: Extension.

Title: Farm Rental Income and Expenses.

Description: This form is used by landowners (or sub-lessors) to report farm income based on livestock produced by the tenant when the landowner (or sub-lessor) does not materially participate in the operation or management of the farm. This form is attached to Form 1040 and the data is used to determine whether the proper amount of rental income has been reported.

Respondents: Individuals and households, Farms.

Estimated Number of Respondents/ Recordkeepers: 407,719.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—2 hr., 57 min.
Learning about the law or the form—4 min.
Preparing the form—1 hr., 1 min.
Copying, assembling and sending the form to the IRS—20 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,793,964 hours.

OMB Number: 1545–0923.

Regulation Project Number: REG–209274–85 NPRM and Temporary.

Type of Review: Extension.

Title: Tax Exempt Entity Leasing.

Description: These regulations provide guidance to persons executive lease agreements involving tax-exempt entities under section 168(h) of the Internal Revenue Code. The regulations are necessary to implement congressionally enacted legislation and elections for certain previously tax-exempt organizations and certain tax-exempt controlled entities.

Respondents: Individuals or households.

Estimated Number of Respondents: 4,000.

Estimated Burden Hours Respondent: 30 minutes.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 2,000 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–17058 Filed 7–26–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–79–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–79–91(TD 8573), Information Returns Required of United States Persons With Respect To Certain Foreign Corporations (§§ 1.6035–1, 1.6038–2 and 1.6046–1).

DATES: Written comments should be received on or before September 27, 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 regulation 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: Information Returns Required of United States Persons With Respect To Certain Foreign Corporations.

OMB Number: 1545–1317.

Regulation Project Number: INTL–79–91.

Abstract: This regulation amends the existing regulations under sections 6035, 6038, and 6046 of the Internal Revenue Code. The regulation amends and liberalizes certain requirements regarding the format in which information must be provided for purposes of Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations. The regulation provides that financial statement information must be expressed in U.S. dollars translated according to U.S. generally accepted

accounting principles and permits functional reporting of certain items.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and business or other for-profit organizations.

The burden for the collection of information is reflected in the burden for Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations.

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: July 15, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–17082 Filed 7–26–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–89–91]

Proposed Collection: Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–89–91 (TD 8622), Exports of Chemicals That Deplete the Ozone Layer; Special Rules for Certain Medical Uses of Chemicals That Deplete the Ozone Layer (§§ 52.4682–2(b), 52.4682–2(d), 52.4682–5(d), and 52.4682–5(f).

DATES: Written comments should be received on or before September 27, 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 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: Exports of Chemicals That Deplete the Ozone Layer; Special Rules for Certain Medical Uses of Chemicals That Deplete the Ozone Layer.

OMB Number: 1545–1361.

Regulation Project Number: PS–89–91.

Abstract: This regulation provides reporting and recordkeeping rules relating to taxes imposed on exports of ozone-depleting chemicals (ODCs), taxes imposed on ODCs used as medical sterilants or propellants in metered-dose inhalers, and floor stocks taxes on ODCs. The rules affect persons who manufacture, import, export, sell, or use ODCs.

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 Recordkeepers: 705.

Estimated Time Per Recordkeeper: 12 minutes.

Estimated Total Annual Recordkeeping Burden Hours: 141.

Estimated Number of Respondents: 600.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Reporting Burden Hours: 60.

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: July 14, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–17083 Filed 7–26–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be conducted in Denver, Colorado. The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals. Recommendations for IRS systemic changes will be developed.

DATES: The meeting will be held Friday, August 20 and Saturday, August 21, 2004.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 or 718–488–3557.

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 Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be held Friday, August 20, 2004 from 9 a.m. MT to 5 p.m. MT and Saturday, August 21, 2004 from 8 a.m. MT to 12 p.m. MT at the Dominion Plaza Building, 600 17th Street, Denver, CO 80202. Individual comments are welcome and limited to 5 minutes per person. For more information and to confirm attendance, notification of intent to attend the meeting must be made with Marisa Knispel. Mrs. Knispel may be reached at 1–888–912–1227 or 718–488–3557. If you would like to have the TAP consider a written statement, please write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201, or you may post your comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: July 22, 2004.

Bernard E. Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–17084 Filed 7–26–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, New Mexico, Nevada, Oregon, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Monday, August 23, 2004.

FOR FURTHER INFORMATION CONTACT: Judi 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 Taxpayer Advocacy Panel will be held Monday, August 23, 2004 from 2 p.m. Pacific Time to 3 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Judi Nicholas, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Judi 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: July 22, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–17085 Filed 7–26–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). 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 Tuesday, August 24, 2004.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, August 24, 2004 from 11 a.m. EDT to 12 p.m. EDT via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include various IRS issues.

Dated: July 22, 2004.

Bernard E. Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–17086 Filed 7–26–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Multilingual Initiative (MLI) Issue Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Multilingual

Initiative (MLI) Issue Committee will be conducted (via teleconference). 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, August 20, 2004 from 1 p.m. to 2 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

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 Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, August 20, 2004 from 1 p.m. to 2 p.m. e.d.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: July 22, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–17087 Filed 7–26–04; 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 (via teleconference). 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, August 20, 2004 from 11 a.m. to 12:30 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

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, August 20, 2004, from 11 a.m. to 12:30 p.m. e.d.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: July 22, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–17088 Filed 7–26–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, August 23, 2004, 8 a.m. to 3 p.m., and Tuesday, August 24, 8 to 11:30 a.m., central daylight time.

FOR FURTHER INFORMATION CONTACT: Audrey Jenkins at 1–888–912–1227, or (718) 488–2085.

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 a meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, August 23, 2004, 8 a.m. to 3 p.m., and Tuesday, August 24, 8 to 11:30 a.m., central daylight time, at the Country Inn & Suites Mall of America, 2221 Killebrew Drive, Bloomington, MN, 55425. You can submit written comments to the panel by faxing to (718) 488–2062, or by mail to Taxpayer Advocacy Panel, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201, or you can contact us at *http://www.improveirs.org.* This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Audrey Jenkins at 1–888–912–1227 or (718) 488–2085 for more information.

The agenda will include the following: Various IRS issues.

Dated: July 22, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–17089 Filed 7–26–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Establishment; VHA Resident Education Committee

As required by section 9(a)(2) of the Federal Advisory Committee Act, the Department of Veterans Affairs hereby gives notice of the establishment of the Advisory Committee on Veterans Health Administration (VHA) Resident Education. The Secretary of Veterans Affairs had determined that establishing the Committee is both necessary and in the public interest.

The Committee will provide advice on matters involving a broad assessment of physician resident positions in relationship to the future health care needs of veterans. The Committee will be composed of public and private health care experts who will provide a national perspective on health care trends and independent advice to VA on critical physician education issues. Members of the Committee will provide a broad range of experience and expertise, ranging from medical school administration to medical education accreditation.

As it considers necessary. the Committee may make recommendations to the Secretary and the Under Secretary for Health regarding the philosophical principles of VHA's resident education program, as well as the overall operation of that program.

Dated: July 14, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–17060 Filed 7–26–04; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
July 27, 2004

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Topeka Shiner; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI20

Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for the Topeka Shiner

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Topeka shiner (*Notropis topeka*) pursuant to the Endangered Species Act of 1973, as amended (Act). We are designating as critical habitat a total of 83 stream segments, representing 1,356 kilometers (km) (836 miles (mi)) of stream in the States of Iowa, Minnesota, and Nebraska. We exclude from designation all previously proposed critical habitat in the State of Missouri under authority of sections 3(5)(A) and 4(b)(2) of the Act, and in the States of Kansas and South Dakota under authority of section 4(b)(2) of the Act. Critical habitat is not designated on the Fort Riley Military Installation in Kansas under authority of section 4(a)(3) of the Act.

DATES: This rule becomes effective August 26, 2004.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection, by appointment, during normal business hours at the Kansas Ecological Services Field Office, U.S. Fish and Wildlife Service, 315 Houston Street, Suite E, Manhattan, Kansas 66502. Copies of the final rule, final economic analysis, and final environmental assessment are available by writing to the above address or by connecting to the Service Internet Web site at *http://mountain-prairie.fws.gov/topekashiner/ch*.

FOR FURTHER INFORMATION CONTACT: Vernon Tabor, Kansas Ecological Services Field Office, at the above address; telephone: (785) 539–3474; facsimile: (785) 539–8567; e-mail: *Vernon_Tabor@fws.gov*.

SUPPLEMENTARY INFORMATION:

Designation of Critical Habitat Provides Little Additional Protection to Species

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

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

While attention to and protection of habitat 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 (36 percent) of the 1,244 listed species in the United States under 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, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

Procedural and Resource Difficulties in Designating Critical Habitat

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

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court-ordered designations have left the Service with almost no ability to provide for additional 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 critical habitat designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act. 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

The Topeka shiner is found in small to mid-sized prairie streams of the central prairie regions of the United States with relatively high water quality and cool to moderate temperatures. Many of these streams exhibit perennial flow, although some become intermittent during summer or periods of prolonged drought. The Topeka shiner's historic range includes portions of Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota. The species continues to exist in these States, but in most areas its range is greatly reduced.

The following additional information on the distribution of the species in South Dakota has recently been made available to us. Few historical data were available regarding the distribution of

the Topeka shiner in South Dakota; at the time this species was proposed for listing in 1997, only five locations were known. The South Dakota Department of Game, Fish, and Parks (SDDGFP) initiated surveys in 1997 to determine current occupation of known historical sites and investigate other possible waterways for the species' presence. These surveys indicated that the species was more widespread in South Dakota than previously thought. In 1999, a number of agencies began working closely with the South Dakota State University Cooperative Research Unit (SDSU Coop Unit) in Brookings to delineate where Topeka shiners existed in South Dakota. Those surveys found many new streams that were occupied by Topeka shiners as well as populations in six of eight of the historical locations. Of the remaining two historical locations, one is on a stream that is expected to have Topeka shiners but resources have limited the ability to conduct surveys, while the other historical location was in the outlet of a lake that has not been surveyed due to its uncharacteristic habitat for Topeka shiners. Since then, several studies have been initiated by South Dakota Department of Transportation (SDDOT) and Natural Resource Conservation Service (NRCS) through the SDSU Coop Unit that have further expanded the list of known occupied streams and general knowledge of the species in South Dakota.

For more information on the Topeka shiner, refer to the proposed critical habitat rule published in the **Federal Register** on August 21, 2002 (67 FR 54262) and the final listing rule published in the **Federal Register** on December 15, 1998 (63 FR 69008).

Previous Federal Actions

We published a final rule in the **Federal Register** (63 FR 69008) on December 15, 1998, listing the Topeka shiner as an endangered species under the Act. In that document, we also determined that designation of critical habitat was not prudent for the species. In an April 4, 2001, court settlement of the case, *Biodiversity Legal Foundation* et al. v. *Ralph Morgenweck et al.* (C00–D–1180), we agreed to reconsider our prudency determination and, if prudent, to propose critical habitat for the Topeka shiner by August 13, 2002, and to finalize our designation of critical habitat by August 13, 2003.

On August 21, 2002, we published a proposed rule in the **Federal Register** (67 FR 54262) proposing the designation of Topeka shiner critical habitat. The proposed designation included 3,766 km (2,340 mi) of stream in the States of Iowa, Kansas, Minnesota, Nebraska, and South Dakota as critical habitat. We also proposed to exclude from designation Topeka shiner habitat in the State of Missouri and on the Fort Riley Military Installation, Kansas, under the authority of section 3(5)(A) of the Act. Concurrent with the publication of the proposed rule, we opened a 60-day public comment period. We held one public meeting in each of the six affected States during September 2002. Due to budgetary constraints, we did not finalize the designation of critical habitat by August 13, 2003. We petitioned the court to extend this deadline until July 17, 2004, and in an order dated February 10, 2004, the court granted us this extension. This order was upheld by the court on June 21, 2004.

In the August 2002 proposed rule for designation of critical habitat for the Topeka shiner, we indicated our intention not to include critical habitat in Missouri and on Fort Riley, Kansas, in the critical habitat designation. This was based upon our interpretation of the definition of critical habitat found in section 3(5)(A) of the Act. Section 3(5)(A)(i) of the Act defines critical habitat as areas on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protections. In order to give meaning to the last clause of the definition, we have considered that if an area was already adequately managed, there would be no requirement for special management considerations or protection. A management plan is considered adequate when it meets the following three criteria—(1) the plan provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that it will be implemented (*i.e.*, those responsible for implementing the management plan are capable of accomplishing the objectives, have an implementation schedule, and/or adequate funding for the management plan); and (3) the plan provides assurances the management plan will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

The National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136, adopted November 24, 2003) amended the Act by adding new language to section 4(a)(3), which prohibits the Service from designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an Integrated Natural Resources Management Plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of the Interior determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. The Sikes Act Improvement Amendment of 1997 requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete an INRMP. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. Each INRMP includes an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a detailed description of management actions to be implemented to provide for these ecological needs; and a monitoring and adaptive management plan. The Service consults with the military on the development and implementation of INRMPs for installations with listed species.

On March 17, 2004, we published in the **Federal Register** (69 FR 12619) a revision to our proposed rule, notice of availability for the draft economic analysis and the draft environmental assessment (EA), and notice of a 30-day reopening of the public comment period for the designation of critical habitat for the Topeka shiner. In this document, we reevaluated our previous intention to exclude from designation habitat in Missouri and on Fort Riley under section 3(5)(A) of the Act. We explained our intent to exclude habitat on Fort Riley under the new provisions of section 4(a)(3). We proposed critical habitat within the State of Missouri, including 12 stream segments representing 148 km (92 mi) of stream, and proposed to exclude these areas from designation under section 4(b)(2). We also proposed an additional 24-km (15-mi) stream reach in the State of South Dakota due to new information on distribution of the species, obtained after publication of the original critical habitat proposal. Finally, we stated our intention to consider excluding critical habitat proposed in the States of Kansas and South Dakota from designation, under section 4(b)(2). This consideration was due to ongoing

management actions, the development and implementation of State management plans for the species, State protections, and other conservation activities related to the species occurring in these two States.

Summary of Comments and Recommendations

In the August 21, 2002, proposed rule, we requested that all interested parties submit comments or information concerning the designation of critical habitat for the Topeka shiner. A 60-day comment period closed on October 21, 2002. We contacted interested parties (including elected officials; Federal, State, and county governments; media outlets; and local interest groups) through a press release and related faxes, mailed announcements, telephone calls, and e-mails. On March 17, 2004, the Service opened an additional 30-day comment period on the revised proposal, draft economic analysis, draft EA, and original proposed rule.

Newspaper notices inviting public comment on the proposal and announcing the public comment period and series of public meetings were published in the following newspapers—in Iowa, *Des Moines Register* and *Ft. Dodge Messenger*; in Kansas, *Emporia Gazette*, *Manhattan Mercury*, *Topeka Capital-Journal*, and *Wichita Eagle*; in Minnesota, *Minneapolis Star-Tribune* and *Pipestone County Star*; in Missouri, *Kansas City Star*, *Columbia Missourian*, and *Harrison County Advisor*; in Nebraska, *Omaha World Herald* and *Norfolk News*; and in South Dakota, *Sioux Falls Argus-Leader*, *Mitchell Daily Republic*, and *Huron Plainsman*. The Service held six public meetings between September 4 and 12, 2002, in Manhattan, Kansas; Bethany, Missouri; Fort Dodge, Iowa; Pipestone, Minnesota; Madison, Nebraska; and Sioux Falls, South Dakota. In conjunction with our revised proposal for critical habitat in Missouri, we held an additional public meeting on April 13, 2004, in Booneville, Missouri, to allow for additional public input into the final designation.

In the 2002 comment period, a total of 34 comments were received by the Service's Kansas Field Office—13 supported the proposed critical habitat; 14 opposed the proposed critical habitat; and 7 expressed neither support nor opposition. During the 2004 comment period, we received a total of 14 comments—5 supporting designation and opposing any exclusion; 4 supporting the Missouri exclusion; 3 opposing designation in South Dakota and supporting a South Dakota exclusion; and 2 that neither supported nor opposed the proposed designation, but provided specific comments on the designation. Generally, comments received posed questions on the proposed action, procedural issues, and the economic analysis, questioned the Service's information and conclusions on the species, provided additional information for the proposed listing, suggested alternatives, and/or simply stated support or opposition to the designation. In total, comments were received from 13 Federal and State agencies or officials, 5 local agencies or officials, and 30 private organizations, companies, and individuals. All comments received during the comment period are addressed in the following summary. Comments of a similar nature are grouped into a number of general issues.

Peer Review Comments

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of five independent specialists regarding this rule. The purpose of such review is to ensure that decisions are based on scientifically sound data, assumptions, and analyses. We sent these peer reviewers, who are all fisheries scientists, 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. Both reviewers were supportive of the proposed rule.

Responses to Public Comments

(1) *Comment:* Several comments opposed designation of critical habitat because of concerns that designation would severely delay, restrict, or eliminate State and local government's ability to construct and maintain roads and bridges due to restrictions on construction in stream channels during the Topeka shiner spawning period.

Our Response: Since the listing of the Topeka shiner in December 1998, road and bridge maintenance and construction with a Federal connection (*i.e.*, using Federal funds, requiring a Federal permit, or sponsored by a Federal agency) are already being reviewed for impacts to the Topeka shiner under the consultation provisions of section 7 of the Act. This review, in most cases, involves the implementation of best management practices to reduce harm to fish and its habitat, including the avoidance of instream work during the spawning period. The designation of critical habitat will have little, if any, additional impact to these existing restrictions. State and local activities with no Federal nexus have no Federal consultation requirement.

(2) *Comment:* The designation of critical habitat will severely delay, restrict, or eliminate State and local government's ability to construct and maintain roads and bridges due to the additional cost of changing the methods and timing of construction and maintenance, and incorporating best management practices, to reduce impacts to the Topeka shiner.

Our Response: Some additional costs are anticipated for State, county, and local governments maintaining and constructing roads and bridges. The Economic Analysis forecasts that over the next 10 years $8.7 million in project modification costs will be incurred (Industrial Economics, Inc. 2004). In this final designation, we are excluding critical habitat in the States of South Dakota, Missouri, and Kansas. The project modification costs in the remaining States of Iowa, Minnesota, and Nebraska are an estimated $6 million over 10 years (Industrial Economics, Inc. 2004). Project modifications include restrictions on instream construction, construction of longer or higher bridges, culvert restrictions, construction of alternative temporary crossings, spawning season restrictions, and surveys for the Topeka shiner. For a more complete discussion of potential impacts associated with road and bridge construction and maintenance, see Section 4 of the Economic Analysis (Industrial Economics, Inc. 2004).

(3) *Comment:* Comments from South Dakota stated the estimate for project modifications for third parties (South Dakota Department of Transportation) identified in the Economic Analysis appears to be low.

Our Response: The project modifications reported in the Economic Analysis for South Dakota Department of Transportation (SDDOT) road and bridge construction and maintenance projects include stream surveys. The SDDOT believes that it may need to survey streams when work occurs in or around areas of Topeka shiner habitat. The cost associated with a survey was estimated to be $3,800 per effort (Industrial Economics, Inc. 2004). This estimate is based on a recent survey conducted by the SDDOT on the Vermillion River (Personal communication with Dave Graves, Office of Project Development, SDDOT, October 8, 2002).

(4) *Comment:* Negative economic impacts will occur to schools and rural residents because of the need to drive additional miles due to construction

delays resulting from spawning date restrictions. Crop harvest also could be delayed or hampered due to spawning date restrictions that apply to construction projects.

Our Response: Consultations on construction projects that have been occurring since the species was listed in 1998 include spawning date restrictions already. The designation of critical habitat will create little additional impact due to spawning date restrictions beyond what is already being incurred.

(5) *Comment:* The designation of critical habitat and the resulting section 7 consultations will delay the implementation of soil and water conservation practices and result in less conservation, more bureaucratic regulation, and further economic hardship for private landowners.

Our Response: Most soil and water conservation activities are not likely to affect Topeka shiners or their habitat, and are not encumbered by the consultation process.

(6) *Comment:* Designation of critical habitat may cause land adjacent to designated streams to be taken out of crop production or cause production practices to be altered. This will result in less profit to the producer and severely affect his/her ability to farm or ranch.

Our Response: Designation of critical habitat will not impact a farmer's right to farm nor dictate production practices. If a private producer plans actions with Federal sponsorship that may affect the Topeka shiner or adversely modify critical habitat, that Federal agency is required to consult with the Service regarding the potential impact to the species or its habitat. If there is no Federal nexus, there is no consultation requirement, whether critical habitat is designated or not. These consultation provisions have been in place since the listing of the species in 1998. Little new regulatory burden will result from designation of critical habitat because all designated areas are occupied habitat. Impacts in these areas already require consultation.

(7) *Comment:* The designation of critical habitat and the implementation of the future recovery plan (*see* Comment 8) will interrupt or prohibit livestock grazing and feeding in and near areas of critical habitat. Livestock operations have been present in these areas for more than 100 years and it is apparent that Topeka shiners and livestock operations can coexist.

Our Response: If a livestock producer plans actions with Federal sponsorship that may affect the Topeka shiner, that Federal agency is required to consult with the Service regarding the potential impact to the species or its habitat. These consultation provisions have been in place since the listing of the species in 1998. Little new regulatory burdens will result from the designation of critical habitat because all designated areas are occupied. Activities that may adversely affect the Topeka shiner already require consultation.

(8) *Comment:* The Topeka Shiner Recovery Plan should have been released before, or concurrently with, the designation of critical habitat and the economic analysis, so that all aspects of the conservation efforts for the species could be thoroughly analyzed by agricultural producers and the general public.

Our Response: We agree that the finalization of the recovery plan prior to or concurrently with the critical habitat designation would have been optimal. A technical draft recovery plan was under internal review at the time of the release of our proposed rule for critical habitat (August 21, 2002). Because of court-approved deadlines and the development of the critical habitat designation received priority over the completion of the recovery plan. Following completion of the critical habitat designation, we plan to restart work on the recovery plan. On completion of the draft recovery plan, we will provide an opportunity for interested parties to comment.

(9) *Comment:* Topeka shiner populations are in decline, and failure to designate critical habitat in South Dakota will lead to their extirpation. Healthy populations in the waters of South Dakota will benefit not only aquatic and riparian wildlife species, but the human population as well.

Our Response: We believe that, with the development and implementation of the South Dakota Management Plan for the Topeka Shiner and the ongoing conservation actions underway by private landowners in the State, the benefits of excluding critical habitat in that State exceed the benefits of designation. In addition, since the time of the species' listing in 1998, the Topeka shiner has been found to be much more widely distributed in South Dakota than previously believed. The best scientific information, at this time, indicates that exclusion of critical habitat will in no way cause the extirpation of the species from South Dakota, or the extinction of the species across its range as a whole.

(10) *Comment:* Topeka shiner critical habitat should extend beyond the habitat proposed for designation and include all of the surrounding watersheds as well. With the limited amount of habitat proposed, Topeka shiners do not have enough room to recover to suitable levels.

Our Response: In proposing and designating critical habitat for the Topeka shiner, we used the best scientific information available to determine the primary constituent elements (habitat components) required by the species; where these components exist within the range of the species; and what areas are essential to the conservation of the species. The information sources we compiled included the technical draft of the recovery plan, State conservation and recovery plans, conservation plans for localized areas, species status surveys, research efforts concerning the species, and habitat models. If Topeka shiner populations expand beyond the areas designated as critical habitat, the protections of the Act (*i.e.*, section 7 consultation, section 9 "take" provisions) afforded listed species will protect these "new" or expanded populations as well. Watershed-based recovery actions improving habitat, as outlined in the conservation and recovery plans, will encourage expansion to these areas by Topeka shiners.

(12) The maps of the proposed critical habitat in Iowa are inadequate. It is difficult to determine if the areas proposed are on drainage ditches or natural streams.

Our Response: The critical habitat maps were created as a graphical representation of Topeka shiner critical habitat. The maps and GIS files used to create the critical habitat maps are not the definitive source of determining the critical habitat boundaries. The reaches proposed for designation were coded to specific legal descriptions of the habitat, which are included in the amendatory language of this rule. These specific legal descriptions are the definitive source of determining critical habitat boundaries. Larger-scale maps are available for inspection at the Kansas Field Office (*see* **ADDRESSES**).

(13) *Comment:* Recent studies have shown that the Topeka shiner is doing very well in South Dakota due to the effective management practices being implemented by agricultural producers. Both further study of the Topeka shiner and implementation of the State management plan inappropriately waste time and State resources. The species needs no management in South Dakota.

Our Response: Surveys since the Topeka shiner was listed indicate that the species is present in South Dakota in each of the three watersheds where it was known to exist historically (the Big Sioux, James, and Vermillion River

watersheds) as well as in nearly all of the historically known occupied streams. Additionally, the Topeka shiner has been documented in more streams in South Dakota than previously known, and evidence of its persistence has been documented in some areas where repeated sampling has occurred. The reasons for this are not entirely clear, but may be due to a variety of factors, including lack of tributary impoundments and associated stocking of predatory fish species, low numbers of channelized streams, and lack of instream gravel-mining practices. These activities have been implicated in the decline of the Topeka shiner's status in other States. We believe the Topeka Shiner Management Plan for the State of South Dakota, which outlines many of the practices currently ongoing in the State via cooperation with Federal, State, and local governments as well as private landowners, provides significant benefit to the species, and we encourage the State and its numerous partners to continue implementing the actions outlined in the Plan.

(14) *Comment:* Critical habitat designation offers little or no benefit beyond that of the protections afforded the species when it was listed. When a species is listed as endangered, actions are automatically taken that limit activities around their habitat. The addition of critical habitat forces overly strict land use constraints and creates contention among various interest groups. Missouri already has a management plan for the species, and the State can handle recovery efforts without additional involvement from the Service.

Our Response: This rule recognizes the benefits of the Missouri Action Plan for the Topeka Shiner and believe the benefits of excluding designation in Missouri exceed the benefits that designation would provide. The Service will continue to be involved in the conservation of the species in Missouri, including section 7 consultation, enforcement of section 9 provisions, conservation and recovery actions sponsored by the Service on private lands, and the continued development of the range-wide recovery plan for Topeka shiner that includes Missouri.

(15) *Comment:* In Missouri a management plan already is being successfully implemented. This plan is based on partnerships between the Missouri Department of Conservation (MDC) and private landowners. Designating critical habitat in Missouri would severely damage these partnerships and greatly diminish the chances the Topeka shiner will recover and eventually be taken off the endangered species list.

Our Response: We recognize the benefits of the Missouri Action Plan for the Topeka Shiner, including the partnerships between private landowners and the MDC. We conclude that the benefits of excluding designation in Missouri exceed the benefits that designation would provide. We recognize that recovery of the species is dependent on solid relationships and partnerships between conservation agencies and private landowners.

(16) *Comment:* The Missouri Action Plan for the Topeka Shiner mentions tasks required for recovery that are to be completed by other State agencies, including the Missouri Department of Natural Resources (MDNR). To date there has been no formal transmittal of the Action Plan to the MDNR. The MDNR does not have time, money, or personnel to complete these tasks as envisioned in the Action Plan.

Our Response: Although other agencies are identified in the State Action Plan, all identified tasks attributable to such entities are voluntary. Most of the items in the plan pertaining to the MDNR are actions that the agency regularly performs (*e.g.*, Clean Water 401 certification, review of National Pollution Discharge Elimination System permits). Because such tasks were already being performed by MDNR staff, the MDC saw no need at the time to formally transmit the action plan to MDNR. The MDNR continues to provide funding and personnel for various tasks identified in the State action plan.

(17) *Comment:* The Missouri Action Plan for the Topeka Shiner was unilaterally developed by the MDC. MDNR, which was assigned tasks in the plan, and citizen's groups were not involved in development of the plan. The plan was conceived and developed by MDC personnel, with minimal involvement from other entities, including the Service.

Our Response: The Service was an active participant and consultant to the team that developed the State action plan. The MDC plans to update the State action plan for the Topeka shiner within the current calendar year and will solicit input on its development and implementation from other potential partners, including MDNR.

(18) *Comment:* Protections afforded a listed species under the section 7 consultation provisions vary between the "jeopardy" standard and the "adverse modification" standard. For example, if no critical habitat is designated in Missouri and a Federal action is proposed that the Service finds, in a biological opinion, could jeopardize the continuing existence of the species, the action agency could proceed with the project without modifications, even with the jeopardy opinion. This is not the case if critical habitat is designated. An objection by the Service would halt the project and the action agency could not proceed until substantial modifications are incorporated into the project.

Our Response: Section 7(a)(2) of the Act requires Federal agencies to satisfy two standards in carrying out their programs. Federal agencies must ensure that their activities are not likely to—(1) jeopardize the continued existence of any listed species, or (2) result in the destruction or adverse modification of designated critical habitat. These two standards (*i.e.*, jeopardy and adverse modification) are separate but equal determinations. In other words, determining that a project would adversely modify designated critical habitat does not have more regulatory weight than determining that the project would jeopardize the continued existence of a species. Although Federal agencies can choose to implement a project after receiving a biological opinion finding jeopardy or adverse modification, any take which results from the action is not exempt from the provisions of section 9 of the Act. Additionally, failure to explain in the administrative record how the agency addressed the Service's biological opinion can expose the action agency to a judicial challenge under both the Act and the Administrative Procedure Act.

(19) *Comment:* The Missouri Action Plan for the Topeka Shiner depends primarily on voluntary cooperation for its implementation.

Our Response: We recognize that the Missouri Action Plan is voluntary in regard to the implementation of conservation tasks. The primary agency responsible for this "voluntary implementation" is the MDC. The MDC has a long and distinguished record involving conservation activities related to the Topeka shiner, dating back prior to Federal listing, and has consistently committed personnel and funding to these tasks.

(20) *Comment:* The Missouri Action Plan has failed. Since it came into effect in 1999 Topeka shiner populations have continued to decline in Missouri. The Bonne Femme Creek population of Topeka shiners has likely disappeared since the plan's inception. While there are many aspects of the plan that are laudable, it is clear that recovery has not resulted, or even progressed. This voluntary action plan should not be

allowed to take the place of Federal designation of critical habitat and an enforceable Federal plan to assure recovery.

Our Response: We disagree that the Missouri Action Plan for the Topeka Shiner has failed. While it is true some Missouri populations of the Topeka shiner have continued to decline since the action plan was finalized in 1999, it should be recognized that recovery of the species will not occur rapidly. The impacts that now affect the species are generally the result of decades of land-use and land-cover changes that cannot be remedied or corrected in a short period of time. The Missouri plan is being implemented and conservation actions completed, contributing toward achieving the goal of recovery. The action plan does not replace the Service's regulatory authorities under the Act. These authorities, under both sections 7 and 9, will continue into the future. We believe the benefits of excluding critical habitat in Missouri from our designation exceed the benefits of including it. The recovery of Topeka shiner will require a combination of voluntary actions and regulatory oversight.

(21) *Comment:* All of the proposed habitat in Missouri should be designated, plus other habitat where the Topeka shiner once existed. Protection of this unoccupied habitat will be essential for the recovery of the species. It also is likely that additional populations still exist in other areas of the species' Missouri range. According to knowledgeable fisheries biologists, the Topeka shiner still may occur in Slate Creek. Additional surveys should be conducted to identify these sites, and this habitat should be designated as well.

Our Response: We recognize that recovery of the Topeka shiner in Missouri will likely require the reintroduction to, or recolonization of, additional habitat. However, until the recovery plan is completed, we cannot identify all potential reintroduction sites. We also may identify an experimental population through section 10(j) of the Act. A nonessential, experimental population could provide more regulatory flexibility in managing reintroduced populations. The Act prohibits the Service from designating critical habitat for an experimental population, so it has been the Service's practice not to designate critical habitat where an experimental population is contemplated.

The MDC continues to sample suitable habitat in hopes of locating additional Topeka shiner populations. The last known records of Topeka shiner from Slate Creek were from 1962. In 2003, Jemerson and Hart Creeks, both tributaries to Slate Creek, were sampled and no Topeka shiners were found (Kerns, pers. comm. 2004). Additional sampling in this watershed is planned for this year. However, at this time, we have not found the species in the Slate Creek watershed or confirmed any specimens.

(22) *Comment:* Contrary to the Service's assertion, critical habitat provides added benefit to listed species. The Service is in possession of at least two studies, Rachlinski (1997) and Taylor *et al.* (2003), which demonstrate that listed species with critical habitat are significantly less likely to decline and more likely to improve than species without critical habitat. Designation helps to protect unoccupied habitat that is essential to the recovery of the species. In addition, there are two different standards for consultation under section 7. For species that are listed without critical habitat, a Federal agency must only consider whether their action jeopardizes the continuing existence of the species (in other words, whether it will increase the risk of extinction). For species with critical habitat, the agency also must consider whether the action will destroy or adversely modify critical habitat (in other words, whether it will impede recovery). Several Federal Circuit Courts have recognized this (*Sierra Club* v. *U.S. Fish and Wildlife Service*, 245 F.3d 434, 441–42, 5th Cir. 2001; *Greenpeace* v. *National Marine Fisheries Service*, 55 F. Supp. 2d 1248, 1265, W.D. Wash. 1999; *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280, 1287, D. Haw. 1998).

Our Response: 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. This is why we have found that the designation of critical habitat provides little additional protection to most listed species.

(23) *Comment:* The Service misapplies the section 4(b)(2) standard in excluding critical habitat. Throughout the proposed designation, the Service relies on State management plans in Missouri, Kansas, and South Dakota as justifications for excluding areas of critical habitat. However, under section 4(b)(2), the Secretary may only exclude critical habitat from designation if the benefits of exclusion outweigh the benefits of inclusion (16 U.S.C. 1533(b)(B)(2)). By relying on these management plans, the Service has based its decision on something other than the balancing of costs and benefits. Management plans are not sufficiently beneficial to the species as to outweigh the benefits of including the areas they cover in the final critical habitat designation. Section 4(b)(2) does not address other management plans as the ultimate deciding factor for excluding critical habitat designation. Since the Service asserts that there is no additional protection over existing benefit to designating critical habitat, they are ultimately balancing a zero benefit against overestimated costs and concluding that the costs outweigh the benefits. Thus, the Service never adequately weighed the benefits of designation against the risk of designation as required by statute.

Our Response: Pursuant to section 4(b)(2) of the Act, we are required to take into consideration the economic impact, impact on national security, and any other relevant impact of specifying any particular area as critical habitat. We also may exclude any area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, provided that the failure to designate such area will not result in the extinction of the species. We use information from our economic analysis, or other sources such as public comments, management plans, etc., to conduct this analysis. A decision to exclude an area is at the discretion of the Secretary. However, for us to consider excluding an area from the designation, we are required to determine that the benefits of the exclusion outweigh the benefits (*i.e.*, biological or conservation benefits) of including the specific area in the designation. This is not simply a monetary cost/benefit analysis, however. This is a policy analysis, and can include consideration of the impacts of the designation, the benefits to the species from the designation, as well as policy considerations such as national security, tribal relationships, impacts on conservation partnerships, and other public policy concerns. This evaluation is done on a case-by-case basis for particular areas based on the best available scientific and commercial data. In the case of Topeka shiner, we are not only considering the State management plans, we are also considering our partnerships with the States and with private landowners. These partnerships have been critically

important to the conservation of the Topeka shiner, and could be jeopardized through a designation. We have concluded that benefit of exclusion outweighs the benefit of inclusion for Kansas, Missouri, and South Dakota.

(24) *Comment:* The Economic Analysis overestimates costs in Missouri, particularly in the Bonne Femme Creek Watershed.

Our Response: The Economic Analysis relies on information from a variety of sources, including the action agencies conducting, permitting, or funding projects, such as the U.S. Army Corps of Engineers (Corps) and the Natural Resources Conservation Service (NRCS) in the Department of Agriculture, to determine the expected activities within each watershed likely to be impacted by conservation measures associated with the Topeka shiner.

Based on the high rate of conversion of agriculture and forest lands into residential, commercial, golf course, and hobby farm development, the Corps estimates that over the next 10 years the Bonne Femme Creek watershed is likely to experience growth resulting in up to twice as many projects as were permitted over the previous 10 years (Industrial Economics, Inc. 2004). The population of Boone County is expected to increase approximately 14 percent from 2005 to 2015, compared to the State of Missouri, which is forecast to increase approximately 5 percent over the same time period (Industrial Economics, Inc. 2004).

Though there have been no consultations on agriculture and ranching activities for the Topeka shiner in the past, based on historical program participation in the watersheds concerned, the NRCS anticipates future consultations. The NRCS expects pond construction to be an issue over the next 10 years (of all the watershed practices that may impact the Topeka shiner, pond construction is the most common) (Industrial Economics, Inc. 2004). Both the Service and NRCS anticipate completing a programmatic consultation on all NRCS program activities within the next year. Therefore, the Economic Analysis indicates that it is reasonable, given currently available information, to anticipate consultation regarding agriculture in the next 10 years regarding the Topeka shiner in these watersheds (Industrial Economics, Inc. 2004).

In addition, a comment noted that the amount reported for "other" forecast costs in Appendix B of the Economic Analysis includes possible water quality monitoring. The comment stated that this is inaccurate as the Environmental Protection Agency (EPA) does not undertake water quality sampling. The forecast costs reported as "other," in Appendix B of the Economic Analysis, include two informal consultation efforts by the State of Missouri to revise water quality standards and do not include EPA water quality monitoring costs.

Summary of Changes From the Proposed Rule

In preparation for development of our final designation of critical habitat for the Topeka shiner, we reviewed comments received on the proposed designation of critical habitat and those received on the revised proposal we published in early 2004. In addition to minor modifications and corrections of legal descriptions, we have made three revisions to our critical habitat designation, as follows:

(1) We have excluded from designation the proposed critical habitat units in the State of Kansas under the authority of section 4(b)(2) of the Act. Kansas has a State Endangered Species Act that provides for special management and state designation of critical habitat, which is more extensive than what the Service originally proposed under the Federal Endangered Species Act. Therefore, we have concluded that adequate management for the Topeka shiner is already in place, and that the benefits of exclusion outweigh the benefits of designating critical habitat in the State.

(2) We have excluded from designation the proposed critical habitat units in the State of Missouri under the authority of sections 3(5)(A) and 4(b)(2) of the Act. Missouri has had a management plan for the Topeka shiner since 1999. We have concluded that adequate management for the Topeka shiner is already in place, and that the benefits of exclusion outweigh the benefits of designating critical habitat in the State.

(3) We have excluded from designation the proposed critical habitat units in the State of South Dakota under the authority of section 4(b)(2) of the Act. South Dakota completed a State-wide management plan for the Topeka shiner in 2003, and we find that the benefits of exclusion outweigh the benefits of designating critical habitat in the State.

(4) We did not designate critical habitat on the Fort Riley Military Reservation in Kansas because the installation has an approved INRMP containing special management considerations for the Topeka shiner. We consider the Topeka shiner conservation measures to be adequate and are thus prohibited from designating critical habitat on the installation in accordance with section 4(a)(3) of the Act.

Critical Habitat

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

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions authorized, funded, or carried out by a Federal agency. Section 7 of the Act also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat.

To be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Occupied habitat may be included in critical habitat only if the essential features thereon may require special management or protection.

Our regulations 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" (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, impacts to national security, and any other relevant impact of

designating 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), and our U.S. Fish and Wildlife Service Information Quality Guidelines (2002) provide criteria, establish procedures, and provide guidance to ensure that our decisions represent the best scientific and commercial data available. They require 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 habitat, 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 and expert opinion or personal knowledge.

This critical habitat designation does not signal that habitat outside the designation is unimportant to the Topeka shiner. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(1)(A) of the Act, we use the best scientific and commercial data available in determining the areas essential to the conservation of the Topeka shiner. We reviewed the overall approach to the conservation of the species undertaken by local, State, Tribal, and Federal agencies and private individuals and organizations since the species' listing in 1998. We solicited information and recommendations from knowledgeable biologists and members of the Topeka Shiner Recovery Team. The Topeka Shiner Recovery Team is composed of species experts from academia and industry, State natural resource agency personnel with knowledge of the species, and Service staff. It has completed an agency technical draft Recovery Plan, which we used, in part, to develop this final critical habitat designation. We reviewed the available information pertaining to habitat requirements of the species received during the listing process.

We have reviewed available information that pertains to the habitat requirements of this species, including information from the final rule listing the species as endangered (63 FR 69008). In addition, the following studies address the habitat requirements and other biological and physical needs of the Topeka shiner and serve as the best available information in determining critical habitat for the species—Barber 1986; Blausey 2001; Cross 1967; Cross 1970; Cross and Collins 1975; Cross and Collins 1995; Deacon and Metcalf 1961; Gelwicks and Bruenderman 1996; Hatch 2001; Hatch and Besaw 2001; Katula 1998; Kerns 1983; Leopold *et al.* 1992; Michels 2000; Michl and Peters 1993; Minckley and Cross 1959; Pflieger 1975; Pflieger 1997; Rosgen 1996; Shranke *et al.* 2001; Stark *et al.* 1999; U.S. Fish and Wildlife Service 1993; Wall *et al.* 2001.

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 must consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations 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 breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species. The area designated as critical habitat for the Topeka shiner is within the geographical area presently occupied by the species and contains the physical or biological features (PCEs) essential for the conservation of the species.

The specific PCEs required for Topeka shiner habitat are derived from the biological needs of the Topeka shiner as described here. Topeka shiners are typically found in small, low order, prairie streams with good water quality, relatively cool temperatures, and low fish diversity (Minckley and Cross 1959; Cross 1967; Barber 1986; Cross and Collins 1995; Pflieger 1997; Blausey 2001). Although Topeka shiners can tolerate a range of water temperatures, cooler, spring-maintained systems are considered optimal (Cross and Collins 1995; Pflieger 1997). These streams generally maintain perennial flow but may become intermittent during summer or periods of drought. Evermann and Cox (1896) reported on surveys from the Nebraska portion of the Big Blue River watershed, and noted that Topeka shiners occurred in "pond-like, isolated portions of streams which dry up in parts of their course during dry weather." Minckley and Cross (1959) found Topeka shiners "almost exclusively in quiet, open pools of small, clear streams that drain upland prairies." They also noted that when these streams approach intermittency, the pools are maintained at fairly stable levels by percolation through the gravel or by springs. Similar habitat characteristics are described for populations in Missouri by Pflieger (1997). In South Dakota, Blausey (2001) found that runs were the dominant macrohabitat type associated with Topeka shiner presence, although higher densities of the species were collected in pools. While characteristic of pools with stable water levels and cooler temperatures, Topeka shiners appear to be well adapted to periodic drought conditions common to prairie streams and are able to endure acute periods of high water temperatures. For example, Kerns (1983) found that even though mortality of several fish species was high in desiccating pools, juvenile Topeka shiners seemed especially drought-resistant.

In Kansas and Missouri, Topeka shiners typically occur in streams with clean gravel, cobble, or sand bottoms (Pflieger 1975; Kerns 1983; Barber 1986; Cross and Collins 1995; Pflieger 1997; Blausey 2001). However, bedrock and clay hardpan covered by a thin layer of silt are not uncommon (Minckley and Cross 1959). In western Kansas pools containing Topeka shiners, Stark *et al.* (1999) determined the primary substrate to be coarse sand overlain by silt and

detritus. Similarly, Michl and Peters (1993) reported the collection of Topeka shiners from a Nebraska stream having a sand and detritus substrate.

While main channel areas may be typical of Kansas, Missouri, and South Dakota populations, Topeka shiners in Minnesota and Iowa appear more abundant in off-channel oxbows and side channels than in the main channels (Menzel pers. comm. 1999; Hatch 2001). These seasonally flooded habitats also appear to have a connection with the water table, enabling temperature and dissolved oxygen to stay within tolerance levels of the species during dry, hot periods. It also suggests that the groundwater connection may prevent complete freezing of these pools in winter. Groundwater availability was a primary predictor of Topeka shiner presence in South Dakota (Blausey 2001). While the species has recently been found in some stream sites with excessive sedimentation, it is unknown whether it uses these locations year-round, for portions of the year, or during periods of dispersal. In much of the range of Topeka shiner, moderate-sized mainstem streams likely provide occasional dispersal corridors for the species (Cunningham, Eco-Centrics, Inc., Omaha, Nebraska, pers. comm. 1999; Menzel pers. comm. 2001). In most cases these larger streams do not provide habitat conditions suitable for the species to complete its necessary life cycle requirements, but in the Iowa and Minnesota range of the species, oxbow and other off-channel habitats adjacent to these mainstems do provide these requirements (Menzel pers. comm. 2001; Hatch 2001). In these cases, the primary constituent elements of critical habitat are present in the off-channel areas, but not in the larger, mainstem streams themselves, even though they likely provide corridors for dispersion to other areas of suitable habitat.

Topeka shiners are a short-lived species, rarely surviving to their third summer in the wild (Minckley and Cross 1959; Cross 1967; Kerns 1983; Cross and Collins 1995; Pflieger 1997; Hatch 2001). The species typically matures at 12–14 months of age (Kerns 1983; Cross and Collins 1995; Pflieger 1997). Based on ovarian development, Hatch (2001) suggested that Topeka shiners are multiple-clutch spawners. Topeka shiners spawn in pool habitats, over green sunfish (*Lepomis cyanellus*) and orangespotted sunfish (*L. humilis*) nests, from late May to August in Kansas and Missouri (Kerns 1983; Cross and Collins 1995; Pflieger 1997). Stark *et al.* (1999) observed Topeka shiners spawning on the periphery of green sunfish nests and suggest that the habitats provided by these nests are important to the reproductive success of Topeka shiners. These same authors reported aggregations of Topeka shiners in close association with fathead minnow (*Pimephales promelas*) and orangespotted sunfish nests, but observed no spawning activities. In Minnesota, Hatch (2001) found that Topeka shiners used rubble, boulder, and concrete rip-rap at the margins of pools and slow runs. Several authors reported the defense of small territories by breeding male Topeka shiners (Kerns 1983; Pflieger 1997; Katula 1998; Stark *et al.* 1999; Hatch 2001). In Jack Creek, Chase County, Kansas, Mammoliti (Kansas Department of Wildlife and Parks, pers. comm. 1999) observed two male Topeka shiners defending a longear sunfish (*Lepomis megalotis*) nest as the male sunfish loafed nearby. Other authors have noted upstream movement as reproductive behavior in Topeka shiners (Minckley and Cross 1959; Kerns 1983, Barber 1986).

The Topeka shiner is primarily a schooling fish and found throughout the water column. Pflieger (1997) noted that the species schooled with other cyprinids in mid-water or near the surface. Other studies have reported Topeka shiners schooling in the lower portion of the water column with central stonerollers (*Campostoma annomalum*) (Kerns 1983; Stark *et al.* 1999). While typical of small, headwater streams, occasionally the species has been captured in larger streams, downstream of known populations. Barber (1986) noted variation in mobility within a population of Topeka shiner based on sex and age class. In the spring, as precipitation and water temperatures increased, adult males tended to move upstream or downstream. In many instances, the fish moved back to their original pool. Young-of-the-year fish tended to move downstream in the fall. Others have reported displacement of fish downstream during periods of high flow (Cross, University of Kansas, pers. comm. 1994; Tabor pers. comm. 1994). Although it is evident that the species has some capacity to disperse, at present the degree of dispersal and the species' ability to "tributary hop" is unknown. It has been suggested that populations found in short, direct tributaries to the Missouri River were evidence of a historic dispersal eastward by "tributary hopping." However, Deacon and Metcalf (1961) found the Topeka shiner to be one of several fishes with a low capacity for dispersal following drought conditions. In addition, Michels (2000) conducted a rangewide genetic analysis of different populations of Topeka shiner and suggested that successful migration, even between adjacent populations, is rare and that movement over long distances is unlikely.

Earlier researchers (Kerns 1983; Cross and Collins 1995) reported that Topeka shiners are benthic insectivores that feed primarily on midges (Chironomids), true flies (Dipterans), and mayflies (Ephemeropterans), with zooplankton (Cladocerans and Copepods) also contributing to their diet. More recent studies have found Topeka shiner feeding at a variety of trophic levels and on diverse foods. Stark *et al.* (1999) observed Topeka shiners consuming eggs from fathead minnow nests in Willow Creek, Wallace County, Kansas. In Minnesota, food included several kinds of zooplankton, a variety of immature aquatic insects, larval fish, algal and vascular plant matter, including seed capsules (Hatch and Besaw 1998). These authors suggest that Topeka shiners function both as benthic (bottom) and nektonic (water column) feeders, and propose that the species also may feed from the surfaces of aquatic plants.

The primary constituent elements for the Topeka shiner consist of:

1. Streams most often with permanent flow, but that can become intermittent during dry periods;

2. Side-channel pools and oxbows either seasonally connected to a stream or maintained by groundwater inputs, at a surface elevation equal to or lower than the bankfull discharge stream elevation. The bankfull discharge is the flow at which water begins leaving the channel and flowing into the floodplain; this level is generally attained every 1 to 2 years. Bankfull discharge, while a function of the size of the stream, is a fairly constant feature related to the formation, maintenance, and dimensions of the stream channel;

3. Streams and side-channel pools with water quality necessary for unimpaired behavior, growth, and viability of all life stages. The water quality components can vary seasonally and include—temperature (1 to 30°Centigrade), total suspended solids (0 to 2000 ppm), conductivity (100 to 800 mhos), dissolved oxygen (4 ppm or greater), pH (7.0 to 9.0), and other chemical characteristics;

4. Living and spawning areas for adult Topeka shiner with pools or runs with water velocities less than 0.5 meters/second (approx. 20 inches/second) and depths ranging from 0.1 to 2.0 meters (approximately 4 to 80 inches);

5. Living areas for juvenile Topeka shiners with water velocities less than 0.5 meters/second (approx. 20 inches/

second) with depths less than 0.25 meters (approx. 10 inches) and moderate amounts of instream aquatic cover, such as woody debris, overhanging terrestrial vegetation, and aquatic plants;

6. Sand, gravel, cobble, and silt substrates with amounts of fine sediment and substrate embeddedness that allows for nest building and maintenance of nests and eggs by native *Lepomis* sunfishes (green sunfish, orangespotted sunfish, longear sunfish) and Topeka shiner as necessary for reproduction, unimpaired behavior, growth, and viability of all life stages;

7. An adequate terrestrial, semiaquatic, and aquatic invertebrate food base that allows for unimpaired growth, reproduction, and survival of all life stages;

8. A hydrologic regime capable of forming, maintaining, or restoring the flow periodicity, channel morphology, fish community composition, off-channel habitats, and habitat components described in the other primary constituent elements; and

9. Few or no nonnative predatory or nonnative competitive species present.

Criteria Used To Identify Critical Habitat

We are designating critical habitat in areas we have determined are essential to the conservation of the Topeka shiner. These areas have the primary constituent elements described above. According to the best available information, they are all occupied by the species or provide critical links or corridors between occupied habitats.

Critical habitat should already have, or have the potential for developing in the near future, many or all of the features and habitat characteristics that are necessary to sustain the species. We do not speculate about what areas might be found to be essential if better information were available, or what areas may become essential over time. Within the geographic area occupied by the species, we will not designate areas that do not now have the primary constituent elements that provide essential life cycle needs of the species, as defined at 50 CFR 424.12(b). Furthermore, we recognize designation of critical habitat may not include all habitat eventually determined as necessary to recover the species. For these reasons, areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) and the regulatory protections afforded by the section 7(a)(2) jeopardy standard and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to those planning efforts calls for a different outcome.

The designated critical habitat described below constitutes our best assessment of areas needed for the conservation of Topeka shiner and is based on the best scientific and commercial information available. The designated areas are essential to the conservation of the species because they currently support populations of Topeka shiner or provide critical links or corridors to other habitat for the species. The stream segments designated as critical habitat in this final rule are consistent with the preliminary agency technical draft recovery plan first recovery criterion, which states that recovery of the species will be recognized as achieved when all naturally occurring populations within recovery units are determined to be stable or increasing over a period of 10 years.

Important considerations in selection of areas designated in this rule include factors specific to each geographic area, watershed, and stream segment, such as stream size and length, connectivity, and habitat diversity, as well as rangewide recovery considerations, such as genetic diversity and representation of major portions of the species' historical range. The designated critical habitat reflects the need for habitat complexes and individual stream reaches of sufficient size to provide habitat for Topeka shiner populations large enough to be self-sustaining over time, despite fluctuations in local conditions.

Habitat complexes contain interconnected waters so that Topeka shiners can move between areas, at least during certain flows or seasons. The ability of the fish to repopulate areas where they are now depleted or extirpated is vital to the species' conservation. Some complexes may include stream reaches with minimal instream habitat, but which provide migration corridors for Topeka shiners. These corridors play a vital role in the dispersal of the species and the overall functioning of the aquatic ecosystem and, therefore, the integrity of upstream and downstream habitats.

The designation includes representatives of all known populations of the species so as to conserve and protect the genetic diversity of the species. Information on the Topeka shiner indicates a high degree of genetic differentiation among many of the remnant populations (Michels 2000) making conservation of as many of these populations as possible important to efforts to preserve genetic diversity.

There are streams with some recent association with Topeka shiners that may not be proposed for designation. These could include streams with records of one-time captures of Topeka shiner; streams for which habitat conditions are unknown; streams with imprecise, generalized, or questionable capture locations; and streams with severely altered habitat, lacking the primary constituent elements (*e.g.*, drainage ditches).

We used the best scientific information and data available in making our determination of which stream segments to designate as critical habitat. We compiled information on the species and its habitat to create proposed maps of potentially suitable stream reaches. We then consulted species experts in academia, members of the Topeka Shiner Recovery Team, and biologists from State natural resource and fish and wildlife agencies familiar with the species or the watersheds in areas with the Topeka shiner. We also consulted biologists from other Service offices in the species' range. We asked for their review of the stream reaches identified on the proposed maps, and for any suggested changes or additions. We opened two public comment periods and held seven public meetings to solicit input and additional information from the public and other interested parties or groups. We also solicited peer review from five fisheries scientists.

Factors considered in determining specific stream segments included—streams with occupancy and habitat information for the species; stream reaches with all or some of the primary constituent elements for Topeka shiners, including those able to attain them in the foreseeable future; habitat models; information on the species' ecology and biology; stream morphology and hydrology information; regional habitat use by the species, such as use of side-channel pools in Iowa and Minnesota; major habitat alterations, such as channelization and dams; and information on the mobility of Topeka shiner in reference to connectivity of adjacent stream reaches and to home

range and dispersal characteristics. Information and suggested changes provided by the individuals and agencies that reviewed the proposed maps were carefully considered and implemented where they were consistent with the Service's criteria for designating critical habitat.

The designation includes 83 stream segments, encompassing 1,356 km (836 mi) of stream in Iowa, Minnesota, and Nebraska. This includes adjacent off-channel pool habitats in Iowa and Minnesota. The stream segments are within five major watersheds in the States of Iowa, Minnesota, and Nebraska. These 83 designated stream segments encompass 8 stream complexes (2 or more connecting stream segments) and 2 individual, isolated streams. All habitat previously proposed for designation in Kansas, Missouri, and South Dakota is excluded from designation as critical habitat for Topeka shiner (*see* Exclusions from Critical Habitat).

Designated critical habitat includes the stream channels within the identified stream reaches and off-channel pools and oxbows in Minnesota and Iowa. Side-channel pools and oxbows that are proposed for designation are typically either seasonally connected to a stream or have waters maintained by groundwater inputs. The defining stream elevation for determining the lateral extent of proposed critical habitat in stream channels and off-channel or oxbow pools is the elevation equal to the bankfull discharge stream elevation. The bankfull discharge is the flow at which water begins leaving the channel and flowing into the floodplain (Rosgen 1996). This level is generally attained every 1 to 2 years (Leopold *et al.* 1992). Bankfull discharge, while a function of the size of the stream, is a fairly constant feature related to the formation, maintenance, and dimensions of the stream channel (Rosgen 1996).

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protection. Primary threats and special management considerations are described below on a unit-by-unit basis (*see* Critical Habitat Unit Descriptions). Overall, major threats to this species include sedimentation caused by agricultural practices, ditch maintenance, and road construction, as described in the final listing rule. Measures to improve habitat include grass waterways, riparian fencing, and best management practices for construction projects and ditch maintenance (63 FR 69008).

Critical Habitat Designation

Tables 1 and 2 summarize the location and extent of designated critical habitat. We provide general descriptions of the boundaries of designated critical habitat units below.

TABLE 1.—NUMBER OF STREAM SEGMENTS AND TOTAL STREAM MILEAGE BEING DESIGNATED AS CRITICAL HABITAT FOR TOPEKA SHINER, BY STATE

State	Number of stream segments	Total stream mileage
Iowa	25	225
Minnesota	57	605
Nebraska	1	6
Total	83	836

TABLE 2.—NUMBER OF STREAM SEGMENTS AND TOTAL STREAM MILEAGE BEING DESIGNATED AS CRITICAL HABITAT FOR TOPEKA SHINER, BY COUNTY

County	Number of stream segments	Stream mileage
Iowa:		
Calhoun	8	68
Carroll	2	7
Dallas	3	3
Greene	8	87
Hamilton	1	1
Lyon	3	16
Osceola	1	5
Sac	4	12
Webster	1	9
Wright	3	16
Minnesota:		
Lincoln	4	27
Murray	2	19
Nobles	14	115
Pipestone	21	196
Rock	25	247
Nebraska:		
Madison	1	6

Note: Many stream segments occur in more than one county, thus inflating the total number per State, if totaled.

Critical Habitat Unit Descriptions

We are designating the following areas as critical habitat for the Topeka shiner. These areas constitute our best assessment at this time of the areas essential for the conservation of the Topeka shiner that may require special management. All of these units are essential for the conservation of Topeka shiners because the overall water quality, substrate, and stream flow characteristics can support healthy populations of the species when recovery efforts are implemented. In accordance with our conservation strategy for this species, it is important to provide special management to all stream reaches that we know are occupied.

Iowa

Raccoon River Watershed

1. North Raccoon River Complex (19 stream segments), Calhoun, Carroll, Dallas, Greene, Sac, and Webster Counties, Iowa—Multiple tributary streams and some of their adjacent off-channel pool habitats in this complex have recent collection records for Topeka shiners. While some habitat in these tributaries has been altered (primarily by channelization and sedimentation), current habitat conditions provide most or all of the PCEs consistent with designation as critical habitat. Off-channel pool habitats adjacent to the mainstem of the North Raccoon River also have been discovered to be Topeka shiner habitat, and we designate these areas as well. However, records of Topeka shiners are lacking from the mainstem of the North Raccoon River itself. It is likely that the mainstem provides an important dispersal corridor for the species between tributary streams and off-channel pools adjacent to the mainstem, particularly during high-flow events, but the habitat components within the mainstem itself do not provide the PCEs necessary for proposing it for designation as critical habitat. Primary threats to the Topeka shiner that require special management in this watershed include agricultural practices and channelization that increase sedimentation and other water quality impacts. Special management for the Topeka shiner in this watershed would include grass waterways and terracing to reduce erosion, and implementation of best management practices for ditch maintenance. In this unit, we are proposing 19 stream segments within portions of the following tributaries and their qualifying, adjacent off-channel habitat for designation—Indian Creek, Ditch 57, and Outlet Creek; Camp Creek and West Fork Camp Creek; Prairie Creek; Lake Creek; Purgatory Creek; Cedar Creek, West Cedar Creek, and East Cedar Creek; Short Creek; Hardin Creek; Buttrick Creek, West Buttrick Creek, and East Buttrick Creek; and Elm Branch and Swan Lake Branch. Additionally, qualifying off-channel pool habitat (as described in the section on Primary

Constituent Elements) adjacent to the mainstem of the North Raccoon River is proposed for designation.

Boone River Watershed

2. Eagle Creek (one stream segment), Hamilton and Wright Counties, Iowa—Eagle Creek has several recent collections of Topeka shiner even though a large portion of its upper basin has been severely altered by stream channelization and drainage ditch construction. The lower reaches of Eagle Creek still retain much of its natural stream morphology, including meanders and pool habitat. We propose the lower reach of Eagle Creek and qualifying, adjacent off-channel pool habitats for designation. The upper, channelized, portions of Eagle Creek are not proposed for designation. Primary threats to the Topeka shiner that require special management in this watershed include agricultural practices and channelization that increases sedimentation and other water quality impacts. Special management for the Topeka shiner in this watershed would include grass waterways and terracing to reduce erosion, and implementation of best management practices for ditch maintenance.

3. Ditch 3 and Ditch 19 Complex (two stream segments), Wright County, Iowa—The proposed reach of Ditch 3 extends from its confluence with the Boone River, upstream to the Humboldt County line. Ditch 19 also extends upstream from its confluence with Ditch 3 to the Humboldt County line. While the general map descriptions of these streams are termed "ditches" due to channelization activities in the past, both streams have reestablished much of their natural morphology and instream habitat conditions in the recent past, including meanders and pool habitats. Habitat components within these streams are consistent with the PCEs necessary for designation as critical habitat downstream from the Humboldt County line. Topeka shiners have been recently captured from both streams. Qualifying off-channel pool habitat also is proposed. Habitat upstream from the Humboldt County line is highly modified by channelization and is not proposed for designation. Primary threats to the Topeka shiner that require special management in this watershed include agricultural practices and channelization that increases sedimentation and other water quality impacts. Special management for the Topeka shiner in this watershed would include grass waterways and terracing to reduce erosion, and implementation of best management practices for ditch maintenance.

Rock River Watershed

4. Rock River Complex (two stream segments in Iowa), Lyon County, Iowa—The Rock River Complex is comprised of 2 stream segments in Iowa and 28 stream segments in Minnesota. Topeka shiners have recently been captured throughout much of the Rock River watershed, both from streams and adjacent off-channel pools and oxbows. We propose the reach of the Rock River from its confluence with Kanaranzi Creek upstream to the border with Minnesota, and Kanaranzi Creek from the confluence with the Rock River upstream to the Minnesota border. Adjacent, qualifying off-channel pool habitats along both stream segments also are proposed. Primary threats to the Topeka shiner that require special management in this watershed include agricultural practices and channelization that increases sedimentation and other water quality impacts. Special management for the Topeka shiner in this watershed would include grass waterways and terracing to reduce erosion, and implementation of best management practices for ditch maintenance.

5. Little Rock River Complex (one stream segment in Iowa), Lyon and Osceola Counties, Iowa—The Little Rock River Complex is comprised of one stream segment in Iowa and two stream segments in Minnesota. Topeka shiners have recently been captured in portions of the Little Rock River watershed, both from streams and adjacent off-channel pools and oxbows. We propose the reach of the Little Rock River from near the town of Little Rock, Iowa, upstream to the Minnesota border, including qualifying, adjacent off-channel pool habitat. Primary threats to the Topeka shiner that require special management in this watershed include agricultural practices and channelization that increases sedimentation and other water quality impacts. Special management for the Topeka shiner in this watershed would include grass waterways and terracing to reduce erosion, and implementation of best management practices for ditch maintenance.

Minnesota

Big Sioux River Watershed

1. Medary Creek Complex (two stream segments in Minnesota), Lincoln County, Minnesota—This complex is comprised of two stream segments in Minnesota. Topeka shiners recently have been captured from several localities in this complex. We propose portions of Medary Creek and an unnamed tributary, and adjacent off-channel pool habitat for designation. Primary threats to the Topeka shiner that require special management in this watershed include agricultural practices and channel maintenance that increases sedimentation and other water quality impacts. Special management for the Topeka shiner in this watershed would include grass waterways and riparian fencing to reduce erosion.

2. Flandreau Creek Complex (four stream segments in Minnesota), Lincoln and Pipestone Counties, Minnesota—This complex is comprised of four stream segments in Minnesota and one in South Dakota. Topeka shiners have been recently captured from several localities in this complex. We propose portions of Flandreau Creek and an unnamed tributary, East Branch Flandreau Creek, Willow Creek, and adjacent off-channel pool habitat for designation. Primary threats to the Topeka shiner that require special management in this watershed include agricultural practices and channel maintenance that increases sedimentation and other water quality impacts. Special management for the Topeka shiner in this watershed would include grass waterways and riparian fencing to reduce erosion.

3. Split Rock/Pipestone/Beaver Creek Complex (18 stream segments in Minnesota), Pipestone and Rock Counties, Minnesota—This complex is comprised of 18 stream segments in Minnesota and 7 in South Dakota. The streams and some of their adjacent off-channel pool habitats in this complex have recent collection records for the Topeka shiner. While some habitat in these tributary streams has been altered, primarily by channelization and sedimentation, current habitat conditions provide most or all of the PCEs consistent with designation as critical habitat. We propose for designation portions of Pipestone Creek and two unnamed tributaries; North Branch Pipestone Creek and an unnamed tributary; and Split Rock Creek and five unnamed tributaries; Beaver Creek and two unnamed tributaries; Little Beaver Creek; Springwater Creek; and adjacent off-channel pool habitat. Primary threats to the Topeka shiner that require special management in this watershed include agricultural practices and channelization that increases sedimentation and other water quality impacts. Special management for the Topeka shiner in this watershed would include grass waterways and terracing to reduce erosion, and implementation of best management practices for ditch maintenance.

Rock River Watershed

4. Rock River Complex (28 stream segments in Minnesota), Murray, Nobles, Pipestone, and Rock Counties, Minnesota—The Rock River Complex is comprised of 28 stream segments in Minnesota and 2 stream segments in Iowa. Many streams in this complex have been impacted by channelization and sedimentation to varying degrees. These streams are characterized by predominantly natural morphology, instream pools, and a number of off-channel and oxbow pools, with some short reaches of channelization. Topeka shiners have recently been captured throughout much of the Rock River watershed, from both streams and adjacent off-channel pools and oxbows. We propose portions of the following stream reaches, along with adjacent off-channel pool habitat for designation—the Rock River from Minnesota/Iowa border, upstream to near Holland, Minnesota, and six unnamed tributaries; East Branch Rock River and an unnamed tributary; Kanaranzi Creek, East Branch Kanaranzi Creek, and three unnamed tributaries; Norwegian Creek and an unnamed tributary; Ash Creek; Elk Creek and an unnamed tributary; Champepadan Creek and three unnamed tributaries; Mound Creek; Poplar Creek and an unnamed tributary; and Chanarambie Creek and North Branch Chanarambie Creek. Primary threats to the Topeka shiner that require special management in this watershed include agricultural practices and channelization that increases sedimentation and other water quality impacts. Special management for the Topeka shiner in this watershed would include grass waterways and terracing to reduce erosion, and implementation of best management practices for ditch maintenance.

5. Little Rock River Complex (two stream segments in Minnesota), Nobles County, Minnesota—The Little Rock River Complex is comprised of two stream segment in Minnesota and one stream segment in Iowa. Topeka shiners have recently been captured in portions of the Little Rock River watershed, both from streams and adjacent off-channel pools and oxbows. We propose the reaches of the Little Rock River from the Minnesota/Iowa border, upstream to near Rushmore, Minnesota, and portions of Little Rock Creek, including adjacent off-channel pool habitat. Primary threats to the Topeka shiner that require special management in this watershed include agricultural practices and channel maintenance that increases sedimentation and other water quality impacts. Special management for the Topeka shiner in this watershed would include grass waterways and terracing to reduce erosion, and implementation of best management practices for ditch maintenance.

6. Mud Creek Complex (three stream segments), Rock County, Minnesota—This complex is comprised of three stream segments. We propose portions of Mud Creek and two unnamed tributaries, and adjacent off-channel pool habitat for designation. Primary threats to the Topeka shiner that require special management in this watershed include agricultural practices and channel maintenance that increases sedimentation and other water quality impacts. Special management for the Topeka shiner in this watershed would include grass waterways and riparian fencing, and implementation of best management practices for ditch maintenance.

Nebraska

1. Taylor Creek (one stream segment), Elkhorn River Watershed, Madison County, Nebraska—A small population of Topeka shiners exists in this stream, with two recent captures of the species. This is the only stream in Nebraska with capture records for the species since 1989, and is the only proposed critical habitat in the greater Platte River watershed. Taylor Creek is somewhat modified in portions of its watershed, but retains several of the PCEs necessary for designation as critical habitat, including stream morphology, pools, and instream habitat. The proposed reach of Taylor Creek is upstream from its confluence with Union Creek, near Madison, Nebraska. Primary threats to the Topeka shiner that require special management in this watershed include agricultural practices and channel maintenance that increases sedimentation and other water quality impacts. Special management for the Topeka shiner in this watershed would include grass waterways, grazing management plans and riparian habitat protection projects to reduce erosion.

Land Ownership

The vast majority (approximately 99 percent) of proposed critical habitat is in private ownership. Private lands are primarily used for grazing and agriculture, but also include some urban, suburban, and industrial areas. The remaining one percent of lands are owned by State, county and local governments, and are used for public recreation, flood control projects and bridge crossings.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that the permitted actions do not destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. "Reasonable and prudent alternatives" are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a

reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request 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.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

Activities on Federal lands that may affect the Topeka shiner 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 Army 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 (FHA) or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat to the Topeka shiner. We note that such activities may also jeopardize the continued existence of the species.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Significantly and detrimentally altering the minimum flow or the natural flow regime of any of the designated stream segments from impoundment, groundwater pumping, and water diversion that would cause the elimination or reduction of scouring flows; prolonged release of high flows; and habitat fragmentation. These impacts threaten maintenance of pool habitat needed for Topeka shiner survival and successful reproduction. Groundwater pumping and water diversion threaten water availability to the species and can reduce water quality impacting reproductive success. We note that flow reductions that result from actions affecting tributaries of the proposed stream reaches also may destroy or adversely modify critical habitat;

(2) Significantly and detrimentally altering the characteristics of the riparian zone in any of the designated stream segments resulting in increased sedimentation of Topeka shiner spawning habitat and decreased water quality. Possible actions would include vegetation manipulation, timber harvest, road construction and maintenance, livestock grazing, off-road vehicle use, powerline or pipeline construction and repair, mining, and urban and suburban development;

(3) Significantly and detrimentally altering the channel morphology of any of the stream segments listed above that would cause elimination of pool habitat, degradation of Topeka shiner spawning habitat, and decreased water quality effecting the species' reproduction and survival. Possible actions include channelization, impoundment, road and bridge construction, deprivation of substrate source, destruction and alteration of riparian vegetation, reduction of available floodplain, removal of gravel or floodplain terrace materials, reduction in stream flow, and excessive sedimentation from mining, livestock grazing, road construction, timber harvest, off-road vehicle use, and other watershed and floodplain disturbances;

(4) Significantly and detrimentally altering the water chemistry in any of the designated stream segments that reduces water quality thereby impacting reproductive success and recruitment of young fish into the adult population. Possible actions include release of chemical or biological pollutants into the surface water or connected groundwater at a point source or by dispersed release (non-point); and

(5) Introducing, spreading, or augmenting nonnative aquatic species in any of the designated stream segments that increases predation, and competition for habitat and food. Possible actions include fish stocking for sport, aesthetics, biological control, or other purposes; use of live bait fish; aquaculture; construction and operation of canals; and interbasin water transfers.

We consider all of the units we are designating as critical habitat to be occupied by the Topeka shiner. We are not designating habitat in the unoccupied historic range of the species. We are designating some stream segments with no records of capture that possess the primary constituent elements of Topeka shiner habitat and connect occupied stream segments. These likely harbor the species during certain flow conditions. Federal agencies consult with us on activities in areas currently occupied by the species or if the species may be affected by the action to ensure that their actions do not jeopardize the continued existence of the species.

Previous Section 7 Consultations

A small number of section 7 consultations for Federal actions affecting the Topeka shiner and its habitat have preceded this critical habitat designation. The action agencies have included the Corps, EPA, FHA, and NRCS. Since the Topeka shiner was listed on December 15, 1998, we have conducted more than 26 informal and 3 formal consultations involving the species. These consultations addressed a range of actions, including bridge construction, highway maintenance, stream bank stabilization, and water quality discharge permits. The designation of critical habitat will have no impact on private landowner activities that do not require Federal funding or permits. Determinations regarding adverse modification of critical habitat are only applicable to activities approved, funded, or carried out by Federal agencies.

If you have questions regarding whether specific activities will likely constitute destruction or adverse modification of critical habitat, contact the Field Supervisor, Kansas Ecological Services Field Office (*see* **ADDRESSES**). 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, Division of Endangered Species, P.O. Box 25486, Denver, Colorado 80225 (telephone 303–236–7400; facsimile 303–236–0027).

Application of Section 3(5)(A) and Section 4(b)(2) of the Act

Section 3(5)(A) of the Act defines critical habitat as the specific areas within the geographic area occupied by the species on which are found those physical and biological features (I) essential to the conservation of the species and (II) which may require special management considerations and protection. Therefore, areas within the geographic area occupied by the species that do not contain the features essential for the conservation of the species are not, by definition, critical habitat. Similarly, areas within the geographic area occupied by the species that do not require special management also are not, by definition, critical habitat. To determine whether an area requires special management, we first determine if the essential features located there generally require special management to address applicable threats. If those features do not require special management, or if they do in general but not for the particular area in question because of the existence of an adequate management plan or for some other reason, then the area does not require special management.

We consider a current plan to provide adequate management or protection if it meets three criteria: (1) The plan is complete and provides a conservation benefit to the species (*i.e.*, the plan must maintain or provide for an increase in the species' population, or the enhancement or restoration of its habitat within the area covered by the plan); (2) the plan provides assurances that the conservation management strategies and actions will be implemented (*i.e.*, those responsible for implementing the plan are capable of accomplishing the objectives, and have an implementation schedule or adequate funding for implementing the management plan); and (3) the plan provides assurances that the conservation strategies and measures will be effective (*i.e.*, it identifies biological goals, has provisions for reporting progress, and is of a duration sufficient to implement the plan and achieve the plan's goals and objectives).

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

We have completed an analysis of the economic impacts of designating specific areas as Topeka shiner critical habitat. The economic analysis was conducted in a manner that is consistent with the ruling of the 10th Circuit Court of Appeals in *N.M. Cattle Growers Ass'n v. USFWS*, 248 F.3d 1277 (2001). It was available for public review and comment during the comment periods for the proposed rule.

In our evaluation of potential critical habitat, our consideration of economic factors included: (1) Costs to us and Federal action agencies from increased workload to conduct consultations under section 7 of the Act and technical assistance associated with critical habitat; (2) costs of modifying projects, activities, or land uses resulting from consultations involving critical habitat; (3) costs of delays from increased consultations involving critical habitat; (4) costs of reduced property values or income resulting from increased regulation of critical habitat designation; (5) potential offsetting economic benefits associated with critical habitat.

Other relevant impacts considered in this evaluation included: (1) The willingness of landowners and land managers to work with natural resource agencies and participate in voluntary conservation activities that directly benefit the Topeka shiner and other threatened or endangered species, including such cooperative partnerships as Safe Harbor Agreements; (2) the implementation of various cooperative conservation measures agreed to through various State and local partnerships, such as those outlined in the action or management plans or through similar collaborative efforts; (3) management or regulatory flexibility, such as the establishment of nonessential experimental populations under section 10(j) of the Act, to recover Topeka shiners through reintroductions; and (4) opportunities and interest of landowners to participate in various incentive and assistance programs offered by the Service and other Federal, State, and local agencies that restore habitats and improve water quality in watersheds containing Topeka shiners.

The economic analysis, along with the analysis of other relevant beneficial and detrimental impacts, serve as the basis of our analysis under section 4(b)(2) and our determination of exclusions from critical habitat. This final rule contains our analysis of economic factors and other relevant impacts of designating critical habitat, and our consideration of comments received during the public comment periods. As a result, we have identified certain areas that are excluded from the final critical habitat designation.

In our critical habitat designations, we use both the provisions outlined in sections 3(5)(A) and 4(b)(2) of the Act to evaluate those specific areas that we are considering proposing designating as critical habitat as well as for those areas that are formally proposed for designation as critical habitat. Lands we have found do not meet the definition of critical habitat under section 3(5)(A) or have excluded pursuant to section 4(b)(2) include those covered by the following types of plans if they provide assurances that the conservation measures they outline will be implemented and effective: (1) Legally operative HCPs that cover the species; (2) draft HCPs that cover the species and have undergone public review and comment (*i.e.*, pending HCPs); (3) Tribal conservation plans that cover the species; (4) State conservation plans that cover the species; (5) National Wildlife Refuge System Comprehensive Conservation Plans; and (6) other conservation efforts by State and local governments and groups that provide the necessary conservation benefits for the species, and which may cease if critical habitat is designated.

In this designation of critical habitat for the Topeka shiner, we exclude all proposed critical habitat in the State of Missouri pursuant to section 3(5)(A) and 4(b)(2), and all proposed critical habitat in the States of Kansas and South Dakota pursuant to section 4(b)(2) of the Act. These States have all completed management or recovery plans for the species, which are in various stages of implementation. No HCPs that include Topeka shiners are under development or completed.

Kansas

We previously proposed 63 stream segments encompassing 945 km (587 mi) of stream in the State of Kansas as Federal critical habitat for Topeka shiner. In our March 17, 2004, **Federal Register** notice (69 FR 12619), we notified the public that we were considering excluding the previously proposed stream segments in Kansas from designation as critical habitat for Topeka shiner under section 4(b)(2) of the Act.

We have evaluated the Recovery Plan for the Topeka Shiner in Kansas (Kansas Plan), developed by the Kansas Department of Wildlife and Parks (KDWP); the protections afforded the species and its habitat under the Kansas Nongame and Endangered Species

Conservation Act of 1975 (Kansas Act); and the associated Topeka shiner conservation actions that have been completed, ongoing, or planned in Kansas against the three criteria to determine whether lands require "special management considerations or protections." The Kansas Plan and Kansas Act clearly provide conservation benefits to the species. The Kansas Plan and Kansas Act provide assurances that conservation efforts will be implemented because KDWP has authority to implement the Kansas Plan and Kansas Act, has demonstrated a history of funding and staffing the Kansas Act, has funded and staffed conservation activities for Topeka shiner in the past, and has completed or begun work on many significant elements of the Kansas Plan. The Kansas Plan and efforts of KDWP are effective because they include biological goals, restoration objectives, and monitoring consistent with a Service agency technical draft recovery plan. The regulatory purview provided by the Kansas Act, and the essential elements of the Kansas Plan, provide for special management of the Topeka shiner. We have determined that adequate special management and protection are provided by State-designated critical habitat and a legally-operative plan that addresses the maintenance and improvement of essential habitat elements and that provides for the long-term conservation of the species, as measured by the three criteria listed in the introductory paragraphs of this section of the preamble.

In Kansas, the Topeka shiner historically occurred in small, headwater streams throughout much of the State, including the Kansas, Big Blue, Smoky Hill, Saline, Republican, Arkansas, and Cottonwood Rivers watersheds. The Topeka shiner has been a focal species for planning and conservation efforts in the State since the early 1990s. In December 1999, the KDWP listed the Topeka shiner as a threatened species under the Kansas Act, and designated State critical habitat for the species as required by the Kansas Act. Shortly afterwards KDWP formed the Topeka Shiner Advisory Committee, a 12-member group with representatives from academia, watershed districts, State and local agencies, and private interest groups, to work with KDWP to provide input into the recovery planning effort and disseminate information to the public and private landowners on a local scale. The Recovery Plan for the Topeka Shiner in Kansas is expected to be finalized by the KDWP in 2004 and will designate more habitat in the State for the Topeka shiner than we proposed.

The objectives of the Kansas Plan are to: (1) Stabilize, protect, and enhance existing populations of Topeka shiner and its habitat in Kansas; (2) identify unoccupied areas of historic habitat capable of supporting, or capable of being restored to support the species, and reintroduce populations to these areas; (3) downlist (to Species In Need of Conservation status) and delist the species as identified by State recovery criteria. The Kansas Plan identifies four separate and distinct recovery units based on watershed boundaries, genetic variability between units, and degree of geographic isolation. Each recovery unit supports known populations and contains habitat features that provide the physiological, behavioral, and ecological requirements essential for the species.

The recovery criteria established in the Kansas Plan for downlisting are: (1) All naturally-occurring populations within the Kansas, Big Blue, and Cottonwood recovery units are determined to be stable or increasing for 10 years; (2) a minimum of eight reintroduction efforts have been implemented and monitored for 3 years in the above recovery units; and (3) the natural population in the Upper Smoky Hill recovery unit is stable or increasing for 10 years, and a minimum of two reintroductions in that recovery unit has occurred and been monitored for 3 years. The delisting criterion is considered met when all populations (natural and introduced) are determined stable or increasing for a period of 10 years. Provisions for statistically sound, long-term monitoring of Topeka shiner populations in Kansas are included in the Kansas Plan.

The Kansas Plan contains a narrative outline, which briefly describes each recovery action needed for the recovery of the Topeka shiner in Kansas. The KDWP also provides an implementation schedule for these actions. Of the 29 tasks listed in the schedule, 13 are ongoing. There are presently three Service-sponsored (section 6 funding) research efforts involving Topeka shiners funded in the State. The KDWP are partners, along with the Service and three different watershed districts, in three individual conservation agreements for the Topeka shiner.

The Kansas Act protects State and federally listed species in Kansas. The Kansas Act was implemented to protect State-listed species classified as threatened, endangered, or "species in need of conservation" within Kansas. The Kansas Act places the responsibility for identifying and undertaking appropriate conservation measures for State threatened and endangered species directly upon KDWP through Kansas Administrative Regulations. The KDWP also must undertake efforts to conserve listed species and pursue increasing their populations and improving their habitats to the point that they are no longer listed under the Kansas Act.

Kansas Administrative Regulations require the KDWP to issue special action permits for activities that affect species listed as threatened or endangered, where an action is defined as "an activity resulting in the physical alteration of a listed species' critical habitat, physical disturbance of a listed species, or destruction of individuals of a listed species." These activities must be publicly funded, State or federally assisted, or require a permit from another State or Federal government agency to be included as activities that fall under KDWP's regulatory purview where action permits could be required. Critical habitat as defined under the Kansas Act is—(1) Specific areas documented as currently providing essential physical and biological features and supporting a self-sustaining population of a listed species; or (2) specific areas not documented as currently supporting a listed species, but determined essential for the listed species by the Secretary (of KDWP). Operationally, documentation relies on occurrence records of the species or identification of the essential habitat requirements as obtained through field assessment and scientific studies conducted by KDWP, State universities, and other qualified individuals or organizations. State critical habitat is designated by the KDWP.

The KDWP's Environmental Services Section (ESS) is responsible for reviewing proposed activities that fall under KDWP's regulatory purview. The ESS personnel conduct environmental reviews of these projects, including potential effects to threatened and endangered species and State-designated critical habitats. The ESS personnel issue action permits for activities that will affect listed species or their critical habitats. Special conditions are incorporated into the action permits to help offset negative effects to listed species or critical habitats. Permit conditions can limit where and when (*e.g.*, spawning date restrictions) construction activities occur and require restoration, creation, and perpetual protection of existing habitats. The KDWP can refuse to issue an action permit for activities that affect listed species and critical habitats if these activities cannot be adequately

mitigated to offset the negative effects to a listed species and its critical habitats.

Each calendar year, ESS personnel conduct environmental reviews for approximately 750 new proposed activities that fall under KDWP's regulatory purview. Since the Topeka shiner was listed by the State of Kansas on November 11, 1999, through December 31, 2003, ESS staff have conducted environmental reviews for 2,814 new proposed activities, of which 59 included the Topeka shiner. Of the 59 projects, 5 required action permits be issued by KDWP.

The KDWP presently has 68 stream segments designated as State critical habitat for the Topeka shiner, representing over 1,046 km (650 mi) of stream. The Service previously proposed 63 stream segments representing 945 km (587 mi) of stream as Federal critical habitat.

In our March 17, 2004, **Federal Register** notice (69 FR 12619), we stated that we were considering excluding the previously proposed stream segments in Kansas from designation as critical habitat for Topeka shiner under section 4(b)(2) of the Act. In our evaluation of potential critical habitat sites in Kansas, we conducted an analysis of the economic impacts and other relevant impacts of designating critical habitat. We provide the following 4(b)(2) analysis of the benefits of inclusion and the benefits of exclusion in assessing this exclusion of critical habitat in Kansas.

(1) Benefits of Inclusion

The principal benefit of designating critical habitat is that federally funded or authorized activities that adversely affect critical habitat must undergo consultation under section 7 of the Act. Consultations on Federal actions involving critical habitat ensure that habitat needed for the survival and recovery of a species is not destroyed or adversely modified, in addition to the jeopardy standard applied to all listed species.

(2) Benefits of Exclusion

The benefits of excluding Kansas from designated critical habitat include—maintenance of effective working partnerships to promote the conservation of the Topeka shiner and its habitat; establishment of new partnerships; providing benefits from the Kansas Plan to the Topeka shiner and its habitat which exceed those that would be provided by the designation of critical habitat; avoiding added administrative costs to the Service, Federal agencies, and applicants; and future regulatory flexibility for the Service and landowners by maintaining the ability to reintroduce the Topeka shiner to formerly occupied streams in Kansas by experimental populations under section 10(j) of the Act.

Recovery of listed species is often achieved through partnerships and voluntary actions. Through previous conservation actions (*e.g.*, conservation agreements with watershed districts), the KDWP has gained the cooperation of some local governmental entities and landowners and has been successful in developing voluntary conservation partnerships. Cooperators, with the assistance of KDWP, are implementing conservation measures for the Topeka shiner and its habitat in accordance with management objectives outlined in the Kansas Plan. These actions range from allowing access to private lands for surveys and site visits to rehabilitation of habitat and implementation of measures to control erosion and sedimentation. The partners have committed to conservation measures benefiting the Topeka shiner that are greater than the benefits of designating critical habitat. Excluding these areas from the designation will send a positive message to our partners and reinforce their commitment to shiner conservation.

The Economic Analysis of Critical Habitat Designation for the Topeka Shiner determined that the total potential economic costs for Kansas range from $2.3 million to $5.1 million over 10 years (Industrial Economics, Inc. 2004).

In summary, we view the continued application of the regulatory authority of State-designated critical habitat, the implementation of the Kansas Plan, and the cooperative conservation partnerships with landowners to be essential for the conservation of the Topeka shiner in Kansas. We conclude that the benefits of including Federal critical habitat in Kansas are small due to KDWP's regulatory purview over State critical habitat and the ongoing implementation of conservation actions, as identified in the Kansas Plan, and that the benefits of excluding Kansas areas from Federal critical habitat exceed the limited benefits of including them. Furthermore, we determine that exclusion from critical habitat in this State will not result in the extinction of the Topeka shiner. In accordance with section 4(b)(2) of the Act, we determine that the benefits of excluding critical habitat in Kansas outweigh the benefits of designating critical habitat, and exclude areas in Kansas containing primary constituent elements from the critical habitat designation.

Missouri

In the proposed rule, we proposed not to include stream segments in the State of Missouri in proposed critical habitat, based on our interpretation of section 3(5)(A) of the Act (67 FR 54261). In our March 17, 2004, **Federal Register** notice (69 FR 12619), we also proposed excluding Missouri under Section 4(b)(2) of the Act.

We have evaluated the Action Plan for the Topeka Shiner in Missouri (Action Plan) and associated Topeka shiner conservation actions that have been completed, are ongoing, or are planned in Missouri, against the three criteria to determine whether lands require "special management considerations or protections." The Action Plan clearly provides conservation benefits to the species; the Action Plan provides assurances that conservation efforts will be implemented because MDC has authority to implement the plan, has put in place the funding and staffing necessary to implement the Plan, and has completed or begun work on many significant elements of the Plan; and the Action Plan and efforts of MDC will be effective because they include biological goals, restoration objectives, and monitoring consistent with a Service preliminary draft recovery plan. The Missouri Action Plan provides for special management of the Topeka shiner under the definition of critical habitat in section 3(5)(A) of the Act.

In Missouri, the Topeka shiner historically occurred in small, headwater streams in northern portions of the State, within the Missouri/Grand River Watershed. The Topeka shiner has been a focal species for planning and conservation efforts in the State since the mid-1990s. In 1995, the MDC established a 5-member Topeka Shiner Working Group, and a 16-member Advisory Group to direct, implement, and facilitate Topeka shiner recovery actions in Missouri. In 1996, the MDC, with approval of the Conservation Commission of Missouri (Conservation Commission), listed the Topeka shiner as an endangered species under the State's Wildlife Code (Conservation Commission 2001).

In 1999, the Conservation Commission established the Private Lands Services Division within the MDC. Eighty-three MDC staff were redirected to private land conservation throughout the State, including a minimum of 16 Private Lands Service personnel with responsibility for the counties with Topeka shiner habitat. Duties of personnel within this division include the facilitation of conservation efforts on private property throughout

Missouri for all federally listed species, including the Topeka shiner. Additionally, there are at least 86 fisheries, forestry, natural history, protection, and wildlife staff delivering services to private landowners as a routine aspect of their job within the Missouri/Grand River Watershed.

In January 1999, the MDC adopted and approved an Action Plan for the Topeka shiner in Missouri (MDC 1999). The Action Plan identifies comprehensive conservation measures and programs necessary to achieve recovery of the Topeka shiner in Missouri. Implementation of recovery efforts for the Topeka shiner in Missouri, as outlined in the Action Plan, is ongoing. The current status of recovery tasks outlined in the Action Plan is described in Table 3 below:

TABLE 3.—STATUS OF TASKS IN THE ACTION PLAN FOR THE TOPEKA SHINER IN MISSOURI

Item	Status
Establishment of the Missouri Topeka Shiner Working Group	Complete & Ongoing.
Development & ongoing implementation of the Action Plan	Complete (1999) & Ongoing.
Establishment of permanent sampling sites & standardized monitoring of Missouri's Topeka shiner populations & completion of recent Statewide survey for the species.	Annual Monitoring—Ongoing/Initiated (began in 2000) Statewide Surveying—Complete & Ongoing.
Initiation of artificial propagation of Topeka shiners, including the development & refinement of captive rearing techniques.	Complete & Ongoing.
Completion of genetic analysis of different populations of Topeka shiners in Missouri	Complete.
Incorporation of Topeka shiner recovery & conservation efforts in State strategic planning documents on several different levels.	Complete & Ongoing.
Development & dissemination of public outreach & education materials throughout Missouri & elsewhere.	Complete & Ongoing.
Completion & dissemination of several ecological & life history studies on Topeka shiner	Ongoing/Initiated.
Securing matching funds from the Service to conduct surveys & ecological studies, & for various habitat restoration & enhancement activities.	Complete & Ongoing.
Revision of the Action Plan that will include actions not yet completed since 1999 & those uncompleted actions identified in the Service's preliminary draft recovery plan.	Planned.
Implementation of a landowner incentive program & completion of a study on the potential impacts of Confined Animal Feeding Operations within the Moniteau Creek Watershed.	Completed (Confined Animal Feeding Operations study) Ongoing/Initiated (landowner incentive program).
Development of 10-year fish monitoring plans for Moniteau, Bonne Femme, & Sugar Creek Watersheds.	Complete—Plan developed with initial sampling conducted in 2000 & annual sampling since.
Development & implementation of Sugar Creek subbasin management plan	Complete & Ongoing.
Development & implementation of a Three Creeks Conservation Area management plan	Complete & Ongoing.
Protection & management of Bonne Femme Creek by establishing these watersheds as Missouri Department of Natural Resources' Non-point Source Pollution Special Area Land Treatment watersheds.	Complete & Ongoing.
Reestablishment or restoration of riparian corridors through tree plantings, natural regeneration, fencing to restrict livestock use of stream banks, creation of alternative livestock watering sources, establishment of warm season grass buffer strips, stream bank stabilization activities, & actions outlined in grazing plan developed for private landowners within the Bonne Femme, Moniteau, & Sugar Creek Watersheds.	Initiated/Ongoing.

Assurances that the Action Plan will be implemented and conservation of the Topeka shiner will be achieved in Missouri are demonstrated by the following actions. Between January 1999 and December 31, 2003, at least $351,100 was spent on recovery actions for the Topeka shiner in Missouri, and that total is likely to increase to at least $600,000 within the next 10 years. Eighty percent (*i.e.*, 12 of 15) of the priority 1 tasks (*i.e.*, those actions deemed necessary to prevent extinction of the species) identified and outlined in the implementation schedule of a Service preliminary draft recovery plan have either been completed or are currently being implemented (this includes 20 percent of tasks that are 100 percent completed, 47 percent of tasks that are 50 percent or greater completed, and 33 percent of tasks that are 25 percent or less completed) by the MDC in cooperation with us, the Topeka Shiner Recovery Team, and other Federal, State, and private entities.

The Private Land Services Division within MDC greatly facilitates the implementation of recovery actions on private property where the species currently exists or where the species may be reintroduced. The planned expansion of our Partners for Fish and Wildlife Program within Topeka shiner—occupied habitat will benefit an additional 10 to 15 landowners at an estimated cost of $100,000 within the next 5 years (Kelly Srigley Werner, Missouri Private Lands Coordinator, pers. comm.). The MDC Fisheries and Natural History Division staffs have committed to help coordinate and implement Topeka shiner recovery efforts between the MDC and Federal, State, and private entities, and MDC's Topeka Shiner Recovery Coordinator. The MDC is actively participating in the Topeka Shiner Recovery Team. The MDC's revisions to the Action Plan, scheduled for completion in 2004, will focus on incorporating any of the recovery actions outlined in a Service preliminary draft recovery plan that are currently not addressed. The scientific soundness of the MDC's Action Plan was further validated by the Recovery Team when the Action Plan's monitoring protocol and recommendations for reducing and eliminating threats to the Topeka shiner were incorporated, in part, into a Service preliminary draft recovery plan. In addition, the MDC, in implementing the Action Plan, has established cooperative working relationships with private landowners. These relationships have allowed for the implementation of conservation programs for the benefit of the Topeka shiner.

We have concluded that Topeka shiner habitat in Missouri does not meet the definition of critical habitat as

outlined in section 3(5)(A) of the Act because there is adequate special management or protection already in place. Therefore, these areas are not included in this critical habitat designation.

In our March 17, 2004, **Federal Register** notice (69 FR 12619), as a consequence of the court's decision in *Center for Biological Diversity* v. *Norton*, we described the previously-excluded segments in Missouri and clarified the basis for proposing to exclude these areas from the critical habitat designation for Topeka shiner under section 4(b)(2) of the Act. In our evaluation of potential critical habitat sites in Missouri, we conducted an analysis of the economic impacts and other relevant impacts of designating critical habitat. We provide the following 4(b)(2) analysis of the benefits of inclusion and the benefits of exclusion in assessing this exclusion of critical habitat in Missouri.

(1) Benefits of Inclusion

The principal benefit of designating critical habitat is that federally funded or authorized activities that adversely affect critical habitat must undergo consultation under section 7 of the Act. Consultations on Federal actions involving critical habitat ensure that habitat needed for the survival and recovery of a species is not destroyed or adversely modified, in addition to the jeopardy standard applied to all listed species.

(2) Benefits of Exclusion

The benefits of excluding Missouri from designated critical habitat include—maintenance of effective working partnerships to promote the conservation of the Topeka shiner and its habitat; establishment of new partnerships; providing benefits from the Action Plan to the Topeka shiner and its habitat which exceed those that would be provided by the designation of critical habitat; avoiding added administrative costs to the Service, Federal agencies, and applicants; and future regulatory flexibility for the Service and landowners by maintaining the ability to reintroduce the Topeka shiner to formerly occupied streams in Missouri as experimental populations under section 10(j) of the Act.

Recovery of listed species is often achieved through partnerships and voluntary actions. Through the Action Plan, the MDC has gained the cooperation of landowners and has been successful in developing voluntary conservation partnerships with these landowners. Cooperators, with the assistance of MDC, are implementing conservation measures for the Topeka shiner and its habitat in accordance with management objectives outlined in the Action Plan. These actions range from allowing access to private lands for surveys and site visits to rehabilitation of habitat and implementation of measures to control erosion and sedimentation. The partners have committed to conservation measures benefiting the Topeka shiner that are greater than the benefits of designating critical habitat

The Final Economic Analysis of Critical Habitat Designation for the Topeka Shiner determined that Bonne Femme and Moniteau Creeks in Missouri are potentially the most costly units of critical habitat based on costs per river mile (Industrial Economics, Inc. 2004). Together, these two units would cost an estimated $6.3 million over a 10-year period based on the expectation that approximately 500 section 7 consultations would result from Topeka shiner listing and critical habitat in these units (Industrial Economics, Inc. 2004). An additional $0.9 million in section 7 costs associated with listing and critical habitat in the Sugar Creek Watershed, Missouri, would be expected over the same period (Industrial Economics, Inc. 2004).

In summary, we view the continued implementation of the Action Plan and the associated cooperative conservation partnerships with landowners to be essential for the conservation of the Topeka shiner in Missouri. We believe that the benefits of including critical habitat in Missouri would be only small additions to the currently ongoing successful conservation actions, as identified in the Action Plan, through multiple partnerships. We believe the benefits of excluding Missouri areas from critical habitat greatly exceed the limited benefits of including them. Furthermore, we believe that exclusion from critical habitat in this State will not result in the extinction of the Topeka shiner. In accordance with section 4(b)(2) of the Act, we believe that the benefits of excluding critical habitat in Missouri outweigh the benefits of designating critical habitat, and exclude areas in Missouri containing primary constituent elements from the critical habitat designation.

South Dakota

We have evaluated the Topeka Shiner Management Plan for the State of South Dakota (SD Plan) and associated Topeka shiner conservation actions that have been completed, are ongoing, or are planned in South Dakota, against the three criteria to determine whether lands require "special management considerations or protections." The SD Plan provides conservation benefits to the species. It provides assurances that conservation efforts will be implemented because the State of South Dakota has authority to implement the plan, has put in place the funding and staffing necessary to implement the Plan, and has completed or begun work on many significant elements of the Plan. It is effective because the SD Plan and other efforts by the State of South Dakota include biological goals, restoration objectives, and monitoring consistent with a Service preliminary draft recovery plan. The SD Plan and other cooperative efforts in South Dakota provide for special management of the Topeka shiner.

In our August 21, 2002, proposed rule, we identified 40 stream segments for designation in South Dakota. We proposed one additional segment in our revision to the proposal published March 17, 2004 (69 FR 12619). Before the original proposal was published, the South Dakota Department of Game, Fish, and Parks (SDDGFP) requested that we consider a State-wide exclusion from designation based on the authority given the Service under section 3(5)(A) and/or 4(b)(2) of the Act.

Prior to the 2002 proposal to designate critical habitat, SDDGFP and the South Dakota Department of Agriculture, the South Dakota Department of Environment and Natural Resources (SDDENR), and the SDDOT developed the Topeka Shiner Management Plan for the State of South Dakota (SD Plan). The development of the SD Plan was a cooperative effort that also involved Federal agencies, private individuals, agricultural groups, and academia. The SD Plan was completed and signed in June 2003 by the four State agencies with management responsibilities for actions that can influence Topeka shiner streams. This commitment by the lead regulatory and management agencies within State government to the SD Plan is a unique approach to cooperative Topeka shiner conservation within the range of this species.

The goals of the SD Plan are to—(1) maintain habitat integrity in Topeka shiner streams; and (2) establish a point-based management goal for the State of South Dakota in contribution toward national recovery efforts. The SD Plan states specific objectives to meet the plan goals, including: (1) Management actions that address stream hydrology, geomorphology, and water quality; (2) establishment of a monitoring and assessment protocol to evaluate South Dakota's point-based recovery goal; and

(3) development of public outreach and education strategies to inform all entities involved about Topeka shiner management in South Dakota.

The SD Plan provides conservation benefits to the species by implementation of on the ground actions undertaken through partnership efforts and conservation strategies. The SD Plan provides assurances that conservation efforts will be implemented because the State of South Dakota has authority to implement the plan and has put in place the funding and staffing necessary to implement the Plan. In addition, there is a long history of implementation of strategies in the SD Plan that have had positive effects on Topeka shiners. The SD Plan, and efforts by the State of South Dakota, have been and will continue to be effective because they address the threats to the species in South Dakota and include biological goals, restoration objectives, and monitoring consistent with, or superior to, a Service preliminary draft recovery plan that has been developed (U.S. Fish and Wildlife Service 2002).

Implementation of recovery efforts for the Topeka shiner in South Dakota, are planned or ongoing. The current status of tasks in the SD Plan is described in Table 4 below:

TABLE 4.—STATUS OF TASKS IN THE TOPEKA SHINER MANAGEMENT PLAN FOR THE STATE OF SOUTH DAKOTA

Action item	Status
Establish the South Dakota Topeka shiner working group	Complete and Ongoing.
Develop and implement the State Plan	Complete (2003) and Ongoing.
Conduct surveys to determine extent of Topeka shiner range in South Dakota	Complete and Ongoing.
Design long term monitoring and assessment plan	Complete.
Develop an education and outreach program to provide information on the Topeka shiner and watershed health.	Ongoing.
Develop and maintain a Topeka shiner website for information on this species	Complete and Ongoing.
Complete genetic analyses of different Topeka shiner populations in South Dakota	Complete.
Incorporation of Topeka shiner recovery and conservation efforts in State strategic planning documents on different levels.	Ongoing.
Secure matching funds from the Service and others to conduct surveys and ecological studies and for various habitat restoration and enhancement activities.	Complete and Ongoing.
Conduct research in relationship to stream hydrology and Topeka shiner habitat	Ongoing.
Provide technical and financial assistance to landowners interested in creating or restoring wetland areas	Complete and Ongoing.
Provide landowner incentives to increase native vegetative cover	Complete and Ongoing.
Work with government agencies to develop best management practices that minimize erosion	Complete and Ongoing.
Provide financial and technical assistance to landowners to reestablish native vegetation along riparian zones	Complete and Ongoing.
Provide technical and financial assistance to landowners and other agencies interested in restoring habitat in degraded stream reaches.	Complete and Ongoing.
Review projects that may adversely alter Topeka shiner streams	Complete and Ongoing.
Continue working with the Service to provide information and assistance on section 7 consultation issues	Ongoing.
Continue working with section 6 funds to further identify Topeka shiner areas and strategy for long-term conservation.	Ongoing.
Provide technical assistance to urban, residential and development planners to improve water quality from water discharge systems.	Complete and Ongoing.
Work with NRCS to have Topeka shiner streams get higher priority for EQIP and WHIP funding	Complete and Ongoing.
Provide incentives for landowners to establish riparian buffers or filter strips along agricultural fields with high runoff potential.	Complete and Ongoing.
Continue technical assistance for permitting and designing confined animal feeding operations	Ongoing.
Continue routine inspections of sewage treatment facilities to ensure compliance with water quality standards	Ongoing.

Assurances that the SD Plan will be implemented and conservation of the Topeka shiner will be achieved in South Dakota are demonstrated by the following actions. Between January 1999 and December 31, 2003, at least $700,000 was expended on recovery actions and habitat improvement for the Topeka shiner by the State of South Dakota, and that total is likely to increase to at least $3 million over the next 10 years (Dowd Stukel and Shearer, SDDGFP, pers. comm. 2004; Graves, SDDOT, pers. comm. 2004; SDDENR Web site 2004). All of the tasks identified in the SD Plan that have definite end points have been completed. Remaining tasks, such as project reviews to minimize adverse impacts to Topeka shiners, implementation of projects to enhance Topeka shiner streams, and Topeka shiner surveys will be ongoing.

Overall, 86 percent (*i.e.*, 12 of 14) of the priority 1 tasks (*i.e.*, those actions deemed necessary to prevent extinction of the species) identified and outlined in the implementation schedule of a Service preliminary draft recovery plan have either been completed or are currently being implemented. Of two remaining priority 1 tasks, one involves "determining impacts of sedimentation on habitat quality." South Dakota recognizes that sedimentation may impair habitat for Topeka shiner and has instituted aggressive provisions to minimize erosion from activities they may undertake or permit. One example is the development of stringent erosion control measures and spawning season restrictions that the SDDOT includes for all projects crossing Topeka shiner streams.

The other priority 1 task involved evaluation of piscivorous fish within Topeka shiner habitat. This task was included in the rangewide draft Recovery Plan because some fish, particularly largemouth bass, have been documented to be damaging to Topeka shiner populations. The information for South Dakota does not show much overlap between Topeka shiner populations and largemouth bass. Therefore, while this is an important issue in parts of the Topeka shiner range, it is not believed to be problematic in South Dakota.

In addition to two Topeka shiner studies initiated by SDDOT through the SDSU Coop Unit, SDDOT has committed to extensive management practices to minimize adverse effects of

road and highway stream crossing projects on Topeka shiner streams. These provisions are among the most rigorous in the species' range. SDDOT has also conducted a programmatic formal section 7 consultation with the Service for construction projects that involve all SDDOT road crossings of Topeka shiner streams.

SDDGFP and SDDENR also routinely review projects to ensure impacts to Topeka shiners and its habitat are minimized. In South Dakota, SDDENR has assumed the section 401 water quality program from EPA and issues certification for all section 404 permits authorized by the U.S. Army Corps of Engineers. This State program ensures discharges do not compromise water quality in the receiving water bodies.

The SDDGFP has been an active partner in cooperation with us, the Topeka Shiner Recovery Team, and other Federal, State, and private entities. The SD Plan greatly facilitates the implementation of recovery actions on private property where the species currently exists or where potential habitat for the species exists.

The SDDGP Habitat Program recently developed a series of implementation guidelines for wetland projects proposed within Topeka shiner watersheds. The guidelines provide field staff with an early screening process to identify any potential conflict habitat projects may create in Topeka shiner streams. This screen also allows selection of management tools that can provide specific benefits to water quality.

The SDDGFP staff has committed to help coordinate and implement Topeka shiner recovery efforts between the State of South Dakota and Federal, State, and private entities. The SDDGFP is actively participating in the Topeka Shiner Recovery Team. In addition, the SDDGFP and other State signatory agencies have established cooperative working relationships with private landowners. These relationships have allowed for the implementation of conservation programs for the benefit of the Topeka shiner.

The SDDENR also has upgraded numerous reaches of Topeka shiner streams to a fisheries classification for Clean Water Act purposes (Snyder, SDDENR, pers. comm. 2004). This includes all areas proposed for critical habitat designations in South Dakota. This is important, since some areas where Topeka shiners have been found in recent years have been on streams or portions of streams that are intermittent and were previously not classified as a fishery water body. With SDDENR reclassification of these streams to a fishery, the full suite of water quality standards apply to that water body when evaluating a National Pollution Discharge Elimination System permit. A fishery classification to a stream is an important upgrade that the State has undertaken as part of their Triennial Review Process of water quality standards.

The State of South Dakota developed a general permit in 1998 to address animal waste resulting from concentrated animal feeding operations (CAFOs). Since development of this permit, the State has regulated 64 CAFOs in the Topeka shiner range in South Dakota. There are an additional 55 CAFOs in the Topeka shiner range going through the permitting system to be authorized under the general permit. This can include existing operations being brought into compliance as well as new or expanded facilities. This important regulatory measure requires strict adherence to provisions of the general permit that allows no discharge of animal waste to streams or rivers from livestock waste management facilities. This regulatory requirement has resulted in significant upgrades to animal waste disposal systems in the range of the Topeka shiner. Significant partnerships between landowners and programs such as the Environmental Quality Incentive Program (EQIP) funds have resulted and are being used to bring existing CAFOs into compliance.

South Dakota has worked with agencies to prioritize expenditures of funds towards actions that would benefit Topeka shiner. For example, through efforts by the resource agencies, the NRCS has modified their ranking criteria such that projects funded by the Environmental Quality Incentives Program (EQIP) and the Wildlife Habitat Incentives Program (WHIP) receive additional points, and thus higher ranking, if benefits to Topeka shiners will result from a proposed project. The SDDENR through their implementation of the 319 program, in concert the Environmental Agency Program. provides incentives to undertake actions that benefit water quality of Topeka shiner streams. SDDGFP and others have cooperated to attain federal grants that prioritize Topeka shiner watersheds with projects that benefit water quality and stream hydrology. Designation of critical habitat would not be expected to appreciably enhance the prioritization efforts that have already occurred and those that are ongoing.

The State also believes that the SD Plan will lay the groundwork for a future Habitat Conservation Plan (HCP) that may be developed by the State. The SD Plan is recognized to be an important component of a future HCP, and provides an indication of South Dakota's ongoing efforts to develop an HCP for Topeka shiners.

In our evaluation of potential critical habitat sites in South Dakota, we conducted an analysis of the economic impacts and other relevant impacts of designating critical habitat. We provide the following 4(b)(2) analysis of the benefits of inclusion and the benefits of exclusion in assessing this exclusion of critical habitat in South Dakota.

(1) Benefits of Inclusion

The principal benefit of designating critical habitat is that federally funded or authorized activities that adversely affect critical habitat must undergo consultation under section 7 of the Act. Consultations on Federal actions involving critical habitat ensure that habitat needed for the survival and recovery of a species is not destroyed or adversely modified, in addition to the jeopardy standard applied to all listed species.

(2) Benefits of Exclusion

The benefits of excluding South Dakota from designated critical habitat include continued participation of State agencies to neutralize threats to Topeka shiner, maintenance of effective working partnerships to promote the conservation of the Topeka shiner and its habitat; establishment of new partnerships; providing benefits from the SD Plan to the Topeka shiner and its habitat which exceed those that would be provided by the designation of critical habitat; and avoiding added administrative costs to the Service, Federal agencies, and permit applicants.

Recovery of listed species that occur primarily on or adjacent to private lands is often best achieved through partnerships, voluntary actions, and incentives. Through the SD Plan, the State of South Dakota has gained the cooperation of landowners and has been successful in developing voluntary conservation partnerships with these landowners. Cooperators, with the assistance of partners identified in the SD Plan, are implementing conservation measures for the Topeka shiner and its habitat in accordance with management objectives outlined in the SD Plan. The broad engagement of the many diverse groups and individuals that developed the SD Plan lends strength to both the SD Plan as well as our belief that its partnership and cooperative concepts have conservation value. The monitoring plan that the SD Plan has undertaken will provide annual data to track the status of the species. Section 4(a)(3)(B) allows us to revisit critical

habitat designations. If in the future the currently healthy population declines, we retain the ability to designate CH in the State at a later date.

In summary, we view the continued implementation of the SD Plan with its threat abatement and cooperative conservation partnerships with landowners to be essential for the conservation of the Topeka shiner in South Dakota. We believe that the benefits of including critical habitat in South Dakota are negligible compared to benefits of the conservation actions identified in the SD Plan. Finally, we believe that exclusion from critical habitat in South Dakota will not result in the extinction of the Topeka shiner nor adversely impact the species. In accordance with section 4(b)(2) of the Act, we believe that the benefits of excluding critical habitat in South Dakota outweigh the benefits of designating critical habitat in the State, and exclude areas in South Dakota containing primary constituent elements from the critical habitat designation.

Application of Section 4(a)(3) of the Act

Section 318 of fiscal year 2004 the National Defense Authorization Act (Public Law No. 108–136) amended the Endangered Species Act to address the relationship of INRMPs to critical habitat by adding a new section 4(a)(3)(B). This provision prohibits the Service from designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of the Interior determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. Fort Riley, Kansas, has an INRMP in place that provides a benefit for the Topeka shiner (*see* Application of Section 4(a)(3) of the Act). All Topeka shiner habitat suitable for designation on the Fort Riley Military Installation, Kansas, also is not included in this designation under the authority of section 4(a)(3) of the Act.

Fort Riley, Kansas

In our August 21, 2002, proposed rule, we proposed not to include stream segments on the Fort Riley Military Installation, Kansas, as critical habitat, on the basis of our interpretation of section 3(5)(A) of the Act. Due to the Federal District Court decision (*Center for Biological Diversity* v. *Norton*, Civ. No. 01–409 TUC DCB, D. Ariz., Jan. 13, 2003) and the amendment to section 4(a)(3) of the Act, we now clarify the basis for not designating stream segments on Fort Riley. As discussed above, Section 4(a)(3) of the Act now prohibits the Secretary of the Department of the Interior from designating critical habitat on Department of Defense lands if an adequate INRMP is in place.

The Topeka shiner has been a focal species for planning and conservation efforts on Fort Riley since the early 1990s, with numerous stream surveys occurring from this time to the present. Fort Riley initiated development of management guidelines for the species in 1994. The first Endangered Species Management Plan for Topeka Shiner on Fort Riley was formalized in 1997. This management plan was revised and incorporated into Fort Riley's INRMP 2001–2005, which was formalized July 30, 2001 (Keating, Ft. Riley Natural Resources Division, pers. comm. 2002). This management plan outlines and describes conservation goals; management prescriptions and actions; a monitoring plan; estimates of time, cost, and personnel needed; a checklist of tasks; and an annual report (U.S. Department of the Army 2001).

We evaluated the Fort Riley Endangered Species Management Plan for Topeka Shiner and the Fort's associated Topeka shiner conservation actions that have been completed, ongoing, or planned, and find that it provides a benefit to the species under section 4(a)(3).

The primary benefit of proposing critical habitat is to identify lands essential to the conservation of the species, which, if designated as critical habitat, would require consultation with the Service to ensure that activities would not adversely modify critical habitat. As previously discussed, Fort Riley has a completed final INRMP that provides for sufficient conservation management and protection for the Topeka shiner. Moreover, this INRMP has already undergone section 7 consultation with the Service prior to its final approval. Further, activities authorized, funded, or carried out by the military or Federal agencies in these areas that may affect the Topeka shiner will still require consultation under section 7 of the Act, based on the requirement that Federal agencies ensure that such activities not jeopardize the continued existence of listed species. This requirement applies even without critical habitat designation on these lands.

The requirements of section 4(a)(3) of the Act are satisfied in relation to Topeka shiner habitat on Fort Riley. Therefore, we do not include these stream segments in the designation as critical habitat for Topeka shiner.

Iowa, Minnesota and Nebraska

We have designated occupied critical habitat on a number of streams in Iowa, Minnesota and Nebraska because, although these States are implementing conservation actions that benefit Topeka shiners, there are currently no "legally operative" conservation plans proposed or in place that we can weigh against the three criteria we use to address special management needs. Federal actions that adversely affect critical habitat must undergo consultation under section 7 of the Act. Consultations on Federal actions involving critical habitat ensure that habitat needed for the survival and recovery of a species is not destroyed or adversely modified.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effect of the designation. The draft analysis was made available for public review on March 17, 2004 (69 CFR 12619). We accepted comments on the draft analysis until April 16, 2004.

Our economic analysis evaluated the potential future effects associated with the listing of the Topeka shiner as endangered under the Act, as well as any potential effect of the critical habitat designation above and beyond those regulatory and economic impacts associated with listing. The following discussion presents the potential economic effects of the proposed critical habitat designation. However, in this final critical habitat rule, we are excluding lands owned by Fort Riley and the States of Kansas, Missouri, and South Dakota from the areas designated as critical habitat for the Topeka shiner. Therefore, because our economic analysis included impacts of areas that are subsequently excluded from the final critical habitat, the values presented below and in the economic analysis are likely significant overestimates of the potential economic

effects resulting from this critical habitat rule for the Topeka shiner.

The categories of potential costs considered in the analysis included the costs associated with: (1) Conducting section 7 consultations due to the listing or the critical habitat, including reinitiated consultations and technical assistance; (2) modifications to projects, activities, or land uses resulting from the section 7 consultations; and (3) potential offsetting beneficial costs connected to critical habitat including educational benefits.

We conclude that the designation of critical habitat would not result in a significant economic impact. Our economic analysis estimates that the potential economic effects over a 10-year period would range from $16.7 million to $37.0 million using a 7 percent discount rate (Industrial Economics, Inc. 2004). Road and bridge construction and maintenance, agriculture, and ranching-related activities account for 66 percent of these costs (Industrial Economics, Inc. 2004).

Agriculture and ranching are the main activities in Topeka shiner critical habitat. However, our analysis indicates that economic impacts to farmers and ranchers will likely be minimal as the consultations that are expected to arise from farming and ranching-related activities are not likely to result in costly additional project modifications because they primarily involve Federal assistance for conservation programs (*i.e.*, the Conservation Reserve Program) (Industrial Economics, Inc. 2004). The administrative costs of consultation and technical assistance efforts account for over 80 percent of the projected costs of this designation, with project modifications representing the remaining 20 percent (Industrial Economics, Inc. 2004).

The economic impacts associated with the proposed critical habitat designation would be manifest primarily as increased operating costs for Federal, State, and local agencies in Iowa, Minnesota, Missouri, Kansas, Nebraska, and South Dakota. Federal, State, and local agencies would bear 70 percent of these costs, with private entities incurring the remainder (Industrial Economics, Inc. 2004). Because we are excluding Missouri, Kansas, and South Dakota and because most of the costs of this rule are borne by governmental agencies rather than private businesses or landowners, secondary impacts to the region are expected to be minimal (Industrial Economics, Inc. 2004).

Although we do not find the economic costs to be significant, they were considered in balancing the benefits of including and excluding areas from critical habitat.

We received four comments on the draft economic analysis of the proposed designation. Two of the comments identified that some of the costs attributed to transportation and sand and gravel operations were overstated, while one stated that estimated third party costs for transportation projects in South Dakota appeared to be low. One commenter requested that the analysis include benefits and incremental costs. Following the close of the comment period, the economic analysis was finalized. We made no revisions or additions to the draft economic analysis.

A copy of the final economic analysis and a description of the exclusion process with supporting documents are included in our administrative record and may be obtained by contacting our Kansas Ecological Services Field Office (*see* **ADDRESSES**).

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. Because of the Court-ordered deadline for publication in the **Federal Register**, formal Office of Management and Budget (OMB) review was not undertaken. We prepared an economic analysis of this action to meet the requirement of section 4(b)(2) of the Endangered Species Act to determine the economic consequences of designating the specific areas as critical habitat. The draft economic analysis was made available for public comment and we considered those comments during the preparation of this rule. The costs of the final designation are estimated to be between $8.84 to $13.66 million. The economic analysis indicates that 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.

Under the Act, critical habitat may not be destroyed or adversely modified by a Federal agency action; the Act does not impose any restrictions related to critical habitat on non-Federal persons unless they are conducting activities funded or otherwise sponsored or permitted by a Federal agency. Because of the potential for impacts on other Federal agencies' activities, we reviewed this action for any inconsistencies with other Federal agency actions. Based on our economic analysis and information related to implementing the listing of the species such as conducting section 7 consultations, we believe that this designation will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency, nor will it materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

Regulatory Flexibility Act

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 a Federal agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

On the basis of information in our final economic analysis, we have determined that a substantial number of small entities are not affected by the critical habitat designation for Topeka shiner. Therefore, we are certifying that the designation will not have a significant effect on a substantial number of small entities. The factual basis for certifying that this rule will not have a significant economic impact on a substantial number of small entities is as follows.

Small entities include small organizations, such as independent nonprofit 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. The RFA/SBREFA requires that agencies use the Small Business Administration's definition of "small business" that has been codified at 13 CFR 121.201. 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. The RFA/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 an area. In addition, Federal courts and Congress have indicated that an RFA/SBREFA is properly limited to impacts to entities directly subject to the requirements of the regulation (Service 2002). Therefore, entities not directly regulated by the listing or critical habitat designation are not considered in this section of the analysis. The RFA/SBREFA defines "small governmental jurisdiction" as the government of a city, county, town, school district, or special district with a population of less than 50,000. Although certain State agencies may be affected by this critical habitat designation, State governments are not considered small governments, for the purposes of the RFA. The SBREFA further defines "small organization" as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Even where the requirements of section 7 might apply due to critical habitat, 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 under section 7, 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.

The designation of critical habitat for the shiner is not expected to result in a significant economic impact on a substantial number of small entities. Approximately 12 to 22 percent ($1 million to 3 million) of the forecast total costs of $8.84 to $13.66 million will be borne by Federal agencies. The majority (approximately 80 to 90 percent) of the remaining costs ($7.8 million to $10.6 million) are largely associated with transportation-related activities. Specifically, approximately 60 to 80 percent of the forecast total costs, or $7.1 million to $8.2 million, are associated with road/bridge construction and maintenance projects. These costs will primarily be borne by State DOT and various action agencies. Agriculture makes up the remaining five to 13 percent of forecast total costs ($450,000 to $1,750,000) and recreation and conservation activities three to seven percent of forecast total costs ($250,000 to $975,000). Third parties may be impacted by consultations regarding agriculture activities (*e.g.*, critical area planting, nutrient management, multiple purpose dams, and structures for water controls) and recreation projects (*e.g.*, boat docks), however, project modifications are anticipated to be minimal. The Service expects these costs will be relatively small to the individual operator and therefore will not generate significant economic impacts on a substantial number of small entities.

For these reasons, we are certifying that the designation of critical habitat for Topeka shiner will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act

Under the SBREFA (5 U.S.C. 801 *et. seq.*), this rule is not a major rule. Based on the effects identified in the economic analysis, we believe that this critical habitat designation 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 United States-based enterprises to compete with foreign-based enterprises. Our detailed assessment of the economic effects of this designation is described in the economic analysis.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued an Executive Order (Executive Order 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this final rule is not expected to significantly affect energy supplies, distribution, or use, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5)–(7). "Federal intergovernmental mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program."

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate

in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) The economic analysis that was prepared in support of this rulemaking fully assesses the effects of this designation on Federal, State, local, and tribal governments, and to the private sector, and indicates that this rule will not significantly or uniquely affect small governments. As such, Small Government Agency Plan is not required.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights," March 18, 1988; 53 FR 8859), we have analyzed the potential takings implications of the designation of critical habitat for Topeka shiner. The takings implications assessment concludes that this final rule does not pose significant takings implications. A copy of this assessment can be obtained by contacting the Kansas Field Office (*see* **ADDRESSES**).

Federalism

In accordance with Executive Order 13132, the 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 Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota. The designation of critical habitat in areas currently occupied by Topeka shiner imposes no additional restrictions to those currently in place and, therefore, has little additional impact on State and local governments and their activities.

The designation may have some benefit to these governments in that the areas essential to the conservation of the species is more clearly defined, and the PCEs of the habitat necessary to the conservation of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have designated critical habitat in accordance with the provisions of the Act. The rule uses standard property descriptions and identifies the PCEs within the designated area to assist the public in understanding the habitat needs of the Topeka shiner.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which OMB approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB Control Number.

National Environmental Policy Act

Our position is that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F .3d 1495 (Ninth Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)). However, when the range of the species includes States within the Tenth Circuit, pursuant to the Tenth Circuit ruling in *Catron County Board of Commissioners* v. *U.S. Fish and Wildlife Service*, 75 F .3d 1429 (Tenth Cir. 1996), we will complete a National Environmental Policy Act analysis. The range of Topeka shiner includes States within the Tenth Circuit; therefore, we completed a draft environmental assessment and made it available for public review and comment. A final environmental assessment and Finding of No Significant Impact have been prepared for this designation and are available from the Kansas Field Office (*see* **ADDRESSES**).

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 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We are required to assess the effects of critical habitat designation on Tribal lands and Tribal trust resources. We believe that no Tribal lands or Tribal trust resources are essential for the conservation of Topeka shiner.

References Cited

A complete list of all references cited herein is available upon request from the Kansas Field Office (*see* **ADDRESSES**).

Author

The primary author of this rule is Vernon Tabor, Kansas Ecological Services Field Office (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. Amend § 17.11(h), by revising the entry for "Shiner, Topeka" under "FISHES" to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	When critical special			
Common name	Scientific name			Status	Listed	Habitat	Rules
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Shiner, Topeka	(*Notropis topeka* = *tristis*).	U.S.A. (IA, KS, MN, MO, NE, SD).	Entire	E	654	17.95(e)	N/A
*	*	*	*	*	*		*

■ 3. Amend § 17.95(e) by adding critical habitat for the Topeka shiner (*Notropis topeka*) in the same alphabetical order as this species occurs in 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) Fishes. * * *

Topeka Shiner (*Notropis topeka*)

(1) Critical habitat is depicted for Calhoun, Carroll, Dallas, Greene, Hamilton, Lyon, Osceola, Sac, Webster, and Wright Counties, Iowa; Lincoln, Murray, Nobles, Pipestone, and Rock Counties, Minnesota; and Madison County, Nebraska, on the maps and as described below.

(2) Critical habitat includes all stream channels up to the bankfull discharge elevation. Additionally, in Iowa and Minnesota, the off-channel, side-channel, and oxbow pools at elevations at or below the bankfull discharge elevation. Bankfull discharge is the flow at which water begins to leave the channel and move into the floodplain and generally occurs with a frequency of every 1 to 2 years.

(3) The primary constituent elements of critical habitat for the Topeka shiner consist of:

(i) Streams most often with permanent flow, but that can become intermittent during dry periods;

(ii) Side-channel pools and oxbows either seasonally connected to a stream or maintained by groundwater inputs, at a surface elevation equal to or lower than the bank-full discharge stream elevation. The bankfull discharge is the flow at which water begins leaving the channel and flowing into the floodplain; this level is generally attained every 1 to 2 years. Bankfull discharge, while a function of the size of the stream, is a fairly constant feature related to the formation, maintenance, and dimensions of the stream channel;

(iii) Streams and side-channel pools with water quality necessary for unimpaired behavior, growth, and viability of all life stages. (The water quality components include—temperature, turbidity, conductivity, salinity, dissolved oxygen, pH, chemical contaminants, and other chemical characteristics.);

(iv) Living and spawning areas for adult Topeka shiner with pools or runs with water velocities less than 0.5 meters/second (approx. 20 inches/second) and depths ranging from 0.1–2.0 meters (approx. 4–80 inches);

(v) Living areas for juvenile Topeka shiner with water velocities less than 0.5 meters/second (approx. 20 inches/second) with depths less than 0.25 meters (approx. 10 inches) and moderate amounts of instream aquatic cover, such as woody debris, overhanging terrestrial vegetation, and aquatic plants;

(vi) Sand, gravel, cobble, and silt substrates with amounts of fine sediment and substrate embeddedness that allow for nest building and maintenance of nests and eggs by native *Lepomis* sunfishes (green sunfish, orangespotted sunfish, longear sunfish) and Topeka shiner as necessary for reproduction, unimpaired behavior, growth, and viability of all life stages;

(vii) An adequate terrestrial, semiaquatic, and aquatic invertebrate food base that allows for unimpaired growth, reproduction, and survival of all life stages;

(viii) A hydrologic regime capable of forming, maintaining, or restoring the flow periodicity, channel morphology, fish community composition, off-channel habitats, and habitat components described in the other primary constituent elements; and

(ix) Few or no nonnative predatory or nonnative competitive species present.

Critical Habitat Map Units

(4) Critical habitat was identified using the Fifth Principal Meridian in Iowa and Minnesota; the Sixth Principal Meridian in Nebraska; U.S. Geological Survey 30- × 60-minute (1:100,000) quadrangle maps; the National Hydrography Dataset (1:100,000) for hydrology; and Digital Line Graph (1:2,000,000) for county and State boundaries.

(5) Unit 1: North Raccoon River Watershed—Calhoun, Carroll, Dallas, Greene, Sac and Webster Counties, Iowa.

(i) Reach 1a. Indian Creek from its confluence with the North Raccoon River (T87N, R35W, Sec. 24), upstream through T87N, R35W, Sec. 29.

(ii) Reach 1b. Tributary to Indian Creek (Ditch 57), from their confluence (T87N, R35W, Sec. 23), upstream to the confluence with the outlet creek from Black Hawk Lake (T86N, R36W, Sec. 1).

(iii) Reach 1c. Outlet Creek from Black Hawk Lake from its confluence with Ditch 57 (T86N, R36W, Sec. 1), upstream to lake outlet (T87N, R35W, Sec. 35).

(iv) Reach 2a. Camp Creek from its confluence with the North Raccoon River (T86N, R34W, Sec. 7), upstream through T87N, R34W, Sec. 8.

(v) Reach 2b. West Fork Camp Creek from its confluence with Camp Creek (T87N, R34W, Sec. 8), upstream through T88N, R34W, Sec. 32.

(vi) Reach 3. Prairie Creek from its confluence with the North Raccoon River (T86N, R34W, Sec. 16), upstream through T87N, R34W, Sec. 35.

(vii) Reach 4. Lake Creek from its confluence with the North Raccoon River (T86N, R34W, Sec. 23), upstream through T87N, R33W, Sec. 25.

(viii) Reach 5. Purgatory Creek from its confluence with the North Raccoon River (T84N, R33W, Sec. 11), upstream through T86N, R32W, Sec. 17.

(ix) Reach 6a. Cedar Creek from its confluence with the North Raccoon River (T85N, R32W, Sec. 33), upstream to the confluence of West Cedar Creek and East Cedar Creek (T87N, R31W, Sec. 31).

(x) Reach 6b. West Cedar Creek from its confluence with East Cedar Creek (T87N, R31W, Sec. 31), upstream through T87N, R31W, Sec. 18.

(xi) Reach 6c. East Cedar Creek from its confluence with West Cedar Creek (T87N, R31W, Sec. 31), upstream through T87N, R31W, Sec. 9.

(xii) Reach 7. Short Creek from its confluence with the North Raccoon River (T84N, R31W, Sec. 33), upstream through T84N, R31W, Sec. 28.

(xiii) Reach 8. Hardin Creek from its confluence with the North Raccoon River (T83N, R30W, Sec. 23), upstream through T85N, R31W, Sec. 27.

(xiv) Reach 9a. Buttrick Creek from its confluence with the North Raccoon River (T83N, R30W, Sec. 26), upstream to the confluence of West Buttrick Creek and East Buttrick Creek (T84N, R30W, Sec. 25).

(xv) Reach 9b. West Buttrick Creek, from its confluence with East Buttrick Creek (T84N, R30W, Sec. 25), upstream through T86N, R30W, Sec. 3.

(xvi) Reach 9c. East Buttrick Creek, from its confluence with West Buttrick Creek (T84N, R30W, Sec. 25), upstream through T85N, R29W, Sec. 20.

(xvii) Reach 10a. Elm Branch from its confluence with the North Raccoon River (T81N, R28W, Sec. 28), upstream to its confluence with Swan Lake Branch T81N, R28W, Sec. 28.

(xviii) Reach 10b. Swan Lake Branch from its confluence with Elm Branch (T81N, R28W, Sec. 28), upstream through T80N, R28W, Sec. 4.

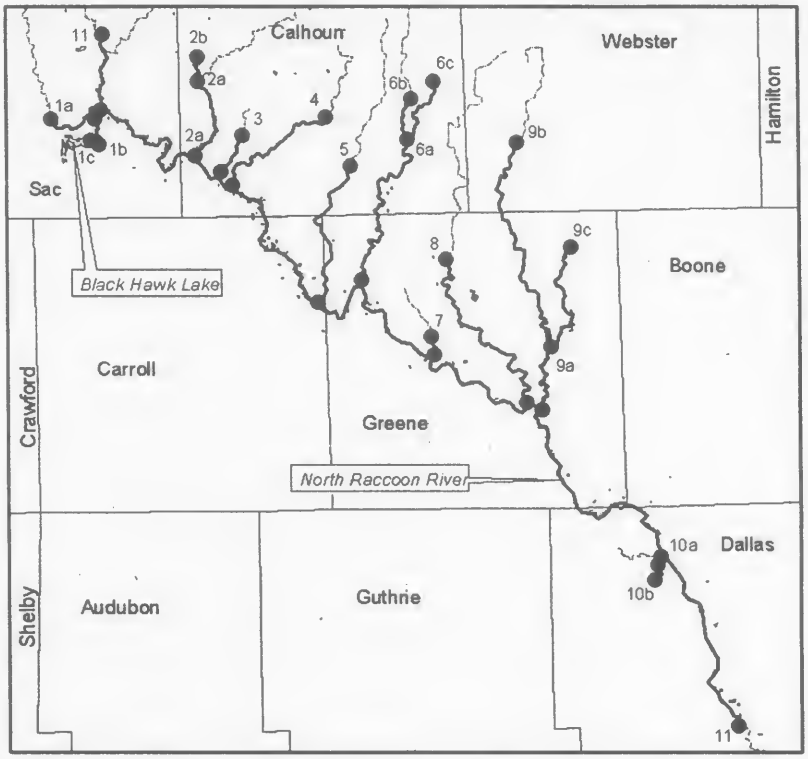
(xix) Reach 11. Off-channel and side-channel pools (that meet the previously described criteria) adjacent to the North Raccoon River from U.S. Highway 6 (T79N, R27W, Sec. 32), upstream to U.S. Highway 20 (T88N, R36W, Sec. 24).

(6) *Note:* Unit 1 (Map 1) follows.

BILLING CODE 4310–55–P

Map 1: General Locations of Designated Critical Habitat for the Topeka Shiner *(Notropis topeka)*

Iowa - North Raccoon River Watershed



10 0 10 Miles

10 0 10 20 Kilometers

N

Proposed Critical Habitat

Not Proposed as Critical Habitat

County Lines

Reaches

1a. Indian Creek	7. Short Creek
1b. Ditch 57	8. Hardin Creek
1c. Outlet Creek	9a. Buttrick Creek
2a. Camp Creek	9b. West Buttrick Creek
2b. West Fork Camp Cr.	9c. East Buttrick Creek
3. Prairie Creek	10a. Elm Branch
4. Lake Creek	10b. Swan Lake Branch
5. Purgatory Creek	11. Off-channel and side channel pools adjacent to North Raccoon River
6a. Cedar Creek	
6b. West Cedar Creek	
6c. East Cedar Creek	

Area of Detail

(7) Unit 2: Boone River Watershed—Wright and Hamilton Counties, Iowa.

(i) Reach 12. Eagle Creek from its confluence with the Boone River (T89N, R25W, Sec. 6), upstream through T91N, R25W, Sec. 30.

Ditch 3 and Ditch 19 Complex

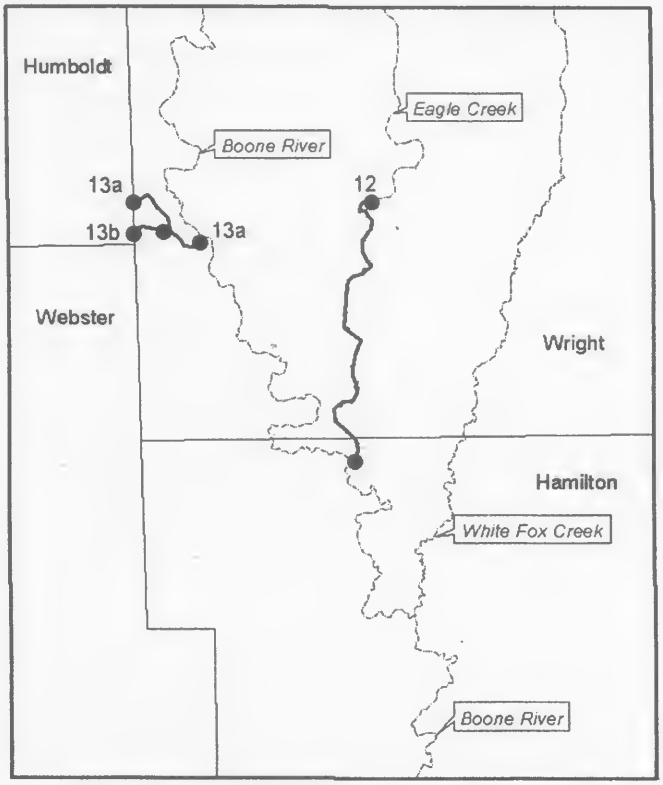
(ii) Reach 13a. Ditch 3 from its confluence with the Boone River (T91N, R26W, Sec. 32), upstream through T91N, R26W, Sec. 30.

(iii) Reach 13b. Ditch 19 from its confluence with Ditch 3 (T91N, R26W, Sec. 31), upstream through T91N, R26W, Sec. 31.

(8) *Note:* Unit 2 (Map 2) follows.

Map 2: General Locations of Designated Critical Habitat for the Topeka Shiner *(Notropis topeka)*

Iowa - Boone River Watershed



5 0 5 Miles

5 0 5 10 Kilometers

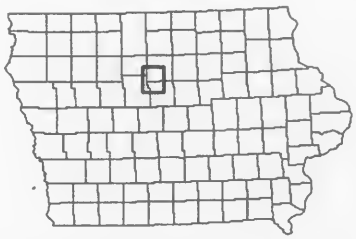
Proposed Critical Habitat
Not Proposed as Critical Habitat
County Lines

N

Reaches

12. Eagle Creek
13a. Ditch 3
13b. Ditch 19

Area of Detail



(9) Unit 3: Rock River Watershed—Lyon and Osceola Counties, Iowa.

Rock River Complex

(i) Reach 14. Rock River from its confluence with Kanaranzi Creek (T100N, R45W, Sec. 28), upstream to the Iowa/Minnesota State border (T100N, R45W, Sec. 8).

(ii) Reach 15. Kanaranzi Creek from its confluence with the Rock River (T100N, R45W, Sec. 28), upstream to the Iowa/Minnesota State border (T100N, R45W, Sec. 11).

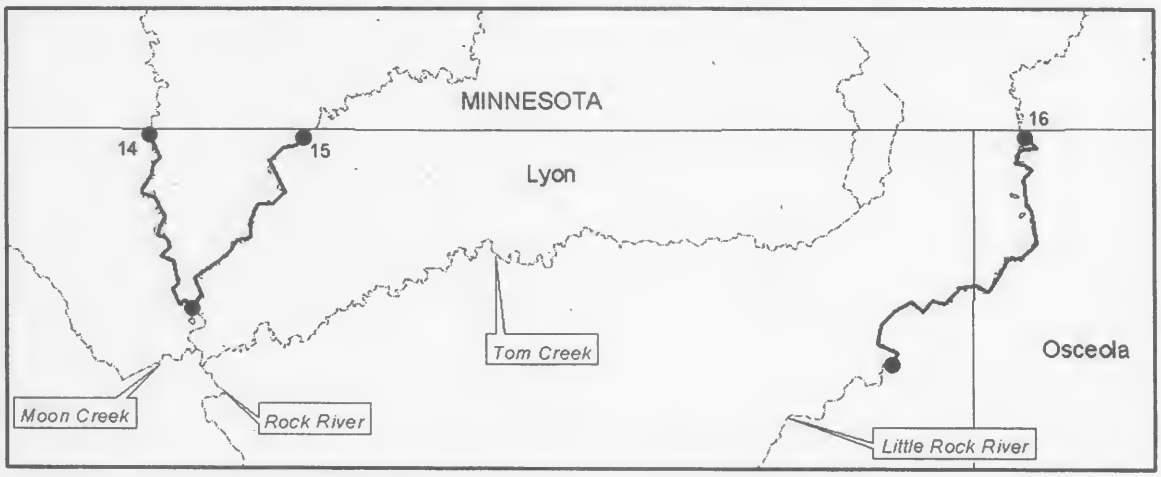
Little Rock River Complex

(iii) Reach 16. Little Rock River from State Highway 9 (T100N, R43W, Sec. 34), upstream to the Iowa/Minnesota State border (T100N, R42W, Sec. 7).

(10) *Note:* Unit 3 (Map 3) follows.

Map 3: General Locations of Designated Critical Habitat for the Topeka Shiner *(Notropis topeka)*

Iowa - Rock River Watershed



2 0 2 4 Miles

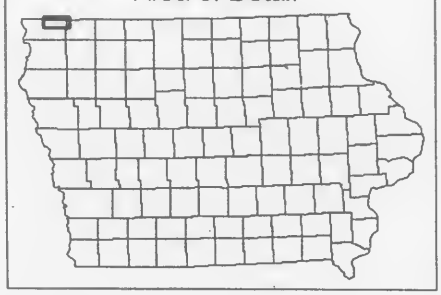
5 0 5 Kilometers

N

Proposed Critical Habitat
Not Proposed as Critical Habitat
County Lines

Reaches
14. Rock River
15. Kanaranzi Creek
16. Little Rock River

Area of Detail



BILLING CODE 4310–55–C

(11) Unit 4: Big Sioux River Watershed—Lincoln, Pipestone and Rock, Counties, Minnesota; and Rock River Watershed—Murray, Nobles, Pipestone and Rock Counties, Minnesota.

Medary Creek Complex

(i) Reach 1a. Medary Creek from the Minnesota/South Dakota State border (T109N, R47W, Sec. 13), upstream through T110N, R46W, Sec. 21.

(ii) Reach 1b. Unnamed tributary to Medary Creek, from their confluence (T109N, R46W, Sec. 18), upstream through T110N, R46W, Sec. 30.

Flandreau Creek Complex

(iii) Reach 2a. Flandreau Creek from the Minnesota/South Dakota State border (T107N, R47W, Sec. 14), upstream through T109N, R45W, Sec. 31.

(iv) Reach 2b. Unnamed tributary to Flandreau Creek, from their confluence (T108N, R46W, Sec. 11), upstream through T108N, R45W, Sec. 6.

(v) Reach 2c. East Branch Flandreau Creek from its confluence with Flandreau Creek (T108N, R46W, Sec. 14), upstream through T108N, R45W, Sec. 4.

(vi) Reach 2d. Willow Creek from its confluence with Flandreau Creek (T107N, R46W, Sec. 6), upstream through T108N, R46W, Sec. 3.

Split Rock/Pipestone/Beaver Creek Complex

(vii) Reach 3a. Pipestone Creek from the Minnesota/South Dakota State border (T106N, R47W, Sec. 23), upstream through T106N, R46W, Sec. 1.

(viii) Reach 3b. Unnamed tributary to Pipestone Creek, from their confluence (T106N, R47W, Sec. 24), upstream through T106N, R46W, Sec. 19.

(ix) Reach 3c. Unnamed tributary to Pipestone Creek, from the Minnesota/South Dakota State border (T105N, R47W, Sec. 2), upstream through T105N, R46W, Sec. 1.

(x) Reach 3d. North Branch Pipestone Creek from its confluence with Pipestone Creek (T106N, R46W, Sec. 5), upstream through T107N, R45W, Sec. 4.

(xi) Reach 3e. Unnamed tributary to North Branch Pipestone Creek, from their confluence (T107N, R45W, Sec. 4), upstream through T108N, R45W, Sec. 23.

(xii) Reach 3f. Split Rock Creek from the Minnesota/South Dakota State border (T103N, R47W, Sec. 2), upstream to Split Rock Lake Outlet (T105N, R46W, Sec. 22).

(xiii) Reach 3g. Unnamed tributary to Split Rock Creek from the Minnesota/South Dakota State border (T103N, R47W, Sec. 23), upstream through T103N, R46W, Sec. 29.

(xiv) Reach 3h. Unnamed tributary to Split Rock Creek, from their confluence (T103N, R47W, Sec. 2), upstream through T103N, R46W, Sec. 8.

(xv) Reach 3i. Unnamed tributary to Split Rock Creek, from their confluence (T104N, R47W, Sec. 25), upstream through T104N, R46W, Sec. 19.

(xvi) Reach 3j. Pipestone Creek from its confluence with Split Rock Creek (T104N, R47W, Sec. 22), upstream to the Minnesota/South Dakota State border T104N, R47W, Sec. 23.

(xvii) Reach 3k. Unnamed tributary to Split Rock Creek, from their confluence (T104N, R46W, Sec. 6), upstream through T105N, R46W, Sec. 36.

(xviii) Reach 3l. Split Rock Creek from the headwater of Split Rock Lake (T105N, R46W, Sec. 15), upstream through T106N, R46W, Sec. 35.

(xix) Reach 3m. Unnamed tributary to Split Rock Creek, from their confluence (T105N, R46W, Sec. 3), upstream through T105N, R46W, Sec. 2.

(xx) Reach 3n. Beaver Creek from the Minnesota/South Dakota State border (T102N, R47W, Sec. 34), upstream through T104N, R45W, Sec. 20.

(xxi) Reach 3o. Springwater Creek from its confluence with Beaver Creek (T102N, R47W, Sec. 34), upstream through T102N, R46W, Sec. 6.

(xxii) Reach 3p. Little Beaver Creek from its confluence with Beaver Creek (T102N, R46W, Sec. 12), upstream through T103N, R45W, Sec. 9.

(xxiii) Reach 3q. Unnamed tributary to Beaver Creek, from their confluence (T102N, R46W, Sec. 1), upstream through T103N, R46W, Sec. 35.

(xxiv) Reach 3r. Unnamed tributary to Beaver Creek, from their confluence (T103N, R45W, Sec. 18), upstream through T104N, R46W, Sec. 36.

Rock River Complex

(xxv) Reach 4a. Rock River from the Minnesota/Iowa State border (T101N, R45W, Sec. 36), upstream through T107N, R44W, Sec. 7.

(xxvi) Reach 4b. Kanaranzi Creek from the Minnesota/Iowa State border (T101N, R44W, Sec. 33), upstream through T103N, R42W, Sec. 7).

(xxvii) Reach 4c. Norwegian Creek from its confluence with Kanaranzi Creek (T101N, R44W, Sec. 25), upstream through T101N, R43W, Sec. 21.

(xxviii) Reach 4d. Unnamed tributary to Norwegian Creek, from their confluence (T101N, R44W, Sec. 20), upstream through T101N, R44W, Sec. 16.

(xxix) Reach 4e. East Branch Kanaranzi Creek from its confluence with Kanaranzi Creek (T102N, R42W, Sec. 5), upstream through T102N, R41W, Sec. 5.

(xxx) Reach 4f. Unnamed tributary to East Branch Kanaranzi Creek, from their confluence (T102N, R42W, Sec. 9), upstream through T102N, R42W, Sec. 22.

(xxxi) Reach 4g. Unnamed tributary to East Branch Kanaranzi Creek, from their confluence (T102N, R42W, Sec. 5), upstream through T102N, R42W, Sec. 5.

(xxxii) Reach 4h. Unnamed tributary to Kanaranzi Creek, from their confluence (T102N, R43W, Sec. 31), upstream through T102N, R43W, Sec. 27.

(xxxiii) Reach 4i. Ash Creek from its confluence with the Rock River (T101N, R45W, Sec. 24), upstream through T101N, R45W, Sec. 14.

(xxxiv) Reach 4j. Elk Creek from its confluence with the Rock River (T102N, R45W, Sec. 36), upstream through T103N, R43W, Sec. 22.

(xxxv) Reach 4k. Unnamed tributary to Elk Creek, from their confluence (T102N, R44W, Sec. 16), upstream through T102N, R44W, Sec. 9.

(xxxvi) Reach 4l. Champepadan Creek from its confluence with the Rock River (T103N, R44W, Sec. 29), upstream through T104N, R43W, Sec. 14.

(xxxvii) Reach 4m. Unnamed tributary to Champepadan Creek, from their confluence (T104N, R43W, Sec. 14), upstream through T104N, R43W, Sec. 13.

(xxxviii) Reach 4n. Unnamed tributary to Champepadan Creek, from their confluence (T103N, R44W, Sec. 23), upstream through T103N, R44W, Sec. 24.

(xxxix) Reach 4o. Unnamed tributary to Champepadan Creek, from their confluence (T103N, R44W, Sec. 23), upstream through T103N, R44W, Sec. 12.

(xl) Reach 4p. Unnamed tributary to the Rock River, from their confluence (T103N, R44W, Sec. 17), upstream through T104N, R44W, Sec. 26.

(xli) Reach 4q. Mound Creek from its confluence with the Rock River (T103N, R44W, Sec. 30), upstream through T104N, R45W, Sec. 35.

(xlii) Reach 4r. Unnamed tributary to the Rock River, from their confluence (T103N, R44W, Sec. 8), upstream through T104N, R45W, Sec. 33.

(xliii) Reach 4s. Unnamed tributary to the Rock River, from their confluence (T104N, R44W, Sec. 28), upstream through T104N, R44W, Sec. 11.

(xliv) Reach 4t. Unnamed tributary to the Rock River, from their confluence (T104N, R44W, Sec. 16), upstream through T104N, R44W, Sec. 10.

(xlv) Reach 4u. Poplar Creek from its confluence with the Rock River (T104N,

R44W, Sec. 5), upstream through T105N, R45W, Sec. 32.

(xlvi) Reach 4v. Unnamed tributary to Poplar Creek, from their confluence (T105N, R45W, Sec. 27), upstream through T105N, R45W, Sec. 9.

(xlvii) Reach 4w. Chanarambie Creek from its confluence with the Rock River (T105N, R44W, Sec. 33), upstream through T105N, R43W, Sec. 8.

(xlviii) Reach 4x. North Branch Chanarambie Creek from its confluence with Chanarambie Creek (T105N, R43W, Sec. 8), upstream through T106N, R43W, Sec. 18.

(xlix) Reach 4y. Unnamed tributary to the Rock River, from their confluence (T105N, R44W, Sec. 8), upstream through T106N, R45W, Sec. 36.

(l) Reach 4z. Unnamed tributary to the Rock River, from their confluence (T106N, R44W, Sec. 33), upstream through T106N, R44W, Sec. 23.

(li) Reach 4aa. East Branch Rock River from its confluence with the Rock River (T106N, R44W, Sec. 18), upstream through T107N, R44W, Sec. 27.

(lii) Reach 4bb. Unnamed tributary to East Branch Rock River, from their confluence (T107N, R44W, Sec. 34), upstream through T107N, R44W, Sec. 35.

Little Rock River Complex

(liii) Reach 5a. Little Rock River from the Minnesota/Iowa State border (T101N, R42W, Sec. 35), upstream through T102N, R41W, Sec. 34.

(liv) Reach 5b. Little Rock Creek from its confluence with the Little Rock River (T101N, R42W, Sec. 26), upstream through T102N, R42W, Sec. 34.

Mud Creek Complex

(lv) Reach 6a. Mud Creek from the Minnesota/Iowa State border (T101N, R46W, Sec. 34), upstream thru T101N, R46W, Sec. 11.

(lvi) Reach 6b. Unnamed tributary to Mud Creek, from their confluence (T101N, R46W, Sec. 22), upstream through T101N, R46W, Sec. 24.

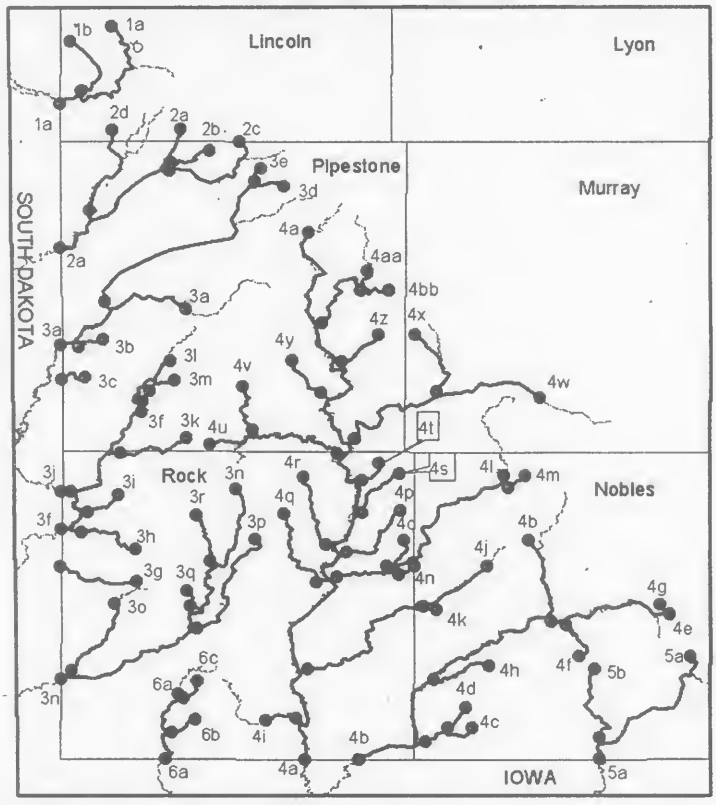
(lvii) Reach 6c. Unnamed tributary to Mud Creek, from their confluence (T101N, R46W, Sec. 11), upstream through T101N, R46W, Sec. 1.

(12) **Note:** Unit 4 (Map 4) follows.

BILLING CODE 4310–55–P

Map 4: General Locations of Designated Critical Habitat for the Topeka Shiner *(Notropis topeka)*

Minnesota - Big Souix/Rock Rivers Watershed



10 0 10 Miles

10 0 10 Kilometers

N

Proposed Critical Habitat

Not Proposed as Critical Habitat

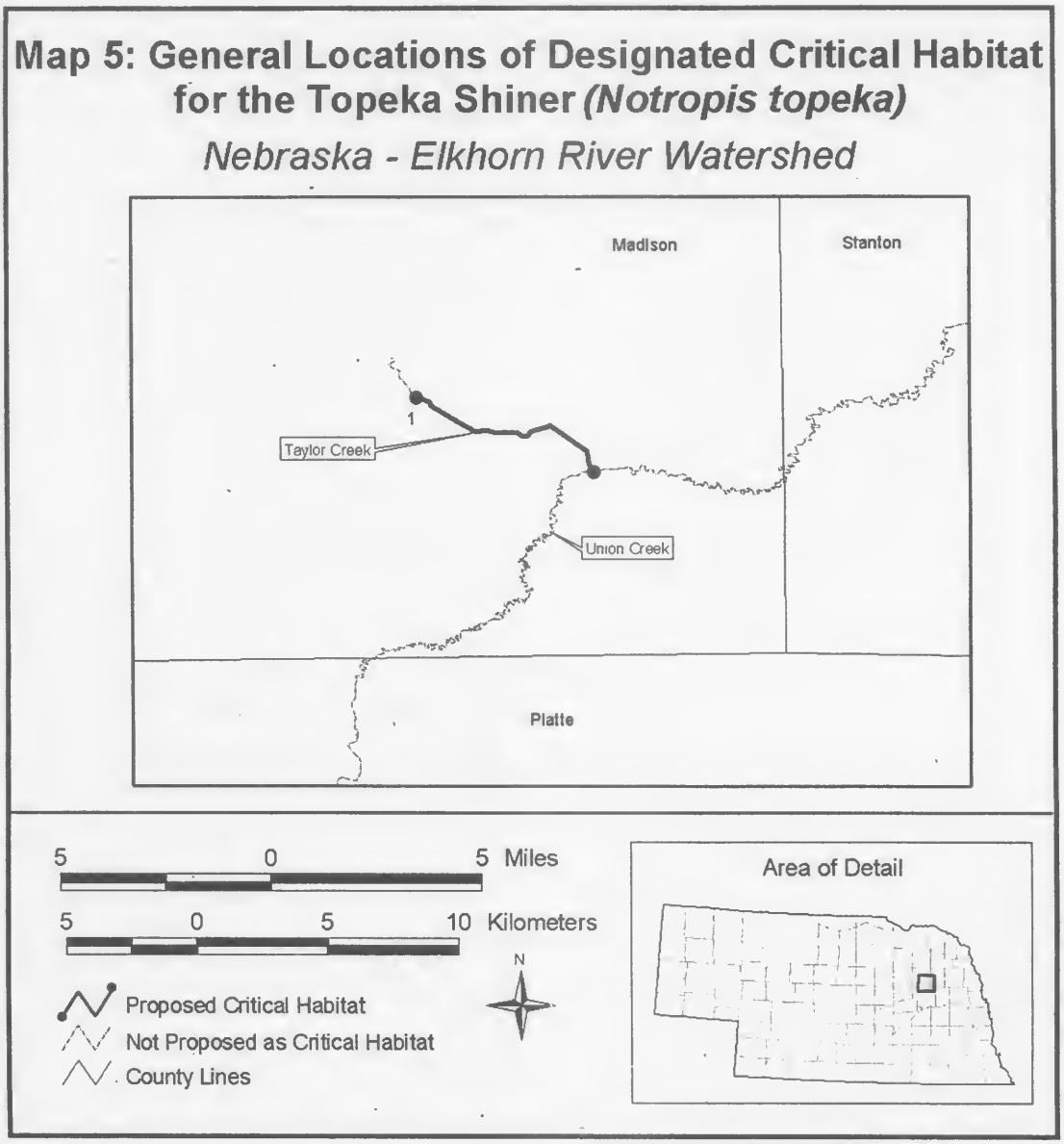
County Lines

Area of Detail

Reaches

1a. Medary Creek
1b. Unnamed tributary
2a. Flandreau Creek
2b. Unnamed tributary
2c. East Branch Flandreau Creek
2d Wilow Creek
3a Pipestone Creek
3b Unnamed tnbutary
3c. Unnamed tnbutary
3d. North Branch Pipestone Creek
3e. Unnamed tnbutary
3f Split Rock Creek
3g Unnamed tnbutary
3h Unnamed tnbutary
3i. Unnamed tnbutary
3j. Pipestone Creek
3k. Unnamed tnbutary
3l. Split Rock Creek
3m. Unnamed tnbutary
3n. Beaver Creek
3o Spnngwater Creek
3p. Little Beaver Creek
3q Unnamed tnbutary
3r Unnamed tnbutary
4a. Rock River
4b. Kanaranzi Creek
4c. Norwegian Creek
4d. Unnamed tnbutary
4e. East Branch Kanaranzi Creek
4f. Unnamed tnbutary
4g. Unnamed tnbutary
4h. Unnamed tnbutary
4i Ash Creek
4j Elk Creek
4k. Unnamed tnbutary
4l. Champepadan Creek
4m. Unnamed tnbutary
4n Unnamed tnbutary
4o Unnamed tnbutary
4p. Unnamed tnbutary
4q Mound Creek
4r. Unnamed tnbutary
4s. Unnamed tnbutary
4t. Unnamed tnbutary
4u. Popular Creek
4v. Unnamed tnbutary
4w. Chanarambie Creek
4x North Branch Chanarambie Cr.
4y Unnamed tnbutary
4z. Unnamed tnbutary
4aa East Branch Rock River
4bb. Unnamed tnbutary
5a Little Rock River
5b Little Rock Creek
6a. Mud Creek
6b. Unnamed tnbutary
6c. Unnamed tnbutary

(13) Unit 5: Elkhorn River Watershed—Madison County, Nebraska.	Taylor Creek from its confluence with Union Creek (T22N, R1W, Sec. 32), upstream through T22N, R2W, Sec. 22.	(14) **Note:** Unit 5 (Map 5) follows.



* * * * *

Dated: July 16, 2004.

Paul Hoffman,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–16646 Filed 7–26–04; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
July 27, 2004

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1, 21, et al.
Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1, 21, 43, 45, 61, 65, and 91

[Docket No. FAA–2001–11133; Amendment No. 1–53; 21–85; 43–39; 45–24; 61–110; 65–45; 91–282]

RIN 2120—AH19

Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is creating a new rule for the manufacture, certification, operation, and maintenance of light-sport aircraft. Light-sport aircraft weigh less than 1,320 pounds (1,430 pounds for aircraft intended for operation on water) and are heavier and faster than ultralight vehicles and include airplanes, gliders, balloons, powered parachutes, weight-shift-control aircraft, and gyroplanes. This action is necessary to address advances in sport and recreational aviation technology, lack of appropriate regulations for existing aircraft, several petitions for rulemaking, and petitions for exemptions from existing regulations. The intended effect of this action is to provide for the manufacture of safe and economical certificated aircraft that exceed the limits currently allowed by ultralight regulation, and to allow operation of these aircraft by certificated pilots for sport and recreation, to carry a passenger, and to conduct flight training and towing in a safe manner.

DATES: Effective September 1, 2004.

FOR FURTHER INFORMATION CONTACT: For questions on airman certification and operational issues (parts 1, 61, and 91 of title 14, Code of Federal Regulations (14 CFR)), contact Susan Gardner, Flight Standards Service, General Aviation and Commercial Division (AFS–800), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone 907–271–2034 or 202–267–8212.

For questions on aircraft certification and identification (14 CFR parts 21 and 45), contact Scott Sedgwick, Aircraft Certification Service, Small Airplane Directorate (ACE–100), Federal Aviation Administration, 901 Locust Street, Kansas City, MO 64106; telephone 816–329–2464; fax 816–329–4090; e-mail *9–ACE–AVR–SPORTPILOT–QUESTIONS@faa.gov.*

For questions on aircraft maintenance and repairman certification (14 CFR parts 43 and 65), contact Bill O'Brien, Aircraft Maintenance Division (AFS–305), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3796.

In addition, information on the implementation of this rule is available on *http://AFS600.faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's (DOT) electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) Visiting the FAA Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfn.*

(3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Identify the amendment number or docket number of this rulemaking.

You may 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, or labor union, etc.). You may review DOT's complete Privacy Act statement in the April 11, 2000 **Federal Register** (65 FR 19477) or at *http://dms.dot.gov.*

Implementation Information

The FAA spent a considerable amount of time determining the effective date of the final rule. Based on a review of the planning and scheduling of the tasks necessary to support the development of the infrastructure to implement the final rule, the agency believes that it had two options in determining this date. The first option was to establish the effective date of the rule after all of the guidance, policy, and infrastructure was in place to implement the rule. The FAA considered the economic impact of delaying the implementation of the rule while waiting for all of this material to be completed and believes that such action would not be in the best interest of those persons affected by the rule. Additionally, the complexity of the rule and the interrelationship among many of its new provisions makes the use of more than a single effective date for the rule difficult to implement. The second option was to select an effective date shortly after publication of the rule in the **Federal Register**. The FAA could then provide the public with many of the benefits of the rule while concurrently carrying out a plan for implementing other portions of the rule. The plan will contain milestones for completion of the specific guidance, policy, and infrastructure necessary for the public to conduct operations and seek certification under the new regulations. Selection of this option, for example, will permit currently certificated pilots to take advantage of many of the benefits of the new rule, such as those provisions relating to the exercise of sport pilot privileges without the necessity of holding an airman medical certificate. The infrastructure to implement other provisions of the rule can be developed during this period.

Due to the agency's intent to provide the public with as many of the benefits of the rule as soon as possible, the agency has established a single effective date of September 1, 2004 for the final rule. Shortly after publication of this rule, the FAA will post an implementation plan for the rule on the FAA Sport Pilot and Light-Sport Aircraft Web site, *http://www.faa.gov/avr/afs/ sportpilot* or *http://AFS600.faa.gov.* The FAA recognizes that persons seeking certification as airmen under the rule or seeking the certification of light-sport aircraft under the rule will not be able to obtain such certification immediately after the rule's effective date. The FAA, however, will work closely with the sport aviation community and those organizations that support its members to ensure that each milestone on the FAA's implementation plan is met and that information regarding implementation of the rule is made available in a timely manner.

The FAA has also reissued exemptions to the Experimental Aircraft Association (EAA), the United States Ultralight Organization (USUA), and Aero Sports Connection (ASC) that address flight training in ultralight vehicles. These revised exemptions from certain provisions of 14 CFR part 103 contain an expiration date of January 31, 2008. This date coincides with the date established to transition existing ultralight training vehicles, single and two-place ultralight-like aircraft, and ultralight operators and instructors to the provisions of the final rule.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or

advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT** above. You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.htm.*

Guide to Terms and Acronyms Frequently Used in This Document

AD—Airworthiness Directive
AGL—Above ground level
AME—Aviation Medical Examiner
ARAC—Aviation Rulemaking Advisory Committee
ASC— Aero Sports Connection
ATC—Air traffic control
BAA— Bilateral Airworthiness Agreement
BASA— Bilateral Aviation Safety Agreement
CAS—Calibrated airspeed
DAR—Designated Airworthiness Representative
DPE—Designated pilot examiner
EAA—Experimental Aircraft Association
Experimental light-sport aircraft—Aircraft issued an experimental certificate under § 21.191(i)
IFR—Instrument flight rules
LTA—Lighter-than-air
MSL—Mean sea level
NAS—National Airspace System
NM—Nautical mile
NTSB—National Transportation Safety Board
PMA—Parts Manufacturer Approval
SFAR—Special Federal Aviation Regulation
Special light-sport aircraft—Aircraft issued a special airworthiness certificate in the light-sport category (or, aircraft issued a special airworthiness certificate under § 21.190)
STC—Supplemental type certificate
TC—Type certificate
TSO—Technical Standard Order
Ultralight-like aircraft—An unregistered aircraft that exceeds the parameters of part 103 and meets the definition of "light-sport aircraft"
USUA—United States Ultralight Association
V_H—Maximum airspeed in level flight with maximum continuous power
V_{NE}—Maximum never-exceed speed
V_{S0}—Maximum stalling speed or minimum steady flight speed in landing configuration
V_{S1}—Maximum stalling speed or minimum steady flight speed without the use of lift-enhancing devices

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I. The Proposed Rule

I.1. NPRM and On-Line Public Forum

On February 5, 2002 the FAA published the Notice of Proposed Rulemaking (NPRM), "Certification of Aircraft and Airmen for the Operation of Light-Sport Aircraft" (67 FR 5368; Feb. 5, 2002), and requested comments by May 6, 2002. In addition, the FAA held an on-line public forum from April 1, 2002, until April 19, 2002, during which time the FAA posed 15 questions on the Internet. For a description of the on-line public forum and a list of the 15 questions, see the FAA's announcement published in the **Federal Register** on March 19, 2002 (67 FR 12826; March 19, 2002). The NPRM and the announcement of the on-line public forum are in the public docket for this rulemaking.

I.2. Public Comment Period

The FAA received over 4,700 comments to the NPRM. Of those, 2,913 were in response to the publication of the NPRM in the **Federal Register**, and approximately 1,800 additional comments came through the on-line forum. To read the on-line forum comments, go to the electronic docket address given above in the section entitled "Availability of Rulemaking Documents" and view item number 2676 in Docket No. FAA–2001–11133. A detailed discussion of the public's comments and the FAA's responses are in "V. Section-by-Section Discussion of Comments and Changes Incorporated Into the Final Rule."

Most commenters expressed fundamental agreement with the FAA's intent in proposing the rule. While there were many comments containing specific criticisms of the proposed rule and suggestions for how the rule could be improved, few of the commenters expressed a complete disagreement with the FAA's goal of providing for the manufacture of safe and economical aircraft and to allow operation of these aircraft by the public in a safe manner. Some comments contained numerous specific suggestions and criticisms, yet were prefaced by a statement of support for the FAA's efforts to make aviation more accessible to the general public. It should be noted that, while not substantial in number, several commenters expressed a fundamental disagreement with the FAA's proposed action, based upon a lack of confidence in the ultralight community. The commenters did not support these concerns with accompanying data.

I.3. Ex Parte Communications

The FAA worked closely with industry associations on this rulemaking in a number of ways. FAA staff conducted informational sessions with interested groups to determine how these rules, if adopted, should best be implemented. The FAA also assisted manufacturers in the development of consensus standards for light-sport aircraft. The Experimental Aircraft Association (EAA) and others met with the FAA repeatedly to urge the completion of this rulemaking as quickly as possible so as to meet the public need for authority to engage in activities permitted under this rule.

On occasion, FAA personnel met with interested organizations to discuss specific aspects of the NPRM and to determine, based on information received from these groups, how the NPRM should be modified. The issues discussed, however, were also set out in

numerous comments to the public docket. These discussions, while of an ex parte nature, have helped to develop a final rule that is responsive to the comments. The revisions to the NPRM, as adopted in this final rule, respond to written and oral concerns raised by individuals and organizations. This final rule reflects the FAA's independent judgment as to the appropriate level of safety for the manufacture and operation of light-sport aircraft.

II. Purpose of This Rule

The FAA intends this rule to—

- Increase safety in the light-sport aircraft community by closing the gaps in existing regulations and by accommodating new advances in technology.
- Provide for the manufacture of light-sport aircraft that are safe for their intended operations.
- Allow operation of light-sport aircraft exceeding the limits of ultralight vehicles operated under 14 CFR part 103, with a passenger and for flight training, rental, and towing.
- Establish training and certification requirements for repairman (light-sport aircraft) to maintain and inspect light-sport aircraft.

The rule is designed to allow individuals to experience sport and recreational aviation in a manner that is safe for the intended operations, but not overly burdensome. By bringing these individuals under a new regulatory framework, the FAA believes this rule lays the groundwork for enhancing safety in the light-sport aircraft category.

This rule does not change existing aircraft certification or maintenance regulations for aircraft already issued an airworthiness certificate, such as a standard, primary, or special certificate (*e.g.*, experimental amateur-built and experimental exhibition aircraft). However, as discussed in the section-by-section preamble discussion for § 1.1, Definition of Light-Sport Aircraft, a sport pilot can operate an aircraft meeting the light-sport aircraft definition in § 1.1, regardless of the airworthiness certificate issued. In addition, this rule does not change existing part 103 requirements.

A more detailed discussion and justification for the rule can be found in the preamble to the NPRM published in the **Federal Register** on February 5, 2002. On page 5370 of that **Federal Register** publication, is a section entitled "Effects of the Proposal on the Public and Industry" that gives answers to frequently asked questions (FAQs). These questions and answers have been updated on the FAA's Web site (*http://faa.gov/avr/afs/sportpilot* and click on FAQs) to reflect the changes being adopted in this final rule.

III. General Discussion of Changes in the Final Rule

III.1. FAA Judgment and Discretion

As the following summary reflects, commenters provided a variety of suggestions for the rule. As discussed more completely in the section-by-section discussions that follow, the FAA carefully considered the comments. Besides the specific issues in the comments, the FAA weighed two factors in adopting, modifying, or rejecting the comments.

First, the FAA is making decisions in a new area for regulation. Although some experience exists in similar aircraft, the rule anticipates growth and change in the industry. There are areas where only time and experience will determine whether these regulatory provisions meet the FAA's expectations or require modification. There is room for debate and disagreement, and the FAA is prepared to make changes when appropriate. But in the FAA's judgment, these standards strike a balance in favor of safety while allowing freedom to operate.

Second, there are situations where a line must be drawn. For example, the case can be made that the maximum weight or speed could be somewhat higher or lower than what is being adopted. In these situations, the FAA is not establishing this rule with the intent of including or excluding specific aircraft. Instead, the FAA is trying to objectively determine where the line should be drawn while considering the appropriate level of safety and the complexity of the operation.

III.2. Summary of Significant Issues Raised by Commenters

While most commenters expressed a desire to see some aspect of the proposed rule revised, they either agreed with the proposed regulation overall or agreed with the intent of the proposal. Most commenters believed the proposal would succeed if revised to address the issues they identified.

Significant issues raised by commenters are listed below, with reference to the corresponding proposal. These issues account for approximately 80 percent of the comments. They, and other comments on the NPRM, are discussed in detail under "V. Section-by-Section Discussion of Comments and Changes Incorporated Into the Final Rule."

- Towing: 1,298 comments
  a. Prohibition of towing of hangliders and paragliders by ultralight pilots; part 103—691 comments
  b. Prohibition of towing of hangliders and paragliders by light-sport aircraft; SFAR No. 89 section 73(b)(12)—607 comments
- Section 1.1 definition of "light-sport aircraft"—122 comments
- Maximum weight limits for light-sport aircraft; § 1.1 definition of "light-sport aircraft" paragraph (1)—489 comments
- Maximum speed in level flight under maximum continuous power for light-sport aircraft; § 1.1 definition of "light-sport aircraft" paragraph (2)—141 comments
- Maximum stall speed limits for light-sport aircraft; § 1.1 definition of "light-sport aircraft" paragraph (4)—62 comments
- Fixed or ground-adjustable propellers and repositionable landing gear on light-sport aircraft; § 1.1 definition of "light-sport aircraft" paragraphs (8) and (11)—116 comments
- Sport pilot certification (general comments on SFAR No. 89)—653 comments
- Maximum speed limit on student pilot operation of light-sport aircraft; SFAR No. 89 section 35(e)—57 comments
- Altitude limits on operation of light-sport aircraft; SFAR No. 89 section 73(b)(6)—55 comments
- Logbook endorsement requirement for each make and model of light-sport aircraft; SFAR No. 89 section 61—129 comments
- Repairman certification; § 65.107—159 comments
- Existing exemptions for two-seat ultralight vehicles; part 103—288 comments
- Operation of ultralights that would be issued an experimental certificate; § 21.191(i)—116 comments
- Use of a U.S. driver's license to establish medical eligibility; SFAR 89, sections 15 and 111--230 comments

III.3. Security Concerns Related to Pilot Identification and Certification

One State's Department of Transportation's aeronautical division expressed concern that allowing persons with a driver's license as a sole form of identification to have access to airports and the airspace system would reduce pilot identification standards and would lead to reduced security. The commenter said that since the terrorist attacks of September 11, 2001, airport security identification, as well as pilot identification, are under greater scrutiny, and that higher standards must be established to prevent unauthorized

access to airports and aircraft. The commenter went on to say that additional scrutiny provided by the process of obtaining a pilot certificate, an airman medical certificate, and passing an FAA practical test is a welcome safety enhancement at this time and must not be eliminated.

The FAA agrees that the additional scrutiny provided by the process of obtaining a pilot certificate, an airman medical certificate, and passing an FAA practical test enhances safety. The FAA is not eliminating any of these certificates or testing requirements for holders of currently issued pilot certificates. All persons operating an aircraft are required to possess a pilot certificate and pass a practical test. All persons issued at least a recreational pilot certificate (except those operating gliders and balloons) are also required to possess an airman medical certificate. This rulemaking action will bring persons who were formerly operating as ultralight pilots into an existing certification system that will provide further scrutiny of these individuals. These ultralight pilots have not been required to have pilot certificates, possess airman medical certificates or driver's licenses, or been required to take practical tests. Therefore, they have not been subject to any level of government scrutiny. Only sport pilots, or those seeking to exercise sport pilot privileges will be afforded the opportunity to exercise certificate privileges with either an airman medical certificate or a U.S. driver's license. These persons will be required to possess a pilot certificate and pass a practical test.

Sport pilots, like all pilots, will have to hold and possess their sport or student pilot certificates at all times when operating light-sport aircraft. Recent FAA rulemaking requires all pilots to carry photo identification when exercising the privileges of a pilot certificate and to present it, if requested by the FAA, an authorized representative of the National Transportation Safety Board (NTSB), the Transportation Security Administration (TSA), or a law enforcement officer (67 FR 65858; Oct. 28, 2002). That rule will apply to all sport pilots.

Additionally, the FAA is creating FAA Form 8710–11 "Sport Pilot Certificate and/or Rating Application." Information from the applicant's U.S. driver's license or airman medical certificate will be recorded on the form.

As a result of this new regulatory action, an estimated 15,000 persons operating ultralight-like aircraft now will be required to hold pilot certificates. In addition, persons performing work on light-sport aircraft will be required to hold repairman (light-sport aircraft) certificates. According to new security procedures, their names will be entered into the FAA airman registry. In addition, all existing unregistered ultralight-like aircraft and two-place utralight training vehicles will now, as certificated aircraft, be required to display an "N" registration number. These numbers will also be entered into the FAA aircraft registry. This will enable the TSA to conduct any necessary security screening for certificated airmen and registered aircraft operating in the National Airspace System (NAS).

These new sport pilots will now be required to make themselves aware of safety- and security-related information contained in notices to airmen (NOTAMs). Currently, operators of ultralight vehicles are not required to review these NOTAMs; although those who receive voluntary training and participate in industry-provided ultralight programs are encouraged to access this information that is made available through their organizations.

III.4. SFAR No. 89

The FAA proposed most of the sport pilot certification requirements as a Special Federal Aviation Regulation (SFAR). After further consideration, the FAA decided not to use the SFAR, but to codify most of the requirements as new subparts J and K of part 61, and the remainder in the existing structure of part 61. The SFAR format is appropriate to regulate operations in a very narrow set of circumstances, to address a temporary situation, or both. However, light-sport aircraft and their operation will be a significant segment of aviation and will require long-term regulatory oversight.

For the convenience of the user, a table showing how the sections of SFAR No. 89 were incorporated into part 61 is provided under "V. Section-by-Section Discussion of Comments and Changes Incorporated Into the Final Rule."

III.5.A. Comments on Ultralight Vehicles

The comments regarding ultralight vehicles were so significant, that, except for towing issues, a response is presented here, rather than in the section-by-section analysis below. A total of 1,586 comments were related to the operation of ultralights under the proposed rule. Of those, 1,298 comments addressed ultralight towing, specifically—

- The prohibition on towing hangliders and paragliders by ultralight pilots; part 103—691 comments; and
- The prohibition on towing hangliders and paragliders by light-sport aircraft; SFAR No. 89 section 73(b)(12)—607 comments.

Towing issues are discussed in the section-by-section analysis for § 61.69.

Four hundred and four comments addressed—(1) eliminating existing exemptions from part 103 (288 comments) and (2) reclassifying aircraft operating under exemptions to part 103 as light-sport aircraft under § 21.191(i) (116 comments). The commenters were nearly uniform in their opposition to eliminating existing exemptions from part 103 and codifying the exemptions into parts 21 and 61. The majority of commenters opposed including ultralights in the proposed regulation. Almost all commenters suggested keeping ultralight regulation as it is, but incorporating existing exemptions from part 103 into that part.

Part 103 defines an ultralight vehicle and prescribes the operating rules for these vehicles. An ultralight vehicle is either an unpowered or powered vehicle with certain weight, speed, and other limits, as prescribed in § 103.1. An ultralight vehicle can carry only one occupant and be used for sport and recreational purposes. The ultralight industry has established voluntary training programs and recommended maintenance practices. In an effort to encourage the use of these voluntary training programs, the FAA has granted exemptions to part 103 that allow—

- Training and proficiency flights to be conducted in a two-place ultralight vehicle operated by an ultralight flight instructor or ultralight student.
- Tandem training operations for hang gliders and powered paragliders conducted by an ultralight flight instructor or ultralight student.
- Towing operations in a single-seat and two-seat ultralight-like aircraft to facilitate operations and training in an ultralight vehicle that is a hang glider, glider, or paraglider.

The FAA has granted these exemptions to part 103 to gather data and to temporarily meet the training needs for persons operating ultralight vehicles and to resolve operational issues such as towing.

Commenters contended that eliminating existing training exemptions from part 103 would—

- Force unregistered two-place training ultralights to be classified as experimental light-sport aircraft, which would prevent their use for compensation or hire and increase the operating costs of these aircraft; and
- Place unregistered single-place and two-place ultralight-like aircraft and

standard category aircraft under the same regulation.

Many of these commenters specifically referred to the United States Ultralight Association (USUA)'s comprehensive suggestion for a two-tiered approach for the regulation of ultralight vehicles and light-sport aircraft. USUA recommended that the FAA not only retain the proposed regulations for light-sport aircraft, but also adopt additional regulations codifying long-standing FAA exemptions for two-place ultralight training. One set of regulations (Tier I) would address single- and two-place ultralight-like aircraft. Single-place aircraft would be limited to 360 pounds empty weight (662 pounds maximum gross weight), 10 gallons maximum fuel capacity, 32 knots maximum power-off stall speed, and 72 knots VH. Two-place aircraft under Tier I would be limited to 496 pounds empty weight (992 pounds maximum gross weight), 10 gallons maximum fuel capacity, 35 knots maximum power-off stall speed, and 75 knots VH. Another set of regulations (Tier II) would address light-sport airplanes, using the weight and performance limits as proposed in the NPRM.

USUA's suggested regulations for ultralight vehicles would accommodate both "fat single- and two-place ultralight aircraft." USUA stated that this regulation could require registration of these aircraft. This action would enable the FAA to provide safety information to the owners and permit training for compensation, as permitted under current exemptions. USUA noted that these ultralight vehicles would have more restrictions than light-sport aircraft. For example, they would not be permitted to operate over congested areas, and would require prior air traffic control (ATC) permission for flight in controlled airspace.

USUA was unequivocal in its comments on the proposed rule, stating that the FAA must update ultralight regulations to better reflect the manner in which ultralights are currently flown in the United States. USUA stated that two-place ultralights have become heavier since part 103 was established in 1980, and that two-seat ultralight training has become common as a result of the training exemptions. The USUA stated that its suggested regulatory approach would include two-seat and single-seat unregistered ultralight-like aircraft, allowing for a permanent solution to the ongoing problem of how to regulate ultralights that do not comply with part 103.

USUA clearly stated that ultralight pilots want the part 103 training exemption provisions used by USUA and other ultralight associations incorporated in the regulations. USUA noted that its recommendation to expand the parameters of ultralight vehicles currently regulated by part 103 has an international precedent in Europe. USUA also noted that the Federation Aeronautique Internationale (FAI), the world governing body of air sports activities, has defined microlights as weighing up to 450 kg (992 pounds) gross weight, with a stall speed no greater than 65 kilometers per hour (kph) (35 knots), and the Joint Aviation Authorities (JAA) have accepted this definition.

Regarding airspeed, the rule allows a sport pilot to fly only a light-sport aircraft that has a maximum airspeed in level flight with maximum continuous power (V_H) of 87 knots CAS or less, unless he or she receives additional training and a one-time endorsement to operate a light-sport aircraft with a V_H up to 120 knots CAS. On the weight criterion, the FAA proposed a weight limit of 1,232 pounds, which is increased to 1,320 pounds in the final rule for aircraft not intended for operation on water. This weight is maximum gross takeoff weight and is essentially equivalent to the empty weight suggested by USUA. The gross takeoff weight includes the added weight of two passengers, ten or more gallons of fuel, one or more pieces of luggage, and a ballistic parachute carried on an aircraft. This weight allows the aircraft to be constructed with stronger materials, to use stronger landing gear, and to use a heavier and more powerful four-stroke engine. All of these items were specifically requested by industry and other commenters, most often in the interest of safety. The consensus standards will address a minimum weight for design standards for a single-place light-sport aircraft.

USUA's recommendation was influential on the ultralight community. Most commenters addressing the subject of ultralights simply recommended that the FAA adopt the USUA's two-tiered approach; however, many of these commenters did not supply any analysis to support their recommendation.

Concerning the aircraft certification component of the USUA's proposed two-tiered concept, the FAA believes that the use of consensus standards is appropriate for aircraft that exceed the parameters of ultralight vehicles as specified in part 103, yet do not exceed the parameters of a light-sport aircraft. The FAA believes that the operating characteristics of these aircraft necessitate their certification. However, their characteristics and the operations that they will be used to conduct do not warrant the more extensive certification standards applied to primary or standard category aircraft. The FAA believes that the use of consensus standards provides a level of safety appropriate for the operation of the aircraft.

Concerning the regulation of airmen and flight operations, FAA does not completely agree with USUA's proposal. The FAA does not agree that the part 103 operating environment is appropriate for the larger, heavier, higher performance aircraft USUA's proposal identifies as "Tier 1" Ultralight Aircraft." The FAA acknowledges the safety benefits for aircraft design and manufacturing and airman training that have resulted from the exemption process; however, the FAA believes that the operational characteristics of these aircraft are of such a degree that a more comprehensive regulatory structure should be applicable to their operation.

Like USUA, most commenters who are ultralight pilots stated that ultralights fundamentally differ from standard category aircraft, and that the FAA should continue to regulate ultralights, regardless of their size, under part 103. For two reasons, the FAA disagrees with the suggestion that all ultralight-like aircraft should be regulated under part 103, either with incorporations of the existing training exemptions or with a continuation of the current exemptions.

First, that approach would not provide the solution recommended specifically by the Aviation Rulemaking Advisory Committee (ARAC). USUA chaired the ARAC working group that addressed the regulation of ultralight vehicles. That working group of the committee was made up of members of the ultralight industry and produced a comprehensive recommendation to the FAA regarding ultralight regulation. The FAA notes that the ARAC recommendation did not include USUA's proposal to expand part 103 to include larger aircraft. The ARAC recommendation did, however, include the USUA's position as a dissenting opinion. ARAC's recommendation to focus on appropriate training for sport pilots served as the basis for the FAA's proposed rule. ARAC's recommendation did not propose either the continuation of existing part 103 exemptions, or the codification of those exemptions into part 103. See the discussion in the preamble of the NPRM, "Section V. The Aviation Rulemaking Advisory Committee (ARAC)."

Second, the FAA issued exemptions to temporarily resolve training issues and operational issues such as towing.

In the preamble to the rule establishing part 103 (47 FR 38776; Sept. 2, 1982), the FAA explained its rationale for permitting no more than a single occupant in an ultralight vehicle. The FAA noted that the general public might incorrectly assume that an ultralight operator possesses certain minimum qualifications and has met specific requirements resulting in the issuance of a pilot certificate. The public would be unaware of the risks that an ultralight pilot assumes with the operation of an uncertificated ultralight vehicle. The FAA still believes that it would be inappropriate to permit the operation of larger and more capable ultralight-like aircraft without the benefits afforded by the certification of these aircraft and their pilots. In addition, extending current training exemptions on a long-term basis would be an inappropriate use of the exemption process. It would not allow the FAA to address the many other regulatory changes contemplated in this rulemaking.

This rule is intended to provide a comprehensive regulatory approach that extends beyond the ultralight community. A significant purpose of the rule is to certificate those two-seat ultralight-like aircraft previously operated under part 103 training exemptions and those two-seat and single-seat unregistered ultralight-like aircraft operating outside of the regulations.

Several commenters noted that the speed differential between ultralights and standard category aircraft makes their operation in the same airspace dangerous. However, USUA recommended a continuation of the current practice allowed under part 103, which permits flights in controlled airspace (Class A, B, C, D, and surface-based Class E) with prior ATC permission. These flights may occur at any altitude, with no equipment requirements for communication, navigation, or identification, and with no required pilot training.

The FAA has considered the comments on the issue of speed differentials and operations in controlled airspace. As adopted, a sport pilot operating a light-sport aircraft will be prohibited from operating in Class A airspace and from operating above 10,000 feet mean sea level (MSL). A sport pilot is authorized to operate in Class G and E airspace. With training on airspace requirements and communications equivalent to the training requirements for a private pilot, and a one-time endorsement from an authorized instructor, a sport pilot can operate in Class B, C, and D airspace and to, from, through, or at an airport having an operational control tower. A sport pilot can only do so, however, if the light-sport aircraft he or she is operating is properly equipped and authorized for that operation. The FAA is also providing that, like a student pilot, a sport pilot will not be authorized to take off or land at any of the airports listed in part 91, appendix D, section 4. For a complete discussion, see "V.5.A.v. Changes to Airspace Restrictions" and the discussion of § 91.131 below.

The FAA notes that many of USUA's suggestions were incorporated in the FAA's proposal. The FAA agreed with the recommendation that it not permit flight at night. However, the rule will permit special light-sport aircraft to fly over cities. The use of light-sport aircraft engines that meet consensus standards for powerplant performance and reliability will make any prohibition of flight over cities unnecessary. Experimental light-sport aircraft (the existing fleet of ultralight-like aircraft) will continue to be restricted to flight over uncongested areas. The rule provides more privileges than the two-tier system suggested by USUA. The rule allows the carriage of a passenger for purposes other than flight training, which has never been allowed under part 103 or the part 103 training exemptions. The rule establishes new categories of airman ratings and two new classes of aircraft—(1) weight-shift-control, and (2) powered parachute. The rule allows a special light-sport aircraft owner to accept compensation for the use of the aircraft for flight training or towing a glider or unpowered ultralight vehicle. It also allows a light-sport aircraft owner to accept compensation for rental of the aircraft. Neither of these privileges had been allowed under the part 103 exemptions. The rule establishes the requirements for repairmen (light-sport aircraft) to maintain and inspect the newly certificated experimental and special light-sport aircraft. Finally, the final rule addresses the concern that it will limit or prevent the use of currently unregistered ultralight-like aircraft. The FAA revised the final rule to assist those who have been operating two-seat ultralight-like aircraft under the part 103 training exemptions. The rule provides a 5-year period during which persons may continue to operate their two-place ultralight-like aircraft and receive compensation for flight training, provided those aircraft are certificated as experimental light-sport aircraft. The FAA expects that in the long term, instructors operating light-sport aircraft previously classified as two-seat ultralight-like aircraft will provide instruction at a lower cost and with greater safety.

In some cases, the rule is more restrictive than USUA's recommendation, but the FAA is using a building-block approach in extending privileges to sport pilots. The rule permits a sport pilot to obtain additional training to permit the exercise of additional privileges at a later time. In the proposed rule, the FAA stated that there would be many safety benefits to certificating sport pilots, light-sport aircraft, and the repairman who would maintain these aircraft that would not be realized under the USUA proposal. For a complete discussion of these safety benefits and alternatives refer to the discussion in the preamble of the NPRM, "IV. Background—B. The FAA's Reason for This Proposal."

III.5.B. Future Rulemaking on Ultralight Vehicles

The NPRM did not address, nor does the final rule address, the use of hangliders, paragliders and powered paragliders in tandem operations and training. There is a need to address these issues, but the FAA did not examine questions in this area for this rule. Rather than delay this rule to include these issues, the FAA intends to initiate a separate rulemaking action. Until that can be completed, the FAA intends to maintain the status quo for these operations by continuing or reissuing training exemptions as necessary.

IV. Comparative Tables

The following tables provide a quick comparison of regulations governing light-sport aircraft and other aircraft.

Abbreviations Used In Tables

A&P—Airframe and powerplant
CFI—Certificated flight instructor
CTD—Computer Testing Designee
DPE—Designated Pilot Examiner
ELSA—Experimental light-sport aircraft
EW—Empty weight
IFR—Instrument flight rules
LS–I—Light-sport—Inspection
LS–M—Light-sport—Maintenance
M/M—Make and model
MTOW—Maximum takeoff weight
PIC—Pilot in command
PMA—Parts Manufacturer Approval
SLSA—Special light-sport aircraft
SP—Sport pilot
STC—Supplemental Type Certificate
TC—Type Certificate
TSO—Technical Standard Order
VFR—Visual flight rules

BILLING CODE 4910–13–P

Light-Sport Aircraft Maintenance and Certification Requirements

	Ultralights, part 103--254 pounds EW	ELSA under §21.191 (i)--1,320 pounds MTOW	SLSA under §21.190--1,320 pounds MTOW	Amateur-built under §21.191 (g)--No MTOW	Primary aircraft under §21.24--2,700 pounds MTOW	Standard aircraft under §21.21--No MTOW
Registration "N" number	None	Yes	Yes	Yes	Yes	Yes
Airworthiness Certificate	None	Yes	Yes	Yes	Yes	Yes
Operating privileges and limits (may be restricted by pilot certificate or aircraft operating limitations)	• Day • VFR • Uncongested areas only • Class A, B, C, D, and surface-based E airspace; ATC permission required (no equipment required) • Class E and G airspace • No passengers • Flight training (under part 103 two-place training exemption) • Towing (under part 103 towing exemption)	• Day/night • VFR/IFR • Congested and uncongested areas • Class A, B, C, D, E and G airspace; (with part 91 equipment) • One passenger • Limited flight training (5 years under §91.319 (e)(2)) • Towing existing fleet (under §91.319 (e)(1))	• Day/night • VFR/IFR • Congested and uncongested areas • Class A, B, C, D, E and G airspace; (with part 91 equipment) • One passenger • Flight training and rental • Towing	• Day/night • VFR/IFR • Congested and uncongested areas • Class A, B, C, D, E and G airspace; (with part 91 equipment)	• Day/night • VFR/IFR • Congested and uncongested areas • Class A, B, C, D, E and G airspace; (with part 91 equipment) • Flight training and rental • Towing	• Day/night • VFR/IFR • Congested and uncongested areas • Class A, B, C, D, E and G airspace; (with part 91 equipment) • Flight training and rental • Commercial operations

	Ultralights, part 103--254 pounds EW	ELSA under §21.191 (i)--1,320 pounds MTOW	SLSA under §21.190--1,320 pounds MTOW	Amateur-built under §21.191 (g)--No MTOW	Primary aircraft under §21.24--2,700 pounds MTOW	Standard aircraft under §21.21--No MTOW
Maintenance	None	Owner-maintained	Maintenance-- • Repairman (LS-M) • Mechanic (A&P) • Part 145 Repair station Preventive maintenance-- • Sport pilot or higher	Owner-maintained	Maintenance-- • Mechanic (A & P) • Part 145 Repair station Preventive maintenance-- • Recreational pilot or higher	Maintenance -- • Mechanic (A & P) • Part 145 Repair station Preventive maintenance – • Recreational pilot or higher
Inspections	None (1)	Annual condition-- • Repairman LS –I and LS-M • Mechanic (A & P) • Part 145 Repair station 100-hour condition (2)-- • Repairman LS-M • Mechanic (A & P) • Part 145 Repair station	Annual condition-- • Repairman LS - M • Mechanic (A & P) • Part 145 Repair station 100-hour condition (3)-- • Repairman LS-M • Mechanic (A & P) • Part 145 Repair station	Annual condition-- • Repairman (experimental aircraft builder) • Mechanic (A & P) • Part 145 repair station	Annual condition-- • Mechanic (A & P) • Part 145 repair station 100-hour condition (4)-- • Mechanic (A & P) • Part 145 Repair station	Annual condition-- • Mechanic (A & P) • Part 145 Repair station 100-hour condition (4)-- • Mechanic (A & P) • Part 145 repair station
Airworthiness Directives	None	None issued against ELSA	Yes – Type certificated TC/STC/PMA/TSO-approved products, if installed	None issued against amateur-built aircraft	Yes	Yes
Safety Directives	None	None	Yes	None	None	None
FAA Type or Production Certificate	No	No	No	No	Yes	Yes
Consensus Standard	No	No (5)	Yes	No	No	No

(1) For two-place ultralight training vehicles operating under an exemption and registered with an FAA-recognized ultralight organization—100–hour condition inspection done by ultralight instructor registered with an FAA-recognized ultralight organization.

(2) Applies to training aircraft used for compensation until January 31, 2010, and tow aircraft used for compensation.

(3) Applies to aircraft used for flight training or towing for compensation.

(4) Applies to aircraft used for flight instruction for hire—§ 91.409.

(5) ELSA—Kit-built (§ 21.191(i)(2)(ii)) or aircraft that have been previously issued a special airworthiness certificate in the light-sport category (§ 21.191(i)(3)) meet consensus standards.

Aircraft Authorized That May Be Operated By Pilots

	Part 103 Ultralight Weight: (254 EW) (496 EW–2-place trainer operating under part 103 exemption) Aircraft Certification: None - Ultralight Vehicle	Light-Sport Aircraft Weight: (1,320/1,430 Floats and amphibious MTOW) Aircraft Certification: ELSA, SLSA, Limited, Restricted, Primary, Standard	Small Aircraft Weight: (< 12, 500 MTOW) Aircraft Certification: ELSA, SLSA, Limited, Restricted, Primary, Standard
Ultralight pilot Ultralight instructor	Yes	No	No
Sport Pilot	Yes	Yes	Yes, if aircraft meets the definition of "light-sport aircraft" in §1.1
Recreational Pilot	Yes	Yes	Yes – 4-place/2 passengers; 180 horsepower, single-engine, non-complex rotorcraft/airplane
Private Pilot	Yes	Yes	Yes
CFI – Sport Pilot	Yes	Yes	Yes, if aircraft meets the definition of "light-sport aircraft" in §1.1
CFI	Yes	Yes	Yes

Pilot Certification Eligibility, Training and Testing Requirements

	Medical Eligibility	Training Requirements	Testing Requirements	Add-On Privileges or Ratings
Ultralight Pilot	None	None	None	No
Ultralight Instructor	None	None	None	None
Sport Pilot	Current and valid U.S. driver's license unless §61.303(b) applies Or Valid medical certificate issued under part 67 Gliders and balloons—Airman medical certificate not required	Airplane, Gyro, weight-shift-control, and airships 20 Hours – Total 15 Hours – Flight training 5 Hours – Solo 2 Hours – Dual Cross Country 1 Solo Cross Country 3 Hours – Prep (Registered ultralight pilots with FAA-recognized ultralight organizations may be given credit until January 31, 2007 Other requirements for powered parachutes, gliders, balloons	CFI or CFI-SP Recommendation – Knowledge test Practical test	Cat/Class Privileges– Training – CFI or CFI-SP Recommendation – CFI or CFI-SP Proficiency Check –Different CFI or CFI-SP Endorsement/Form 8710-11 Make and model (to operate aircraft within a set of aircraft) Class B, C, D– V_H> 87 Knots CAS-- Training –CFI or CFI-SP Endorsement - CFI or CFI-SP
Recreational Pilot	Third-class medical certificate issued under part 67 Except for gliders and balloons - Medical eligibility not required	Airplane and Rotorcraft 30 Hours – Total 15 Hours – Flight training 3 Hours – Solo 2 Hours – Flight training cross country-(limited 50 NM range from	CFI Recommendation - Knowledge test Practical test	Cat/Class Rating – Training – CFI Recommendation – CFI Practical test - Cat/class rating Issued

	Medical Eligibility	Training Requirements	Testing Requirements	Add-On Privileges or Ratings
		departure airport, permitted with additional training (see §61.101 (c)) 3 Hours – Prep		(Make and model – training recommended) Class B, C, D Training – CFI Endorsement - CFI
Private Pilot	Third-class medical issued under part 67 Except for gliders and balloons -- Medical eligibility not required	For airplanes: 40 Hours – Total 20 Hours – Flight training 10 Hours – Solo 3 Hours – Flight training cross country 5 Hours – Solo cross country 3 Hours – Prep 3 Hours—Night 3 Hours—Instrument training	CFI Recommendation – Knowledge test – Practical Test –	Cat/Class Rating – Training – CFI Recommendation – CFI Practical Test
Commercial Pilot	Second-class Medical certificate Issued under part 67 Except for gliders and balloons -- Medical eligibility not required	For airplanes: 250 Hours – Total Additional flight training requirements for each category and class	CFI Recommendation – Knowledge test – Practical Test –	Cat/Class Rating – Training – CFI Recommendation – CFI Practical Test

	Medical Eligibility	Training Requirements	Testing Requirements	Add-On Privileges or Ratings
CFI – Sport Pilot	Current and valid U.S. driver's license unless §61.303(b) applies Or Valid airman medical certificate issued under part 67---Only required when acting as pilot in command Gliders and balloons—Airman medical certificate not required	150 Hours – Total Additional flight training requirements for each category and class Sport Pilot certificate or higher Category and class privileges or rating	CFI Recommendation – Knowledge test – Practical test –	Cat/Class Privilege– Training –CFI or CFI-SP Recommendation – CFI or CFI-SP Proficiency check – Different -CFI or CFI-SP Endorsement/Form 8710-11 Make and model 5 hours PIC Endorsements—Must have those endorsements required to exercise pilot privileges in the aircraft
CFI	Valid airman medical certificate issued under part 67--Only required when acting as pilot in command Gliders and balloons—Airman medical certificate not required	ATP or Commercial certificate (with Instrument Rating if appropriate) Category/Class Rating Additional flight training requirements for each category and class	CFI Recommendation – Knowledge test – Practical test –	Cat/Class Rating – Training – CFI Recommendation – CFI Practical Test

Airman Certification – Operating Privileges and Limitations

	Ultralight Pilot	Sport Pilot	Recreational Pilot	Private Pilot	CFI – Sport Pilot	CFI
Day	Yes	Yes	Yes	Yes	Yes	Yes
Night	No	No	No	Yes	No if exercising sport or recreational pilot privileges	Yes
VFR—visibility 3 miles or more	Yes	Yes	Yes	Yes	Yes	Yes
VFR—visibility less than 3 miles	Yes	No	No	Yes	No if exercising sport or recreational pilot privileges	Yes
IFR	No	No	No	Yes with instrument rating	No without an instrument rating	Yes with instrument rating
Passenger carriage	No	Yes – One Passenger	Yes – One Passenger	Yes	Yes	Yes
Compensation	No	No	No	Limited	Limited if exercising sport or recreational pilot privileges; Yes otherwise	Yes
Class A airspace	Yes with ATC authorization	No	No	Yes with instrument rating	No if exercising sport or recreational pilot privileges; Yes otherwise	Yes with instrument rating
Class B, C, D airspace	Yes with ATC authorization	Yes with training	Yes with training	Yes	Yes (additional training may be required)	Yes
Class E, G airspace	Yes	Yes	Yes	Yes	Yes	Yes

	Ultralight Pilot	Sport Pilot	Recreational Pilot	Private Pilot	CFI – Sport Pilot	CFI
> 10, 000 MSL	Yes	No	No	Yes	No if exercising sport or recreational pilot privileges. Yes otherwise	Yes
< 10, 000 MSL	Yes	Yes	Yes	Yes	Yes	Yes
Cross country	Yes	Yes	Yes with training	Yes	Yes (for recreational pilot additional training is required)	Yes
> 120 knots CAS	No	No	Yes	Yes	No if exercising sport pilot privileges. Yes otherwise	Yes
< 87 knots CAS	Yes	Yes	Yes	Yes	Yes	Yes
> 87 knots CAS	Yes	Yes with training	Yes	Yes	Yes (additional training may be required)	Yes

Airman Certification—Privileges for Which Additional Training Is Required

	Ultralight Pilot	Sport Pilot	Recreational Pilot	Private Pilot	CFI – Sport Pilot	CFI
Added Cat/Class Privilege	N/A	Yes	N/A	N/A	N/A	N/A
Make and Model Privilege	N/A	Yes	N/A	N/A	N/A	N/A
Added Cat/Class Rating	N/A	N/A	Yes	Yes	N/A	Yes
Class B, C, and D	No	Yes	Yes	No	Yes if exercising sport or recreational pilot privileges	No

	Ultralight Pilot	Sport Pilot	Recreational Pilot	Private Pilot	CFI – Sport Pilot	CFI
> 87 knots CAS	No	Yes	No	No	Yes if exercising sport or recreational pilot privileges	No
Cross country	No	No	Yes	No	Yes if exercising recreational pilot privileges	No
IFR	N/A	N/A	N/A	Yes	N/A	Yes
Tail wheel	No	Yes	Yes	Yes	Yes	Yes
High-Performance	N/A	N/A	N/A	Yes	N/A	Yes
Complex	No	N/A	Yes	Yes	N/A	Yes
High Altitude	No	N/A	N/A	Yes	N/A	Yes
Type	N/A	N/A	N/A	Yes	N/A	Yes
Towing	No (additional training required if operating under Part 103 exemption)	N/A	N/A	Yes (additional experience required)	N/A	N/A
Sales demo	No	No (N/A if aircraft salesman)	No (N/A if aircraft salesman)	Yes (additional experience required)	N/A	N/A
Agricultural (non-commercial)	N/A	No	No	No	N/A	N/A
Charitable Flights	N/A	N/A	N/A	Yes (additional experience required)	N/A	N/A
Provide Flight Training	No (additional training required if operating under part 103 exemption)	N/A	N/A	N/A	Yes	Yes

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V. Section-by-Section Discussion of Comments and Changes Incorporated Into Final Rule

The following is a summary of comments for each section of rule text, with a description of any changes the FAA is making to the final rule. Because of the large number of comments received on the proposed rule, it is not possible to discuss each commenter's remarks individually. Some of the changes are being made as the result of public comments, and others are being made after further review within the FAA. As discussed previously in this preamble, the requirements proposed as SFAR No. 89 are being moved into part 61, and a conversion table is included for the reader's convenience in the discussion of comments to part 61. All comments to proposed SFAR No. 89 therefore are located under the discussion of changes to part 61.

V.1. Part 1—Definitions And Abbreviations

Section 1.1 General Definitions

Definition of "Consensus Standard"

The FAA received numerous comments on the topic of consensus standards. Most commenters expressed support for the concept of airworthiness standards developed by a consensus of industry and the FAA. However, some commenters expressed concern that they could not review any actual consensus standards, as the standards were nonexistent at the time of the NPRM comment period. These standards would be developed either concurrent with, or subsequent to, the adoption of the rule. The FAA understands the commenters' concern, but notes that the consensus standards development process will include adequate opportunity for public participation and comment. The FAA further notes that the consensus standards process will not replace, but rather will supplement, existing design, manufacturing, and airworthiness certification procedures, and that alternative consensus standards may be found acceptable.

Since the publication of the proposal, a number of aviation organizations have chosen to work with ASTM International to develop light-sport aircraft consensus standards. ASTM International has established Committee F37—Light-Sport Aircraft for this standards development task. Anyone who desires to comment on the consensus standards may participate in their development by ASTM International. Also, when an acceptable standard is developed, the FAA will publish a Notice of Availability in the **Federal Register**. This notification will include a statement that the FAA has found the standard acceptable for certification of the specified aircraft under the provisions of this rule. This statement will assert that:

- The FAA has participated in the development process for this consensus standard;
- The FAA has reviewed the standard for compliance with the regulatory requirements of the rule; and
- Any light-sport aircraft designed, manufactured, and operated in accordance with that consensus standard provides the public with an appropriate level of safety.

If comments from the public are received as a result of the Notice of Availability, the FAA will address them during its recurring review of the consensus standards and participation in the consensus standards revision process. Refer to the comment below from NTSB concerning FAA participation in the revision of consensus standards.

Several commenters recommended delaying the effective date of the rule until the consensus standards were issued. The FAA recognizes that consensus standards may not be completed by the effective date of the rule, and has therefore revised the rule to permit existing two-seat ultralights to be used for many of the operations that are intended for aircraft manufactured to a consensus standard.

Some commenters were concerned that the consensus standards process would only represent viewpoints of particular manufacturers, and would not assure adequate representation of small manufacturers or aircraft operators. Other commenters believed the consensus standards should not be set only by the aircraft manufacturers and ASTM International. Another proposed that a committee of pilots, aircraft owners, manufacturers, standards organizations, and regulators should formulate the consensus standards. The FAA agrees that broad representation of all affected parties is necessary for the FAA to accept a consensus standard. Any and all interested parties can participate in the development of consensus standards. In fact, OMB Circular A–119 requires balanced participation and voting. The FAA believes that the ASTM process balances the representation of product manufacturers, product users, and the interests of other affected persons. The FAA notes that the current ASTM consensus standard committees are comprised of individuals representing all the perspectives recommended by the commenter. The FAA believes that the ASTM standards development procedures satisfy the other attributes (openness, due process, and appeals process) set forth in OMB Circular A–119 for an acceptable consensus standard body. The OMB Circular permits FAA to make this determination. If necessary, the FAA will participate with other standards development organizations in the development of alternative consensus standards. The FAA would refer to paragraphs 2, 6.e. and f. of OMB Circular A–119 in making this determination. These paragraphs describe the goals of the government in using consensus standards and the considerations the FAA should make when considering the use of a consensus standard.

The FAA received a comment from the NTSB saying that the NPRM lacked sufficient information for it to determine to what extent the FAA will be involved in the review of consensus standards after they have been issued. As stated in the NPRM, the FAA will participate in the development of and any revision to the consensus standards, in accordance with OMB Circular A–119. In the preamble of the NPRM, the FAA stated that it expected a suitable consensus standard to be reviewed every two years. As a member of the consensus standard body, the FAA can call for revisions to the consensus standard when the agency determines such revisions are necessary. The FAA, as all other participants, may propose changes to amend the consensus standard to address new technology, applications, or deficiencies. As part of the FAA's participation in the consensus standards development, the FAA will review proposed consensus standards prior to the issuance of a Notice of Availability. The FAA will not issue a Notice of Availability for a consensus standard it considers unacceptable. The FAA will notify the public, through a Notice of Availability, of its acceptance of a consensus standard or any revision to a consensus standard. The FAA will continue to participate in revising the consensus standard at an interval no longer than every 2 years. The FAA will respond to comments on the consensus standards in this revision process.

One commenter proposed that the term "industry developed consensus airworthiness standard" be changed to "industry developed airworthiness standard." The FAA prefers that the word "consensus" be included to emphasize that these standards are developed in accordance OMB A–119. Use of the term "consensus" will also distinguish consensus standards from airworthiness standards that are developed by the FAA through the normal rulemaking process and are specifically contained in other parts of 14 CFR subchapter C. Within the definition, the FAA is removing the modifier "airworthiness" from the phrase "industry developed consensus airworthiness standard." This change is to permit the consensus standards body to develop light-sport aircraft and sport pilot safety standards that may encompass more standards than those affecting airworthiness.

A commenter stated that FAA involvement in developing the criteria for certificating light-sport aircraft should be minimal to keep aircraft design and manufacturing costs down. As noted above, the FAA has chosen to use consensus standards developed in accordance with the criteria in OMB Circular A–119 for these aircraft. The use of the consensus standard process

assures government and industry discussion and agreement on appropriate standards for the required level of safety. The FAA believes that the consensus standards process will minimize costs while meeting the level of safety appropriate for these aircraft.

Several commenters expressed concern that the consensus standards would result in excessive increases to the price of light-sport aircraft. A commenter expressed concern over insurance costs for light-sport aircraft, and expressed the opinion that general aviation revitalization depends on the availability of factory-built aircraft priced under $40,000. The FAA has discussed the certification process for these aircraft in both the NPRM and this final rule. How the public will interact with insurance companies and legal professionals, as well as the pricing of these aircraft are matters of commercial interest. The FAA, however, believes that this rule may significantly decrease the cost of purchasing and operating light-sport aircraft. See the full economic analysis in the public docket for this rulemaking.

Consensus Standards Topics

In the notice, the FAA proposed that consensus standards address airworthiness certification and continued airworthiness. In the NPRM, the proposed definition for consensus standard specified that the standard address "* * * aircraft design and performance, quality assurance system requirements, production acceptance test specifications, and continued operational safety monitoring system characteristics." Based on comments received from the public on the proposed rule and as a result of FAA review of the NPRM, the FAA has determined that the consensus standard definition should be expanded to include additional topics. These additional topics are related to aircraft maintenance and operations, or subjects that should be more appropriately addressed as separate topics rather than as subsections within the four topics listed in the FAA's proposed definition.

In view of this consideration, the consensus standards definition is being revised to specifically require the consensus standards to address topics other than the four specified in the proposed rule. The revised definition sets forth a broader approach. It generally specifies that the consensus standards must address the three subjects of aircraft design, production and airworthiness. Additional specific topics the consensus standards must address are set forth in the revised definition. Consensus standards may address additional topics, as determined by the consensus standards body. As a result of FAA's review of questions from commenters to the NPRM, and as a result of FAA's participation in the ongoing development of consensus standards, the FAA has determined that the consensus standards must address the following topics so that appropriate information and procedures are provided for manufacturers and operators of light-sport aircraft.

Design and Performance: The consensus standard includes a design and performance section, which should address the following:

(1) Methodology for determining parameters associated with the definition of light-sport aircraft. The consensus standard should provide methodologies for determining definition parameters such as: maximum takeoff weight; maximum airspeed in level flight with maximum continuous power (V_H); maximum never-exceed speed (V_{NE}) for gliders; maximum stalling speed or minimum steady flight speed without the use of lift-enhancing devices (V_{S1}).

(2) Methodology for distinguishing different make and model aircraft from the same manufacturer and for updating and recording information that may change during the course of the production of the make and model aircraft.

Required Equipment: The FAA did not expressly propose to require the consensus standard to address or include minimum equipment in the NPRM. However, the FAA notes that certain aircraft equipment is required by part 91 to operate in the NAS. The FAA notes that, because the requirements of § 91.205 do not apply to these aircraft, the FAA has revised the definition of consensus standard to specifically indicate that a consensus standard must address required equipment. The design and performance portion of the consensus standard, therefore, should indicate standards for performance for equipment that is required for specific authorized operations. The FAA recognizes that the operator of a light-sport aircraft may have a variety of privileges based on differing certificate privileges or individual logbook endorsements. However, a person may not exercise those privileges, unless the aircraft is appropriately equipped.

Quality Assurance: Commenters recommended that instructors functioning also as dealers, be allowed to continue to assemble weight-shift-control and powered parachutes kits for their clients. They did not believe that this privilege should be limited to the factory (manufacturer). The commenters also expressed an interest in assembling, demonstrating, and selling the aircraft. They cite that they were already providing these distributor-type services. They further stated that costs to ship a completed aircraft are much more than shipping a kit-built aircraft that can be assembled at the final destination. The FAA agrees that persons other than the manufacturer may complete the assembly of light-sport aircraft subject to this rule. This may be permitted provided the consensus standard addresses how the manufacturer will control these outside entities under its quality assurance system. The consensus standard should address how the manufacturer maintains oversight of the persons and the processes of assembly, and, if the aircraft is delivered to a dealer for assembly, procedures for the dealer to issue a statement of compliance on behalf of the manufacturer. The manufacturer that issues the statement of compliance is responsible for the quality of the end product, and this includes material supplied by, or assembly work performed by, a person or other entity.

In the proposed definition, the term "quality assurance system requirements" has been revised to read "manufacturer quality assurance systems" to emphasize that the aircraft manufacturer has the overall responsibility to assure that safe aircraft are delivered to its customers.

Production Acceptance Tests: The production acceptance tests should include all tests needed to prove the aircraft's reliability and functionality. These tests may be accomplished at different stages of assembly and at final completion. The tests verify the aircraft's proper function on the ground and in the air, as required by § 21.190(c)(7). The consensus standard should include tests that demonstrate that the aircraft is in a condition for safe operation. As a minimum, these ground and flight tests show that the aircraft—

- Has been assembled in accordance with the manufacturer's criteria and specifications.
- Can be operated normally throughout all ranges of capability, as defined in the consensus standard.

In the proposed definition, the term "production acceptance test specifications" has been revised to read "production acceptance test procedures." The FAA believes that use of the word "specifications" is not consistent with performance-based standards, which are preferable to prescriptive standards for aircraft built to consensus standards.

Aircraft Operating Instructions: In the proposal, the FAA stated that the consensus standards must address aircraft design and performance. The proposal did not include a specific requirement for the consensus standards to address aircraft operating instructions. Proposed § 21.186, however, required the manufacturer to identify, and the applicant to present, the applicable "Pilot Operating Handbook."

In the final rule the FAA is revising the consensus standard definition to specifically address aircraft operating instructions. Although the FAA believed that the proposed consensus standards definition would require aircraft operating instructions to be addressed in the standards for aircraft design and performance, the FAA has determined that standards for aircraft operating instructions should be developed specifically as part of the consensus standards process.

The FAA also notes that rather than using the term "Pilot Operating Handbook" in the definition of consensus standards it is using the term "Aircraft Operating Instructions." The term "Pilot Operating Handbook" is normally associated with type-certificated general aviation aircraft and may include information approved by the FAA. "Aircraft Operating Instructions," however, will not require FAA approval. "Aircraft Operating Instructions" provide methods and procedures to safely operate the aircraft. Additionally, the aircraft operating instructions specify those parameters (*e.g.* weight, stall speed, maximum speed) that show the aircraft make and model meets the light-sport aircraft definition.

Maintenance and Inspection Procedures: The proposal did not include a specific requirement for the consensus standards to address maintenance and inspection procedures. Proposed § 21.186, however, required the manufacturer to identify, and the applicant to present, the applicable maintenance and inspection procedures. In the final rule the FAA is revising the consensus standard definition to specifically address maintenance and inspection procedures. The FAA has determined that standards for maintenance and inspection procedures should be developed specifically as part of the consensus standards process.

Through the consensus standards process the rule requires the development of maintenance and inspection procedures for the entire aircraft. This includes the engine, propeller, and accessories, such as ballistic parachutes, floats, and skis. These maintenance and inspection procedures can be developed solely by the airframe manufacturer or with other manufacturers that supply engines, propellers, or other products for the aircraft. The purpose of requiring maintenance and inspection procedures is to ensure the continued airworthiness of the aircraft throughout its useful life. Maintenance and inspection procedures should contain at least two parts, one part for inspection and one for maintenance.

The inspection section should include inspection requirements and a checklist for conducting the annual condition inspection, the 100-hour inspection, or any other inspection, as needed. The inspection section should also identify any checks needed to verify adequate limits for items subject to wear or replacement due to age or time in use.

The maintenance section should specifically address major aircraft systems and components such as the engine, propeller, fuel system, flight controls, lubrication system, instrumentation, airframe, and landing gear. Each part of this maintenance section should identify the maintenance that a certificated repairman, mechanic, or repair station can perform, and those preventive maintenance tasks that a pilot can perform. For each major system, instructions should be provided that detail the service and maintenance requirements for that system, including removal and replacement instructions for components, repair and overhaul instructions for those products that can be repaired and overhauled, and how Airworthiness Directives (ADs) and Safety Directives should be addressed.

The maintenance and inspection procedures also should include a section that addresses major repairs and major alterations. This section should include the training requirements for a person to perform a major repair for each aircraft system (*e.g.*, overhaul an engine), what data should be used to perform a major repair or major alteration, and describe the process used to notify the manufacturer that a major repair or major alteration has been accomplished on its product. While a parts manual is not required to be developed as part of the required maintenance and inspection procedures, the FAA recommends that manufacturers develop these manuals to ensure the proper parts are installed.

Identification and Recording of Major Repairs and Major Alterations: The proposal did not include a specific requirement for the consensus standards to address major repairs and major alterations, and procedures to record them, for each class of light-sport aircraft. The FAA has revised the proposal to require maintenance on special light-sport aircraft to be performed in accordance with part 43, except for those requirements that apply to the performance and recording of major repairs and major alterations. In the final rule, therefore, the FAA is revising the consensus standard definition to specifically address major repairs and major alterations. The FAA has determined that standards for defining, performing, and recording major repairs and major alterations should be developed specifically as part of the consensus standards process. The consensus standard also should address the level of training a person must have before performing a major repair. Refer to the discussions of part 43 and § 91.327 for more explanation of this topic.

Continued Airworthiness: The FAA specifically requested comments from the public on its proposal that the consensus standards include provisions for defining minimum characteristics for a manufacturer's continued operational safety monitoring system. The FAA received comments both for and against the use of the FAA's existing AD process for correcting unsafe conditions in light-sport aircraft. These comments are addressed in item (2) below. The FAA discussed the expectations for a continued airworthiness system in the section-by-section analysis of the NPRM under "Definition of "Consensus Standard'" under § 1.1, and also in § 21.186(c)(6). In response to comments received concerning continued airworthiness, the following clarifies the processes that should be followed for the continued airworthiness of special light-sport aircraft.

The consensus standard should address the following:

(1) The types of occurrences or events or incidents that the aircraft owner is to report back to the manufacturer.

(2) How the manufacturer will issue Safety Directives to correct unsafe conditions, including a process for how the determination of an unsafe condition will be made. Examples of unsafe conditions include, but may not be limited to:

(a) Structural failures that reduce the aircraft ability to carry flight or ground loads;

(b) Structural failures affecting the attachment of high mass items to the aircraft;

(c) Structural failures affecting flight or powerplant control systems; or

(d) Failures that might result in occurrence of a fire in flight.

A commenter stated that for light-sport aircraft, the AD system should be

used because the aviation community is familiar with it, and it helps to assure that the owners of light-sport aircraft can be found regardless of changes of ownership of the aircraft manufacturer. A different commenter questioned if Safety Directives issued by the aircraft manufacturer would be any better quality than ADs, which the commenter believes are sometimes issued in haste and may be ineffective or burdensome. Another commenter agreed with not using the AD system, believing that the AD system can be used in the event that a manufacturer no longer exists or is no longer able to issue safety-of-flight information.

The FAA maintains the position it took in the proposed rule. The FAA does not intend to issue ADs on the special light-sport aircraft, but will issue them on type-certificated products incorporated into special light-sport aircraft, and may, if necessary, issue them on products having other forms of FAA approval. Therefore, as proposed, the final rule requires development of corrective actions for unsafe conditions in special light-sport aircraft by the aircraft manufacturer, or a group or individual that has assumed that responsibility. As described in the discussion of proposed § 21.186(c)(6), the FAA intended for the rule to provide for persons other than the manufacturer to assume continued airworthiness responsibilities in the event that the special light-sport aircraft manufacturer would cease to exist, or cease to provide safety-of-flight information.

The FAA, in discussing the intended advantages of the proposed rule, referred to the safety benefits of "* * * safety-of-flight bulletins, similar to airworthiness directives and service bulletins * * *" that would be issued by the manufacturer to correct problems that might exist on aircraft in service. A commenter recommended that the FAA change the term "safety-of-flight" to a different term such as "safety directive," since the military already uses the term "safety-of-flight" and this may cause confusion. The FAA agrees and has revised the term to "Safety Directive" in the final rule. The FAA uses the term "Safety Directive" to identify the documents that a special light-sport aircraft manufacturer issues to make changes that are needed to correct conditions that may adversely affect safety of flight for aircraft that are in service.

One commenter recommended that proposed corrective actions by individual manufacturers should be subject to industry review and acceptance within a two- or three-month time period. The FAA recognizes that this proposal would provide for a balance of manufacturer and operator interests in assuring effective continued airworthiness support of special light-sport aircraft. As the consensus standards process develops procedures for continued airworthiness, the FAA will present the commenter's proposal to the appropriate technical committee for consideration.

(3) Operator actions that will be addressed by a service publication other than a Safety Directive. This discussion addresses a comment expressing concern that manufacturers might issue mandatory part replacement or maintenance instructions that would be not be justified by any corresponding safety concern. The consensus standard should identify those situations for which the manufacturer's Safety Directives should not be issued. Those situations include, but are not limited to, circumstances in which service publications are issued to improve or enhance the following:

(a) Spare part sales;

(b) Aircraft performance, capability, or efficiency, unless the change is needed for the aircraft to meet the minimum design and performance standards identified in the consensus standard and the manufacturer's statement of compliance;

(c) Aircraft appearance;

(d) Aircraft maintainability; or

(e) Any other aircraft characteristic when the action called for does not remedy an unsafe condition, including those related to reliability which do not have an impact on safety of flight.

(4) A process for responding to requests for methods of correcting unsafe conditions that differ from those prescribed in Safety Directives. This section addresses comments recommending that the owner of a special light-sport aircraft be able to correct an unsafe condition using methods other than specified by a Safety Directive. Refer also to the discussion in § 91.327, "Safety-of-Flight Issues." The FAA notes that owner-developed alterations and repairs are permitted for experimental light-sport aircraft where compliance with Safety Directives is not mandatory.

(5) A process for permitting successor organizations to assume responsibility for providing continued airworthiness support. Adding this section to the consensus standard addresses comments recommending the consensus standard contain provisions for assuming or transferring continued airworthiness responsibilities if the original manufacturer of a light-sport aircraft goes out of business. The FAA, in the NPRM, intended to allow for this. This was discussed in the proposal in §§ 21.186(b)(1)(iv), (b)(1)(v), and (c)(6), in which the FAA allowed for a person other than the original aircraft manufacturer to assume continued airworthiness responsibilities for in-service aircraft. (The phrase "manufacturer or a person acceptable to the FAA" in proposed § 21.186(b)(1)(iv) and (v) allowed for this possibility.) A person acceptable to the FAA may include persons other than the original manufacturer, such as a licensee, designee, successor, or a person other than the manufacturer or licensee who built a product or part that was not part of the original design, (*i.e.*, a third-party modifier). In the current rule, these provisions are in § 91.327(b), since continued airworthiness of light-sport aircraft will be controlled by the operating limitations of the aircraft airworthiness certificate.

(6) A process for qualification of third-party alterations or replacement parts, if a manufacturer chooses to permit this. In the proposed rule, alterations, repairs, design modifications, or replacement parts manufactured by third parties (distinct from the manufacturer or the airplane owner) were not addressed. The FAA's assumption at the time of the NPRM was that each manufacturer would determine if it intended to permit third-party aircraft support, such as the manufacture of replacement parts, or the alteration of aircraft in service. If a manufacturer chooses to permit this, the standard should address how oversight and control of the third parties performing this service will be accomplished by the manufacturer.

The FAA also notes that the operating limitations for aircraft having the special light-sport aircraft airworthiness certificate require that all changes to an aircraft after its original manufacture be authorized by the manufacturer or other acceptable person. Aircraft modifiers, manufacturers of replacement parts for light-sport aircraft, and manufacturers of products used to modify light-sport aircraft also must comply with the provisions of the applicable consensus standard in order to be considered a person acceptable to the FAA.

(7) A process for responding to an aircraft owner's assertion that a Safety Directive was issued for reasons other than to correct an unsafe condition. Providing this process also responds to the previously stated concern that manufacturers might require the operator to purchase expensive parts and make changes to the aircraft that do not correct an unsafe condition. By developing guidelines through an appropriate consensus standard, the

balanced representation of interests will help to minimize the possibility of a manufacturer issuing a safety directive for an inappropriate reason. If an aircraft owner believes a Safety Directive was issued for reasons other than to correct an unsafe condition, the owner should raise this issue to the manufacturer. The consensus standard process should address how the manufacturer reviews the request, and how it responds to the aircraft owner by justifying its position that the Safety Directive addresses an existing unsafe condition affecting the aircraft. The FAA notes that a manufacturer may permit an alternative means of compliance to the Safety Directive. In the event that the aircraft owner does not accept the manufacturer's response and chooses not to correct the condition in a manner permitted by the manufacturer, the aircraft owner may request a waiver from the FAA to operate his or her aircraft without following the Safety Directive. See the discussion of the "waiver" process under § 91.327, "Safety-of-flight issues."

(8) A process for reviewing ADs issued on FAA-approved products used in special light-sport aircraft. Upon further internal review, the FAA recognized that special light-sport aircraft may embody equipment that has its own FAA approval (*e.g.*, engines, propellers, communications equipment, instruments). Owners of special light-sport aircraft will be required to comply with applicable ADs issued against FAA-approved products installed on special light-sport aircraft. For details, see the discussion under § 91.327 "Safety-of-flight issues."

In addition, the FAA believes that the consensus standards should also address—

Manufacturer's Assembly Instructions. In proposed § 21.193(e)(5), the FAA stated an expectation that kit-built experimental light-sport aircraft would be assembled following detailed instructions provided by the manufacturer. This was stated in the section-by-section analysis of the NPRM. However, the FAA did not establish any requirements with regard to the quality of those assembly instructions. In the final rule, a requirement is being added to § 21.193(e)(4) for the assembly instructions to meet the consensus standard. Also, there is a change to § 21.191(i)(2) requiring that the assembler provide evidence that he or she assembled the aircraft according to the manufacturer's instructions.

The manufacturer should prescribe the details of an individual aircraft assembly process. The objective is for the assembly instructions to provide the detailed instructions to build and safely flight test the product. Any necessary mechanical skills or training should be defined. The instructions should prescribe the tooling, fixtures, inspections, measurements, and other pertinent items that must be recorded by the assembler and presented to the FAA or the FAA representative, such as, the Designated Airworthiness Representative (DAR), as evidence that the manufacturer's assembly instructions were followed.

In the proposed definition, the term "continued operational safety monitoring system characteristics" is revised to read "continued airworthiness." The changed language requires the consensus standard to address continued airworthiness subjects that may be considered outside the scope of a continued operational safety monitoring system.

Changes

The definition of "consensus standard" is changed in the final rule as follows:

The words "consensus airworthiness standard" are changed to "consensus standard."

The word "governs" is changed to "applies to."

The words "aircraft design and performance" are changed to "aircraft design, production, and airworthiness."

The four topics that a consensus standard would govern have been revised and additional specific items have been added to the list of items that a consensus standard must address.

The definition now lists the items that a consensus standard "includes but is not limited to." The topics specified in the definition now include "standards for aircraft design and performance, required equipment, manufacturer quality assurance systems, production acceptance test procedures, operating instructions, maintenance and inspection procedures, identification and recording of major repairs and major alterations, and continued airworthiness."

Definition of "Light-Sport Aircraft"

Overview

The FAA believes that there might be confusion concerning what airworthiness certificates apply to light-sport aircraft. Therefore, the FAA is clarifying this issue. A sport pilot may operate any aircraft that meets the definition in § 1.1 of a light-sport aircraft, regardless of the airworthiness certificate issued for the aircraft. An aircraft that meets the light-sport aircraft definition may have any airworthiness certificate that may be issued for an aircraft, such as standard, special, primary, or experimental amateur-built aircraft. An aircraft that meets the light-sport aircraft definition and holds a standard airworthiness certificate must be operated and maintained in accordance with the limitations of that airworthiness certificate. For example, the sport pilot must operate the aircraft within the limits of the aircraft's flight manual and type certificate data sheet. Also, maintenance will still need to be done in accordance with part 43 by an appropriately rated mechanic, repairman, or repair station. A repairman (light-sport aircraft) is not authorized to conduct any maintenance on an aircraft issued a standard airworthiness certificate or a special airworthiness certificate in a category other than light-sport.

Numerous commenters raised issues pertaining to the design attributes associated with the definition of light-sport aircraft. A majority recommended expanding the design attributes in one or more areas, such as maximum weight, stall speed, or cruise speed. The design attributes associated with the definition are discussed individually later in this section.

As stated in the proposal, the FAA intended to limit the definition of light-sport aircraft to primarily address the population of ultralight-like aircraft that are being operated under exemptions to part 103 to conduct flight training. The rule was not primarily intended to address type-certificated and vintage aircraft where there were not significant regulatory, certification, or operational issues. The FAA recognizes that any aircraft that meets the light-sport aircraft definition may be operated by a sport pilot. However, it is necessary for the FAA to use its judgment and discretion in setting limits on aircraft to be flown by sport pilots.

The most frequently cited justification to increasing one or more design attributes associated with the light-sport aircraft definition was to enable existing aircraft designs to be operated as light-sport aircraft. A majority of these comments contended that the light-sport aircraft definition should be expanded to accept these additional aircraft simply because these larger or higher performance aircraft could be safely operated as light-sport aircraft.

While some changes were made to the design attributes of the definition, there was only one change made to the definition as a result of comments pertaining to operating type-certificated aircraft as light-sport aircraft. The change prohibits aircraft modified to

meet the parameters of the definition from being operated as light-sport aircraft. The reasoning for this change is explained below.

One commenter noted that the FAA's proposal is unique in attempting to address aircraft for used for recreation rather than transportation purposes. Some commenters expressed concern that the light-sport aircraft definition did not describe how a given constraint would be shown to be satisfied. Neither a § 1.1 definition nor an operating rule definition is normally so complete as to establish how compliance with the definition is determined.

Another commenter noted that the definition of an aircraft category is usually established in the applicability section of the appropriate airworthiness standard, rather than in § 1.1. The FAA agrees with this observation. However, there will not be airworthiness standards set forth in specific parts of the Code of Federal Regulations, and the definition of light-sport aircraft will be applicable to a variety of different kinds of aircraft. Also, the definition is significant both for aircraft and airman certification purposes. For these reasons, it is appropriate for the FAA to establish these limits for the light-sport aircraft in the general definitions section of part 1.

Many commenters wanted various existing airplanes to be included in the light-sport aircraft definition. Many of these commenters believe that the existing service record of these airplanes makes them safe and more affordable than a new airplane. The FAA recognizes that certain aircraft that do not meet the definition of light-sport aircraft may have operating characteristics that are similar to aircraft that meet the definition. The FAA determined that the values used in the definition strike an appropriate balance between safety and public interest. Refer to the discussion under "III.1. FAA Judgment and Discretion." The FAA has revised the light-sport aircraft definition without the intent to include or exclude specific aircraft.

General Comments on the Design Attributes in the Light-Sport Aircraft Definition

There was considerable interest in changing the design attributes that control the definition of light-sport aircraft. The FAA received numerous general questions and comments on aircraft currently certificated. Some commenters operating aircraft with a standard or an experimental certificate stated that their aircraft nearly met the definition of light-sport aircraft. Many of these commenters expressed their desire that the light-sport aircraft definition be changed to include their aircraft, whether it be an airplane with a standard airworthiness certificate, an amateur-built aircraft, or a vintage aircraft with a standard airworthiness certificate. Several commenters stated a desire that the FAA revise the light-sport aircraft definition to permit them to obtain the perceived advantages of the sport pilot certificate's medical provisions when operating their aircraft.

Commenters also requested clarification as to how compliance with some of the parameters used to define light-sport aircraft will be determined. The most frequently cited parameters were maximum takeoff weight, maximum airspeed in level flight with maximum continuous power V_H, and stall speeds V_{S1} (without lift enhancing devices) and V_{S0} (landing configuration). As discussed under § 1.1, the consensus standards will address details on methods of demonstrating compliance.

A commenter stated that the light-sport aircraft definition should require ballistic parachute recovery systems as protection in case of inadvertent encounter of instrument flight rule (IFR) weather conditions. The FAA disagrees. This rule does not directly prescribe design or equipment standards, those are contained in the consensus standard.

Modifications of Aircraft To Meet the Light-Sport Aircraft Definition

Some commenters stated that aircraft with quite high payload and performance characteristics that far exceed the stated definition of light-sport aircraft could be modified to meet the definition of light-sport aircraft. The FAA has revised the definition of light-sport aircraft in the rule to prevent these modifications. The FAA notes that these types of modified aircraft are outside the stated purpose of the proposal. The proposal identified light-sport aircraft as aircraft that exceed the limits set in § 103.1, and are compatible with the skills and training required to obtain a sport pilot certificate. Light-sport aircraft are simple low-performance aircraft that are distinct from small aircraft that can be designed and built to existing airworthiness standards. In the proposal, the FAA permitted sport pilots to fly any aircraft that meets the light-sport aircraft definition. In prohibiting modifications to aircraft to meet the light-sport aircraft definition, the FAA seeks to ensure that the light-sport aircraft operating characteristics are consistent with the skills and training for the sport pilot. The FAA is concerned that modifications to an aircraft to meet the light-sport aircraft definition may increase its complexity to a level that is inappropriate for the capabilities of the sport pilot. This is the FAA's rationale for excluding these modified aircraft from the light-sport aircraft definition.

The FAA notes that compliance with light-sport aircraft parameters can be more readily verified for type-certificated aircraft than for amateur-built aircraft certificated under existing § 21.191(g). Amateur-built aircraft do not have a TC, a flight manual, or a type certificate data sheet. Because of this, it may be difficult to determine if aircraft with other than a standard airworthiness certificate meets the limits listed for a light-sport aircraft and can be operated by a sport pilot. The FAA anticipates that the aircraft design consensus standard will include methodologies that will readily enable a determination that an aircraft design meets the light-sport aircraft definition.

Requests for Light-Sport Aircraft Definition To Include Additional Kinds of Aircraft

A number of commenters wanted "light" helicopters and gyroplanes to be included in the definition of light-sport aircraft. They believed that these aircraft are suited for the sport and recreation that the proposed rule addresses.

As stated in the proposal, the FAA did not include helicopters because their complex design, manufacture, and operation is beyond what the FAA envisioned for light-sport aircraft. The FAA included gyroplanes in the light-sport aircraft definition, but does not intend to issue the special airworthiness certificate in the light-sport category for gyroplanes. See the discussion of paragraph (9) of the definition of light-sport aircraft below.

Several comments recommended that the light-sport aircraft definition include individual unique aircraft designs, such as flying platforms or tandem wing aircraft. The FAA disagrees. The light-sport aircraft definition does not need to address every possible variation of aircraft. The FAA believes that the unique nature of these aircraft precludes the development of consensus standards for these aircraft at this time. However, these aircraft remain eligible for the experimental certificate for operating amateur-built aircraft, under existing § 21.191(g). A few commenters requested that aircraft with standard airworthiness certificates not be included in the sport pilot program. As stated in the proposed rule, a sport pilot may fly an aircraft with a standard airworthiness certificate, if it meets the definition of light-sport aircraft. See also

§ 21.175 discussion on airworthiness certificates. As stated above in the section titled "Modifications of Aircraft To Meet the Light-Sport Aircraft Definition," a sport pilot may not fly an aircraft with a standard airworthiness certificate that has been modified to meet the light-sport aircraft definition.

Comments Concerning the Limits Established by the Light-Sport Aircraft Definition

Many commenters suggested alternatives to the maximum speed as limiting factors for the light-sport aircraft definition. The alternatives proposed included wing loading (airplane weight divided by airplane wing area); horsepower (ranging from 80 to 180 horsepower); fuel capacity; aircraft payload; kinetic energy of the airplane at cruise speed; weight of the drive train package. One commenter proposed to base the light-sport aircraft definition on the weights and aerodynamic performance of the J–3 Cub airplane. The FAA disagrees that the light-sport aircraft definition should be changed to replace the maximum speed limit with a different limiting design condition. The FAA does not believe that any of the alternatives suggested will be a better, more readily determined method of assuring that light-sport aircraft are simple, low performance aircraft. The FAA has not eliminated a maximum speed in the light-sport aircraft definition. However, the light-sport aircraft definition has been revised to increase the maximum speed limit. The FAA has not adopted an alternative approach to setting an upper limit to the power or performance of a light-sport aircraft. However the FAA decided that the light-sport aircraft definition should set an upper limit for aircraft power to assure that the aircraft is suitable for the sport pilot. The FAA believes that the maximum airspeed limit, combined with a maximum takeoff weight, acceptably serves this purpose, for the reasons originally stated in the proposed rule. The FAA discusses each of the attributes of the light-sport aircraft definition elsewhere in this section.

Some commenters believed that the limits in the FAA's definition of light-sport aircraft would limit innovation, or lead to the development of unsafe aircraft. The FAA disagrees with this opinion, and believes that the consensus standards process and the FAA's participation in that process will lead to an acceptable balance between innovation and safety.

A few commenters requested that the FAA use the definition of microlight aircraft established by the International Aeronautical Federation (FAI). The FAA did consider this definition in developing its proposal. The microlight aircraft definition primarily addresses weight, seating capacity, and stall speed. The FAA notes that the light-sport aircraft definition addresses significantly more parameters than the definition of microlight aircraft. The FAA developed this definition to provide for the development of an aircraft that matches the capabilities of the sport pilot.

A few commenters believed that the FAA's definition of light-sport aircraft was too broad. Alternatives suggested included three different weight limits for light-sport aircraft, and the two-tiered system proposed by USUA and discussed in detail under "III.5.A. Comments on Ultralight Vehicles." The FAA disagrees that the light-sport aircraft definition should be changed to address different weight limits for different kinds of light-sport aircraft. The FAA believes that the use of a broad definition for light-sport aircraft, along with the development of consensus standards appropriate for each class of aircraft, will result in safe and economical aircraft for the wide range of products in recreational aviation.

One commenter suggested eliminating the word "light" from the definition, to prevent the implication that there might be medium- and heavy-sport aircraft to follow. Another commenter suggested "Class III aircraft" as an alternative, stating that the public might form an impression that light-sport aircraft "* * * are frivolous toys." The FAA disagrees with these opinions and believes that the words used to describe "light-sport aircraft" are adequate to distinguish this category of aircraft.

Several commenters stated that the cost of new aircraft would be prohibitive with the goals of the proposed rule. The FAA disagrees. The aircraft certification process that uses industry consensus standards and a manufacturer's statement of compliance is a lower-cost approach than type and production certification. Refer to the full regulatory evaluation that is in the rulemaking docket for a detailed discussion on the estimated cost to the end user.

A commenter suggested that light-sport aircraft should have a maximum noise limit established and verified by a simple protocol to be defined in the consensus standard for aircraft performance. The commenter believed that including a noise limit would prevent adverse public impressions of light-sport aircraft. Current amateur-built aircraft do not require compliance with a maximum noise limit. Presently, part 36 noise standards are applicable only to aircraft with a type certificate or a standard airworthiness certificate. See "XIV. Environmental Analysis" below.

Paragraph (1) Maximum Certificated Takeoff Weight

Some commenters stated that lacking a definition of maximum takeoff weight, aircraft with fairly high performance characteristics could meet the definition of light-sport aircraft by limiting the approved weight and payload of the airplane. The FAA considers this a valid concern and has provided some additional constraints on the weight as detailed below. The maximum weight of a light-sport aircraft is the sum of:

(1) Aircraft empty weight;

(2) Weight of the passenger for each seat installed;

(3) Baggage allowance for each passenger; and

(4) Full fuel, including a minimum of the half-hour fuel reserve required for day visual flight rules in § 91.151(a)(1).

Some commenters wanted the weight increased to permit stronger aircraft structures, use of four-stroke or type-certificated engines, electrical systems for avionics, starters for engines, or ballistic recovery systems. The FAA is increasing the weight limitation of the light-sport aircraft from the proposed 1,232 pounds (560 kilograms) to 1,320 pounds (600 kilograms). The originally proposed weight limitation was based on the 1,200-pound weight limitation proposed by the ARAC's light-sport aircraft working group. The FAA agrees that there may be a safety benefit to light-sport aircraft designs to include provisions for currently produced type-certificated four-stroke engines and ballistic parachute recovery systems. Commenters submitted data that indicated that an additional 60 to 70 pounds would accommodate four-stroke aviation powerplants, and that an additional 30 to 40 pounds would accommodate the ballistic parachute recovery systems. For these reasons, the FAA has revised its proposed maximum takeoff weight limitation to 1,320 pounds (600 kilograms) for aircraft designed for operation on land.

In addition, many commenters requested that the proposed weight limitation be increased to accommodate flying boats, amphibious or float plane aircraft designs. The FAA originally envisioned these kinds of aircraft in its proposed light-sport aircraft definition. Recommendations from these commenters indicated weights ranging from 100 pounds to 250 pounds to allow for amphibious or float plane capability. The rule provides for a maximum take-off weight of 1,430 pounds for light-

sport aircraft designed for operation on water. The 110-pound weight increase compared to an aircraft not designed for operation on water is consistent with data submitted regarding weight of floats for microlight type aircraft.

Some commenters objected to setting a weight limit that becomes a specific number of pounds based on conversion of kilograms to pounds, assuming that the FAA is relying solely upon foreign airworthiness standards in establishing the light-sport aircraft category. The FAA stated weight limitations are different from those used by other airworthiness authorities for the reasons stated in the two preceding paragraphs.

Many commenters proposed alternative weight limits, ranging from 1,250 to 2,650 pounds, to encompass a number of existing general aviation or classic aircraft. In the FAA's judgment, the weight limit in the rule is appropriate for the light-sport aircraft to be compatible with the skills and training of the sport pilot.

Some commenters wanted the weight increased, stating that a passenger weight of 170 pounds is not realistic today. The FAA notes that the maximum take-off weight includes the weight of the occupants. The manufacturer may want to consider this in their design and communicate any weight limits to the customer. A few commenters stated that the FAA should use weight other than maximum takeoff weight as a limiting condition. Alternatives suggested by commenters included aircraft empty weight, or maximum payload. The FAA believes that the maximum take-off weight is an appropriate limiting parameter for light-sport aircraft, because it is an objective measure that can easily be determined when the aircraft configuration is specified.

A few commenters agreed with the FAA's originally proposed weight limit of 1,232 pounds for aircraft that are not lighter-than-air (LTA) aircraft. Some commenters questioned the rationale for the FAA's originally proposed weight limit. As stated above, the weight limit originally proposed by the FAA for other than LTA was a balance between the original ARAC recommendation for light-sport aircraft, and existing foreign airworthiness requirements for sport aircraft, such as microlights and aircraft certificated under the Joint Airworthiness Requirements for Very Light Aircraft (JAR–VLA).

Some commenters objected to the FAA's proposed weight limit of 660 pounds (300 kilograms) for an LTA aircraft, stating that the weight limit is too low for a two-passenger hot air balloon. One comment asked if the weight limit was intended to refer to an uninflated mass. The FAA intended for the LTA weight limit to be comparable to the weight limit for the other light-sport aircraft designs, that is, a maximum mass for the aircraft. The FAA intended for the weight limit to include the aircraft with passengers and fuel, and the weight of the lifting gas (the product of lifting gas volume and density) added to the weight of the uninflated mass. For airships, the FAA intended the defined weight limit to include the empty weight of the airship, the weight of pilot and passenger, fuel, and lifting gas (FAA–P–8110–2, "Airship Design Criteria," paragraph 2–4). One commenter provided a weight statement for a two-passenger hot air balloon, saying that 800 to 1,000 pounds would be appropriate in that it would allow for two 15-gallon fuel tanks, or 230 pounds of fuel. The FAA disagrees. The FAA's originally proposed weight limit for LTA aircraft was based on a review of the weights of type-certificated manned free balloons. The FAA believed that the maximum weight permitted for a LTA light-sport aircraft should not be greater than the maximum weight of currently existing type-certificated manned free balloons. The FAA believes the requirements in part 21 and part 31 are appropriate for the manufacture and design of hot air balloons larger than proposed by the FAA.

Additionally, one commenter stated that 2,200 pounds would be an appropriate weight limit for airships in the light-sport aircraft category because the low speeds for takeoff or approach to landing would result in low kinetic energy. The commenter also expressed concern that existing very light hot air airships are robust enough to accommodate two large persons plus the systems and structures for a powered LTA aircraft. The commenter did not provide any data to support the position that the weight limit in the FAA's proposal or the existing airship design certification criteria for small airships used for sport and personal recreation are unnecessarily burdensome. The FAA believes that the requirements of part 21 and the guidance contained in FAA publication FAA–P–8110–2, "Airship Design Criteria" are appropriate for the manufacture and design of airships as large as that proposed by the commenter.

Several commenters stated that the FAA's proposed weight limit for the light-sport aircraft definition had the effect of eliminating some existing certificated aircraft that they believed were ideally suited for the sport pilot rule. One commenter's opinion was that the FAA strategically established the weight limit to favor the sale of new, more expensive light-sport aircraft. The FAA did not have such a purpose in mind when it established its proposed light-sport aircraft weight limit. Also, in establishing the light-sport aircraft, FAA did not intend to promote existing certificated aircraft. When the FAA initially set the proposed limits for the light-sport aircraft definition, the FAA did not look at currently built aircraft, either with type certificate approval or in the amateur-built aircraft marketplace. The FAA's proposed definition was to address aircraft to be designed and built for the sport pilot, rather than addressing existing aircraft for currently certificated pilots.

A commenter stated that the proposed weight limit eliminates the eligibility of many production aircraft, and seems to cater to homebuilt aircraft. The FAA disagrees with this opinion. The reasons for the weight limit were discussed in the proposal and were intended to accommodate a wide variety of simple, low performance aircraft that have no more than two occupants. The FAA has explained elsewhere in this section the reasons for its changes to the proposed weight limit in the light-sport aircraft definition. A few commenters noted that the FAA's originally proposed weight limit would result in some models in a particular classic aircraft line being eligible for the light-sport aircraft category, while other models in the same line would not be eligible. The FAA believes that this is evidence that the weight limit for light-sport aircraft was not drawn with the intent of including or excluding specific aircraft.

A commenter proposed that the FAA establish different weight limits for single- and two-seat aircraft. This would add an additional limiting condition to the definition of light-sport aircraft. The FAA disagrees. The weight is only one component of the definition. The FAA believes that its weight limit is appropriate for a two-seat aircraft. One of the main purposes of the light-sport aircraft definition is to provide appropriate flight training aircraft for sport pilots. The weight limit proposed by the FAA is intended to accommodate aircraft designed for two occupants. The FAA does not have data that would support establishing a reduced weight limit for single occupant aircraft. The FAA notes, however, that a manufacturer may choose to produce a single place aircraft with a weight less than the maximum permitted by the rule. A commenter stated that the weight limit will preclude tricycle landing gear on light-sport aircraft, and that will make light-sport aircraft more

difficult to operate by low-time pilots. The FAA does not agree that the weight limit will preclude tricycle gear light-sport aircraft. The FAA is aware of tricycle-gear aircraft that meet the light-sport aircraft weight limit.

A commenter proposed that the FAA's weight limit should only apply to powered parachutes and weight-shift-control aircraft, and that higher weights should be permitted for airplanes in the light-sport aircraft category. The FAA disagrees that different weight limits should be established for powered parachutes, weight-shift-control aircraft, and airplanes. However, the FAA agrees that the weight limit for light-sport aircraft should be raised and has done so in the final rule. The FAA believes that the maximum weight limits established in the light-sport aircraft definition will permit the design and manufacture of two-seat airplanes suitable for operation by sport pilots. Manufacturers of powered parachutes and weight-shift control aircraft may manufacture aircraft that weigh less than the maximum weight limit permitted by the light-sport aircraft definition.

Some commenters stated that low stall speed is more important than aircraft weight. The FAA agrees that low stall speed is important; however, the FAA does not believe that the light-sport aircraft definition should identify any one attribute of the definition as more important than another.

Commenters recommended that sport pilots be permitted to fly aircraft heavier than the FAA's proposed weight limits with a logbook endorsement. Another commenter proposed that sport pilots with higher experience levels be permitted to fly aircraft heavier than the FAA's proposed weight limits. A different commenter said that for 5 years following the adoption of the FAA's proposal, sport pilots should be permitted to fly existing general aviation training aircraft that are within 120 percent of the limits established in the light-sport aircraft definition. The FAA disagrees that sport pilots should be permitted to fly aircraft heavier than the weight limits for light-sport aircraft. The FAA believes that a pilot operating aircraft above these weights should have at least a private or recreational pilot's certificate. For further discussion on sport pilot training limits reference the discussion titled "Flight Training and Proficiency Requirements" in the section on Part 61 general issues.

Paragraph (2) Maximum Airspeed in Level Flight With Maximum Continuous Power (V_H)

As discussed in more detail later in this section, the FAA always intended that the light-sport aircraft definition would establish an appropriate limiting maximum airspeed. During the preliminary discussions to set the design attributes proposed in the NPRM, the FAA considered a range of limiting airspeeds. When setting an appropriate limiting maximum airspeed, the FAA took into account that: (1) Training requirements for the sport pilot certificate are based on the simplicity of the aircraft's operating characteristics; and (2) aircraft certification requirements are based on a performance envelope appropriate for a light-sport aircraft.

In constructing the light-sport aircraft definition, the FAA also took into consideration three groups of aircraft that will be addressed by this rule: (1) Two-place ultralight-like aircraft that have been operating under an exemption to part 103; (2) new light-sport aircraft to be designed, manufactured and operated under this rule; and (3) existing aircraft whose low performance capabilities would meet the light-sport aircraft definition. In the proposed rule, the FAA believed that the 115 knots CAS V_H limit met the two considerations in the preceding paragraph and covered the range of aircraft described in this paragraph.

Additionally, the FAA specifically requested additional input through the light-sport aircraft online forum on methods to establish upper limits for the light-sport aircraft definition. To read the online forum comments, go to the electronic docket address given above in the section titled "Availability of Rulemaking Documents" and view item number 2676 in Docket No. FAA–2001–11133.

The FAA still believes that establishing a maximum airspeed in level flight at maximum continuous power (V_H) is the best way to limit "high-end" capability of the powered light-sport aircraft. With the change to the light-sport aircraft definition permitting increased weight, which may provide for the use of higher-powered engines, the FAA is also increasing V_H to 120 knots. The FAA believes that this small increase is appropriate for the revised light-sport aircraft definition and remains consistent with the purpose that was the basis for the originally proposed 115-knot CAS (V_H) limit. The FAA believes that the training required for sport pilots operating light-sport aircraft over 87 knots (V_H) addresses any training concerns and that the change in the V_H airspeed limit from 115 to 120 knots does not require any additional training beyond what is established in the rule.

Some commenters believed that the proposed airspeed limitation, V_H, should be eliminated and some commenters state that unlimited maximum speeds would not jeopardize safety. A commenter said that the FAA should impose other design limits or flight characteristics instead of a maximum speed limit for light-sport airplanes. One commenter specifically asked why the FAA cares how fast the airplane can fly. The FAA disagrees that a maximum speed limit is unnecessary for light-sport aircraft. As stated in the NPRM, the FAA believes that a maximum speed limit is appropriate for aircraft designed for operation by persons with the minimum training and experience of a sport pilot. Some commenters state that the maximum speed limitation is essentially unenforceable. For the purpose of issuing the special light-sport aircraft airworthiness certificate, the FAA believes that the consensus standards will identify an easily repeatable demonstration for the manufacturer to prove that the aircraft meets the light-sport aircraft definition. The manufacturer will perform this test in support of its statement of compliance.

One commenter stated that aircraft speeds vary with altitude, and the light-sport aircraft definition did not state any FAA expectation concerning this. The FAA agrees with the comment, and is specifying in the light-sport aircraft definition that performance limitations are expected to be met for standard atmospheric conditions at sea level.

Commenters stated that the FAA's proposed limit of 115 knots maximum airspeed in level flight with maximum continuous power is unnecessary or redundant because the aircraft weight and stall speed establish power and wing loading, which effectively set drag that limits maximum speed. One commenter proposed that a weight limit of 750 pounds for a single-seat light-sport airplane would limit power and airspeed without requiring a design constraint. Alternatively, some commenters proposed that the sport pilot accept an operating limitation to not operate at speeds in excess of the FAA's desired limit. A commenter proposed that a sport pilot operating limitation of 100 knots CAS in the airport traffic pattern should be an alternative to the proposed light-sport aircraft maximum airspeed limit. The FAA believes that because of the wide variety of aircraft to be included in the

light-sport aircraft definition, the use of airplane-based parameters is not adequate to eliminate an upper limit on light-sport aircraft speed. The FAA requires a maximum speed limit to assure a light-sport aircraft design that is compatible with the capabilities of a sport pilot. However the FAA disagrees with the use of operating limitations to prescribe limitations on the aircraft definition. Using operating limitations instead of aircraft design limits may permit sport pilots to use aircraft that exceed the parameters of the light-sport aircraft definition.

Commenters requested that the FAA consider alternative maximum speed limits, ranging from 120 to 187 knots CAS. One commenter proposed that the maximum airspeed limit should be 120 knots, so that 2 nautical miles (NM) per minute would simplify navigation by pilotage. The FAA disagrees that simplifying navigation by pilotage would be an appropriate justification; however, the FAA is increasing the maximum speed value to 120 knots CAS from the 115 knots CAS originally proposed. As previously stated, the FAA believes this small increase is appropriate for the revised definition of "light-sport aircraft," and it remains consistent with the original proposal. The FAA does not believe that this change will materially affect the population of aircraft that are eligible to meet the definition of light-sport aircraft.

Commenters stated that the proposed limit is unenforceable, because a propeller pitch change can increase or decrease the airplane speed at maximum power. Some commenters asked if flat pitch propellers or engine governors would be permitted as a way for an airplane to satisfy the maximum airspeed constraint. The FAA agrees that the manufacturer may use flat pitch propellers or engine governors as part of the aircraft design to demonstrate compliance with the light-sport aircraft definition. If an aircraft propeller or engine configuration causes the aircraft to exceed the prescribed limitations, the aircraft will not be considered to meet the definition of light-sport aircraft. The FAA notes that although it is not permitting variable pitch propellers, the use of ground adjustable propellers is permitted. The FAA expects the airplane manufacturer to define the airplane configuration, using critical parameters, when determining compliance with the light-sport aircraft definition. The FAA expects that the sport pilot will operate the aircraft in the configuration that the manufacturer used to demonstrate compliance with the light-sport aircraft definition.

Commenters stated that the proposed limit is impractical, because when the airplane nose drops, it will accelerate and possibly exceed the limit set by the light-sport aircraft definition. The FAA disagrees that the limit is impractical. The proposed limit is for straight and level flight only and should not be confused with a maximum operating speed or a maximum dive speed. The consensus standard for airplane design and performance will assure that the aircraft structure has adequate margins to be operated within its allowable speed range.

Several commenters stated that the same flying skills are needed for a slower or a faster airplane. The FAA disagrees and notes that the skills necessary to operate an aircraft that exceeds 120 knots differ from those skills necessary to operate a light-sport aircraft. In addition, the FAA requires a sport pilot to obtain additional training to operate an aircraft with V_H greater than 87 knots and less than 120 knots because different skills are necessary to operate these light-sport aircraft with higher performance capabilities. For further discussion on training requirements reference "V.5.A.iii. Flight Training and Proficiency Requirements" in the discussion of Part 61 general issues.

A commenter proposed that a different light-sport airplane category permit faster airplanes, or that a sport pilot be permitted to operate faster airplanes with a logbook endorsement. The FAA disagrees that sport pilots should be permitted to fly faster aircraft heavier than permitted by the definition of light-sport aircraft. The FAA believes that a pilot operating aircraft above the speed in the definition should have at least a private or recreational pilot's certificate because the FAA believes it would not be appropriate or safe for persons with the minimum training and experience of a sport pilot to operate faster or heavier aircraft.

A commenter stated that cruise speed has little to do with aircraft energy when the aircraft is out of control. The FAA notes that the purpose of the limitation on speed is to make it easier for the sport pilot to maintain aircraft control. The FAA believes that, at higher cruise speeds, the possibility for adverse consequences from momentary loss of control is greater. Commenters objected that the proposed limit would force the design of inefficient aircraft. The FAA disagrees with this opinion. Faster aircraft are not necessarily more efficient than slower aircraft. Maximum speed is not an indication as to whether or not an aircraft has an efficient design. An efficient aircraft design (with lower drag) can provide benefits to the operator other than increased speed. Such benefits may permit the aircraft to use a smaller engine, have increased range, or have increased payload capacity.

Some commenters proposed that a horsepower limit would be more suitable than a maximum speed limit. A commenter stated that horsepower and drag are the factors that set airplane maximum speed. The FAA agrees that there are alternative methods of limiting aircraft speed, however, the FAA has chosen to limit the speed directly rather than indirectly through some other parameter. Due to the variability of aircraft design the FAA believes that limiting horsepower would not necessarily result in consistent maximum airspeed limitations.

Some commenters stated that higher speed does not affect safety, but insufficient power may reduce safety. The FAA has previously discussed how higher speed may affect safety. With regard to simple, low-performance aircraft, the design and performance consensus standard will ensure that all aircraft meet a minimum performance standard and therefore provide an acceptable level of safety. Several commenters stated that the maximum airspeed is dependent upon throttle position, and that operating at 100% throttle is not a normal operation. Although this statement is true, the FAA has determined that it is appropriate to impose a maximum speed limit for the reasons stated above.

Another commenter stated that many airplanes "claim" inflated top speeds, so only a demonstrated maximum speed would be credible. The FAA agrees and notes that V_H was selected as it is easily demonstrated. Several commenters noted that in-service variations affecting engine or propeller efficiency, instrument calibration, or airplane aerodynamics could cause significant variations in actual maximum airspeed. The FAA agrees that some small variations in actual aircraft performance are to be expected. However, the FAA believes that a demonstration by the manufacturer of the aircraft's maximum airspeed in a specified configuration is adequate to ensure that the airplane design is compatible with the light-sport aircraft definition. A commenter stated that foreign sport airplane airworthiness standards do not impose a maximum airspeed requirement, and this would be an unfair advantage compared to American aircraft. The FAA disagrees that foreign aircraft have an unfair advantage. Regardless of the country of manufacture, in order to be considered a light-sport aircraft, the aircraft must

meet the parameters of the light-sport aircraft definition.

A commenter proposed that the light-sport aircraft definition should assure structural integrity by requiring that the maximum speed in level flight with maximum continuous power, V_H, be less than or equal to the design maneuvering speed (V_A) at altitudes of 8,000 feet or less. Because the FAA is not establishing structural limits in the definition of light-sport aircraft, it would be inappropriate to include this constraint in the definition. The FAA believes that this would be an excessive restriction for light-sport aircraft.

Paragraph (3) Maximum Never-Exceed Speed (V_{NE}) for a Glider

A commenter stated that the FAA's proposed maximum speed of 115 knots for a glider does not provide adequate protection against headwinds or wind shear. A commenter asked that the never-exceed speed (V_{NE}) be increased slightly to allow for increased safety, utility, and comfort. Several comments recommended increased V_{NE} for gliders. Additional comments expressed satisfaction with the consistency with the V_H for powered aircraft. The FAA is aware that the two maximum speed limits established in the light-sport aircraft definition have two different bases. As stated in the previous section, the FAA's concern is that the light-sport aircraft definition set a maximum speed limit for the aircraft to be flown by sport pilots. In response to the comments reported in this section, in the final rule, V_{NE} for gliders is increased to 120 knots CAS. This is done to maintain consistency between the V_H value for powered aircraft and the V_{NE} value for gliders.

Proposed Paragraph (4) Maximum Stalling Speed or Minimum Steady Flight Speed in Landing Configuration (V_{S0})

Some commenters recommended that the FAA eliminate the 39-knot stall speed in the landing configuration. Many comments recommended raising the limit of 39 knots CAS in the landing configuration. Some commenters questioned the narrow proposed spread between the originally proposed V_{S0} (proposed in paragraph (4)) of 39 knots CAS and the V_{S1} (proposed in paragraph (5)) of 44 knots CAS.

The FAA agrees that the proposed spread of stall speeds in practice is narrow, and provides a mixed message as to the limiting design condition. A low stall speed is desirable, but not at the expense of forcing a simple aircraft that otherwise meets the definition to become more complex to operate and maintain by adding flaps to a design for no other purpose than to meet the V_{S0} requirement. Light-sport aircraft may have flaps because the safety benefit of this feature can be achieved without the complexity inherent in retractable landing gear or controllable-pitch propellers. The FAA is eliminating the maximum stalling speed in the landing configuration (V_{S0}) restriction that was proposed in paragraph (4) of the NPRM because the low-speed limit is adequately addressed by the maximum "clean" stall speed (V_{S1}).

Final Rule Paragraph (4) Maximum Stalling Speed or Minimum Steady Flight Speed Without the Use of Lift-Enhancing Devices (V_{S1}) (Proposed as Paragraph (5))

The FAA received numerous comments concerning the two proposed maximum stall speeds. Some commenters agreed with the stall speeds originally proposed by the FAA. Many commenters proposed higher alternative values for the light-sport aircraft stall speed limit, ranging from 45 miles per hour (mph) (39 knots) to 63 mph (55 knots). Typically, commenters referred to a particular homebuilt, classic, or existing training airplane as being appropriate for consideration under the light-sport aircraft definition and for operation by a sport pilot. The FAA did not establish a maximum stall speed for light-sport aircraft based on the parameters of particular aircraft.

Additionally, one commenter asked why the stall speeds were so low. The FAA's proposed stall speeds were based on early discussions with light-sport aircraft industry representatives. A basic design principle for light-sport aircraft is that the stall speed for these aircraft is about one third of the aircraft maximum speed. The FAA notes that when it increased the maximum aircraft speed in the final rule it also increased the maximum stall speed accordingly.

A commenter stated that the FAA should increase the stall speed to a range of 50 mph to 60 mph, "* * * which would be above what is generally encountered as normally high runway turbulence and would lead to safer landings." The FAA believes that the stall speed established in the light-sport aircraft definition should be adequate to address airport surface conditions normally encountered by light-sport aircraft. Permitting significantly increased stall speeds may have the effect of changing the takeoff and landing characteristics of light-sport aircraft to a degree that is inappropriate for their operation by sport pilots.

A commenter stated that a 50-knot stall speed would be needed for light-sport aircraft to operate in Class B, C, or D airspace. The FAA does not agree that operating in these airspace classes requires such a high stall speed and notes that ultralight vehicles may operate in Class B, C, or D airspace with ATC permission. Additionally, other aircraft with stall speeds below 50 knots routinely operate in these classes of airspace.

A commenter proposed that the FAA require shoulder harnesses in light-sport aircraft and then increase the proposed stall speed limits by 10 percent. The FAA disagrees that installing shoulder harnesses should permit increased stall speeds for light-sport aircraft. This rule does not directly prescribe equipment standards as those are contained in the consensus standards.

A commenter proposed that an increased stall speed would permit a higher aircraft weight, which would permit installation of more navigation and communication equipment on the light-sport aircraft. As noted elsewhere in this section, to accommodate the weight increase and maximum speed increase from the originally proposed maximum values, the FAA is increasing the limit stall speed without the use of lift enhancing devices V_{S1} to 45 knots CAS.

Several commenters proposed that the light-sport aircraft should have a lower stall speed limit. One reasoned that slower flight permits a wider choice of emergency landing fields. Several stated that the stall speed should be as low as possible for safety's sake. The FAA agrees with these principles; however, disagrees with the need to lower the proposed stall speed. The FAA believes that the revised stall speed is appropriate for aircraft that might weigh as much as the maximum weight limit that is established in the light-sport aircraft definition. The FAA notes that the maximum stall speed does not prohibit a manufacturer from producing lighter aircraft with lower stall speeds.

A commenter believed that 30 to 35 knots would be better than the value proposed by the FAA, and recommended that the part 103 stall speed of 24 knots would be even better. As described in detail elsewhere in this section, the FAA believes that an increased stall speed for light-sport aircraft is appropriate for the maximum aircraft weight permitted by the light-sport aircraft definition. The FAA notes that the light-sport aircraft definition is intended to broadly encompass a wide range of aircraft for sport pilots. Some light-sport aircraft design parameters significantly exceed the parameters of vehicles operating under part 103. Therefore, it would not be appropriate

to use the part 103 stall speed limits for all light-sport aircraft.

A commenter agreed with the concern for a low stall speed, but stated that pilot awareness should better focus on airplane angle of attack rather than speed. The FAA agrees that there is a need to limit the capability of the light-sport aircraft but notes that angle of attack is not an appropriate design parameter for these aircraft. Pilot training typically addresses critical aircraft attitudes, including angle of attack.

A commenter stated that FAA should clarify that aircraft speeds are more accurately represented by knots True Air Speed (TAS) or knots Calibrated Air Speed (CAS), rather than knots Indicated Air Speed (IAS). Both the proposal and the final rule refer to speeds in knots CAS.

Commenters asked for details on how the stall speed is determined. The definition was changed to specify that maximum stalling speed is determined at maximum weight, with most critical center of gravity location, at sea level standard day conditions. However, the actual test method is to be defined in the consensus standard.

Final Rule Paragraph (5) Maximum Seating Capacity (Proposed As Paragraph (6))

Several commenters stated that the FAA should permit more than two seats for the light-sport aircraft. Additionally, a commenter asked if four-seat airplanes could meet the light-sport aircraft definition with limitation of only using two seats. Light-sport aircraft are simple, non-complex, aircraft and adding more seats or passengers would add to the weight and complexity of these aircraft resulting in operational characteristics that would be inappropriate for the sport pilot. A commenter asked if a single-seat aircraft is eligible as a light-sport aircraft. The definition permits a single-seat aircraft.

A commenter asked if side-by-side seating would be permitted for flight instruction. Another commenter questioned the permissible arrangement of the seats in a two-place aircraft. Side-by-side or tandem seating is permitted under this rule. The definition does not define the arrangement of the seats.

Final Rule Paragraph (6) Single, Reciprocating Engine (Proposed As Paragraph (7))

Commenters recommended that the light-sport aircraft definition allow for multi-engine aircraft, turbine-powered aircraft, or both. The FAA disagrees with this suggestion. Multi-engine and turbine-powered aircraft introduce a level of operational and mechanical complexity that extends far beyond the scope of this rule. Current pilot certification rules require an additional rating for multi-engine operation and a type rating for turbojet powered aircraft. These additional pilot ratings are not available to the holder of a sport pilot certificate. Further, most turbopropeller engines make use of cockpit-controllable variable pitch propellers and many have a reverse thrust operational mode as well. Such devices are mechanically and operationally complex, requiring more extensive training to operate in flight and having far more complex maintenance requirements. Therefore, the definition of light-sport aircraft will continue to exclude multiengine or turbine-powered aircraft.

Several commenters proposed that small turbine engines be permitted for light-sport aircraft. Reasons included simplicity of design and operation, desire to foster innovation, and safety relative to a propeller design. A commenter stated that a small turbine engine permits a simpler powerplant package for a powered glider than a propeller engine. The FAA does not agree that turbine engines are appropriate for the light-sport aircraft category. Turbine engines possess inherent design characteristics that must be accommodated by stringent design, maintenance, and operating criteria that are inconsistent with the light-sport aircraft regulatory philosophy. Specifically, turbine engine failure modes, such as disc bursts, can be catastrophic to the aircraft. The FAA has established engine and airframe certification regulations to address these failure modes such as mandatory life limits, extensive engine analyses and testing, and airframe layout, structural and performance criteria that require extensive FAA oversight that is beyond the scope of this rulemaking.

Many commenters stated that light-sport aircraft should have the safety benefit of multi-engine reliability. A commenter stated that small multi-engine ultralight-like airplanes respond differently to a single engine failure than relatively larger general aviation aircraft. Another commenter stated that the light-sport aircraft performance would assure that multi-engine operation would require a negligible difference in pilot skills. Another proposed to require only a single thrust line and permit multi-engines. Another proposed that the light-sport aircraft definition contain suggested specific performance values and include provisions that would result in a light-sport aircraft having docile handling characteristics to accommodate single-engine failure in a multi-engine layout. A commenter proposed that multi-engines be permitted, with a combined horsepower limit. For the reasons stated previously, the FAA disagrees that light-sport aircraft should be permitted to have multiple engines because of the additional operational complexity of these aircraft.

A commenter stated that for ultralight-like aircraft, the engines should be considered non-essential equipment. Another commenter stated that because ultralight pilots are trained to stay within safe gliding distance from an emergency landing field then engines should be considered as non-essential equipment. The FAA will permit the teams developing the design consensus standards for the different classes of light-sport aircraft to determine whether engine operation is essential to the safe operation of these aircraft. Neither the light-sport aircraft definition nor the rule directly prescribes standards for design of equipment, such as engines. The FAA believes that in many instances light-sport aircraft will be operated well beyond safe gliding distances from an emergency landing field.

A commenter asked if type-certificated engines will be required for light-sport aircraft. The FAA notes that the rule does not require the installation of type-certificated engines.

The FAA notes that in the final rule the term "single non-turbine engine" has been modified to single reciprocating non-turbine engine. This was done to preclude light-sport aircraft powered by rocket engines but still permit rotary and diesel engines.

Final Rule Paragraphs (7) and (8) Propellers (Proposed as Paragraph (8))

The FAA received numerous comments on the proposed definition limiting powered light-sport aircraft to a fixed or ground-adjustable propeller. Several commenters stated that existing electronically controlled in-flight adjustable propellers are widely used in the ultralight industry, and are not as complicated as hydromechanically controlled constant-speed propellers. A commenter stated that the light-sport aircraft definition should not stifle innovation in developing automatically controlled adjustable propellers. Most of the commenters stated that electrically driven variable-pitch propellers have been used on ultralight vehicles, and that they are not inherently complex and recommended changing the definition to include variable-pitch propellers. The FAA does not agree that the light-sport aircraft definition should

be changed to permit controllable pitch propellers. These propellers add operational complexity to an aircraft, as well as the potential for mechanical failure. In addition, because of the training requirements for sport pilots and repairmen (light-sport aircraft), the FAA does not believe that light-sport aircraft should have controllable pitch propellers. The FAA further notes that a controllable-pitch propeller is one of the characteristics of a complex airplane as listed in § 61.31 (e). As stated in the proposed rule, the FAA intends for light-sport aircraft to be simple, low performance aircraft.

Commenters proposed that adjustable-pitch propellers are needed for safety and performance benefits for powered aircraft, particularly for seaplanes. One commenter stated that the maximum speed limit and additional weight for floatplanes should permit adjustable propellers for those aircraft. Another commenter noted that reversible propellers are typically used by floatplanes as brakes in surface operations on the water. The FAA does not believe that these benefits justify permitting controllable pitch propellers for these aircraft for the reasons stated above.

Commenters proposed that controllable pitch propellers be permitted on light-sport aircraft and that a sport pilot be permitted to operate that aircraft if the pilot has the appropriate training and a corresponding endorsement. The FAA does not agree that the light-sport aircraft definition should be revised to permit this because it would require a level of training for sport pilots and repairmen (light-sport aircraft) that is not commensurate with the privileges of those certificates.

A commenter proposed that adjustable propellers be permitted on light-sport aircraft, but that a private pilot license be required for these aircraft. Light-sport aircraft are intended to be flown by persons exercising privileges of a sport pilot. In addition, the FAA notes that private pilots may fly aircraft with adjustable propellers; however those aircraft are not considered light-sport aircraft.

A commenter asked if the FAA would require operators of existing weight-shift-control and powered parachute aircraft to remove their in-flight electronically adjustable propellers. If the operator wishes the aircraft to be considered a light-sport aircraft, the aircraft may not be equipped with an in-flight adjustable propeller. Under the provisions of § 21.191(i)(1), existing aircraft would have to meet the definition of a light-sport aircraft in order to receive an experimental certificate for the purpose of operating a light-sport aircraft. The operator may be able to qualify for another experimental certificate for a different purpose such as amateur-built.

Some commenters recommended that the light-sport aircraft definition include particular aircraft that have constant-speed propellers. Some commenters stated that variable-pitch propellers provide performance benefits for smaller powerplants, and that this can be a safety benefit. The FAA does not agree that these potential benefits outweigh concerns discussed previously concerning the complexity of operations and maintenance for light-sport aircraft.

Some commenters stated that seaplanes use reversible-pitch propellers to assist in water handling characteristics and that the definition of light-sport aircraft be modified to permit reversible-pitch props on seaplanes. For the reasons stated above, the FAA disagrees and will not permit the use of reversible pitch propellers for seaplanes.

Some commenters requested that the light-sport aircraft definition permit powered gliders to have in-flight adjustable propellers. According to the commenters, powered gliders use a small motor and propeller to prolong the cruise or soaring flight. The powerplant may also be used for self-launching of the powered glider. A number of different systems exist, ranging from a windmilling propeller, to various autofeather propeller systems, to systems that fold the propeller and stow the motor.

The FAA notes that reduction of drag is critical to safe operation of unpowered and powered gliders. Powered gliders are a unique kind of light-sport aircraft in that they use a propeller to carry the aircraft to glide altitude, then the engine is turned off as the aircraft begins soaring flight. If the propeller were not stowed or faired from the cockpit to reduce drag, the aircraft's glide performance would be greatly hindered.

The FAA further notes that propellers used on powered gliders are simple and only allow the pilot to feather or retract the propeller from the cockpit once the engine has been shut down. In addition, potential failure of these systems does not add to pilot workload during the more critical flight phases of takeoff or landing. Therefore, the FAA believes that the use of an autofeathering propeller system is appropriate for powered gliders. The proposed light-sport aircraft definition is revised in the final rule to permit autofeathering propeller systems on powered gliders.

Paragraph (9) Gyroplane Rotor System

The definition of light-sport aircraft in proposed § 1.1 included gyroplanes. As discussed in the NPRM, the FAA did not propose to issue special airworthiness certificates for gyroplanes in the light-sport category. The FAA received numerous comments on the subject of gyroplanes (or autogyros or gyrocopters), including a submittal from the gyroplane trade association. Most of the comments concerned the availability of dual-instruction, and the effect that terminating current training exemptions would have on the availability of training for gyroplane pilots. The FAA included gyroplanes in the light-sport aircraft definition to permit a sport pilot to fly the small gyroplanes that are currently available on the market. The FAA believes that the training exemptions have permitted some increased availability of gyroplane flight instructors because the exemptions allowed for a two-seat gyroplane to be operated as an ultralight training vehicle by a qualified ultralight instructor. Existing two-seat gyroplanes that had been operated as training vehicles under the part 103 exemptions, and which have been certificated under § 21.191(i)(1), will be permitted to conduct similar flight training operations for five years, as provided for in § 91.319 in this rule. The part 61 provisions of the rule will permit an existing ultralight gyroplane flight instructor to transition to become a flight instructor with a sport pilot rating. The FAA anticipates that this 5-year transition period will permit the gyroplane flight instructor pool to continue to expand to address the concerns of most of the commenters.

Two-seat gyroplanes that have been issued experimental certificates for the purpose of operating amateur-built aircraft under § 21.191(g) may be operated in accordance with operating limitations issued under § 91.319. Generally, they may be used for sport and recreation operations, including carrying a passenger, and receiving personal flight training. Receiving personal flight training (obtaining credit for flight instruction received in the aircraft that one owns) was a concern for some commenters.

Many of the commenters were concerned that the consensus standards for light-sport aircraft would add prohibitively expensive costs to gyroplanes, and would result in fewer gyroplane flight instructors. The FAA notes that there are four gyroplane designs that have been type certificated. The FAA notes that many gyroplane designs are smaller and lighter weight

than type certificated gyroplane designs. One commenter stated that even with less mass, ultralight gyroplanes are not different from existing gyroplanes and could be considered similar to gyroplanes that have a standard airworthiness certificate. If it is true that existing ultralight gyroplanes are similar to gyroplanes that have a standard airworthiness certificate, then the FAA will work with any manufacturer who desires to obtain a type certificate for a two-seat gyroplane that meets existing airworthiness standards. Part 27 airworthiness standards define an internationally recognized level of safety for small rotary wing aircraft. A gyroplane design may also receive a primary category type certificate, which will be issued if the FAA finds that the aircraft complies with the applicable airworthiness requirements approved under § 21.17(f) and has no feature or characteristic that makes it unsafe for its intended use.

Many of the commenters who called for the special light-sport aircraft airworthiness certificate for gyroplanes referred to the simple design and operation of flight controls. The FAA acknowledges that this is a reason for permitting sport pilots to fly gyroplanes, and for that reason the FAA included gyroplanes in the light-sport aircraft definition. However, the FAA does not agree that this operational simplicity would apply to design and performance criteria for the light-sport aircraft gyroplane design. Complicating design factors for gyroplanes include the location of thrust and lift lines with respect to the center of gravity; horizontal and vertical stabilizer size and location; and effects of turbulence. Larger gyroplanes have greater inertia, which makes the aircraft less sensitive to the relative effects of these factors. The FAA believes that the dynamics of a rotary wing aircraft and the light weight of existing two-seat ultralight gyroplanes require a design standard for structural integrity and aircraft stability that may add prohibitively expensive costs to gyroplanes. One commenter expressed doubt that the ultralight gyroplane industry would agree upon a design standard.

The FAA reviewed gyroplane accident statistics in the NTSB's electronic database. The data show 70 fatal accidents in the years 1983 through 1994 with mechanical failures accounting for 12 of those accidents. Data show 20 fatal accidents in the years 1995 through 2001, and mechanical failures accounting for two of those accidents. This data tends to support those commenters who state that gyroplane safety is better served by increased availability of training rather than different standards for design and performance of gyroplanes. Refer to the discussion under "VI.5.A.viii. Gyroplanes" for details on how this rule proposes to assure better training for sport pilots seeking a gyroplane rating.

To summarize, the FAA stated in the NPRM that, for sport pilots flying light-sport aircraft, the continued use of exemptions would generally be inappropriate to allow aircraft larger than the limits in part 103 to be used for flight training. At this time, the FAA is not participating in developing consensus standards for gyroplanes, because the FAA believes that, unlike other kinds of light-sport aircraft, there are significant complex design issues for gyroplanes that are unresolved by the industry. The simplicity of operation of gyroplanes supports making this aircraft available to sport pilots. The need for dual instruction in gyroplanes, and the scarcity of gyroplane instructors, is reason for the FAA to issue training exemptions for the gyroplane community. Including gyroplanes in the light-sport aircraft definition will permit the continued construction of two-seat gyroplanes that will support increased availability of gyroplane flight instructors. If the gyroplane community is successful in developing a design and performance consensus standard, and if service experience, including accident data, demonstrates a marked difference between ultralight gyroplanes and those that are built to that voluntary consensus standard, then the FAA may revise the rule to permit gyroplanes to receive the special airworthiness certificates in the light-sport category. Otherwise, before the end of the 5-year period during which aircraft certificated under § 21.191(i)(1) may be used for flight training for compensation, the FAA may consider if it will continue to keep exemptions in place to allow flight instructors to train sport pilots in gyroplanes issued experimental certificates.

Paragraph (10) Nonpressurized Cabin

The FAA did not receive any comments on the proposed requirement for a light-sport aircraft to include a nonpressurized cabin, if equipped with a cabin, in paragraph (10).

Paragraphs (11) Through (13) Landing Gear

Numerous commenters requested that the FAA revise the proposed definition of a light-sport aircraft to permit retractable landing gear. The FAA reiterates its original position that for aircraft other than gliders, retractable landing gear is inconsistent with the simplicity of the light-sport aircraft, and the training requirements for the sport pilot.

The FAA received many comments requesting that the light-sport aircraft definition allow for simple mechanical retractable landing gear. Some commenters requested that specific existing aircraft that have simple mechanical retractable landing gear be eligible to be a light-sport aircraft. They noted these aircraft would otherwise satisfy the FAA's proposed definition of light-sport aircraft. The reasons stated by commenters for permitting light-sport aircraft to have retractable landing gear included—the safety benefit for emergency landings on water or rough fields; that speed limitations make the performance restriction of a fixed gear redundant; that training and endorsement for pilots under existing § 61.31(e) adequately prepares pilots to operate aircraft with retractable landing gear; that the slow speed of light-sport aircraft will naturally limit damage in event of an inadvertent gear-up landing; that gear-up landings are not an uncommon occurrence; and that mechanical retractable landing gear is inherently simple compared to electrical, hydraulic, or pneumatically actuated systems. The FAA disagrees that aircraft other than gliders should have simple mechanical, or any other type of, retractable landing gear for the reasons stated above.

A commenter asked the FAA to define its safety concern for not permitting light-sport aircraft to have retractable landing gear. The FAA does not expect retractable gear would improve the safety of a light-sport aircraft. The FAA believes that retractable landing gear add to pilot workload, particularly during the critical takeoff and landing phases of flight. Further, the addition of retractable landing gear would introduce the potential for gear failure. Therefore, the FAA believes that allowing the use of retractable landing gear on light-sport aircraft other than gliders would provide no safety benefit for powered airplanes while adding to the operational and mechanical complexity of the aircraft.

Many of these commenters stated their position that retractable landing gear does not add to aircraft complexity while helping to reduce drag and increase aircraft performance. The FAA disagrees and notes that retractable gear adds complexity as discussed above. The FAA notes that retractable landing gear are designed to enhance the performance of aircraft by reducing drag. This performance improvement is typically attained at operational speeds that exceed the performance limitations

for light-sport aircraft. Several commenters proposed alternative rule language to permit simple mechanical retractable landing gear, and to define repositionable landing gear. As stated above, the FAA is not revising the light-sport aircraft definition to permit retractable landing gear on aircraft other than gliders. The FAA discusses repositionable landing gear later in this section.

Some commenters proposed to permit simple mechanical retractable landing gear for specific makes and models of aircraft, which would otherwise satisfy the proposed light-sport aircraft definition. Other proposed exceptions included replica fighter aircraft, and existing classic aircraft. The FAA does not agree for the reasons stated elsewhere in this section.

A commenter submitted a description of an existing aircraft mechanical retractable landing gear, with a pneumatic gear position indicating system. The FAA believes that the system's complex description justifies the FAA's position that it is inappropriate for the light-sport aircraft.

Several commenters stated that it is discriminatory to permit retractable landing gear for some kinds of light-sport aircraft but not for others. The FAA explains below why it is allowing retractable landing gear for gliders.

Several commenters stated that, by including a reference to landing gear, the FAA does not include provisions for foot-launched aircraft, such as hang gliders and powered paragliders in the light-sport aircraft definition. The FAA does not consider these to be light-sport aircraft. As stated in the proposed rule, the FAA specifically intended to exclude from consideration as light-sport aircraft configurations in which the engine and/or wing is mounted on the person operating the aircraft, rather than a fuselage.

A commenter requested a definition of repositionable landing gear that distinguishes it from retractable landing gear. The FAA notes that for the purposes of light-sport aircraft, repositionable landing gear is wheeled landing gear that allows an aircraft designed for operation on water to take off and land from a hard surface and which may be retracted on the ground to permit takeoff and landing on water. Repositionable landing gear remains fixed in its position from takeoff through landing. For aircraft intended for operation on water, repositionable landing gear is acceptable for light-sport aircraft because it does not add to mechanical or operational complexity.

In the proposed rule, the FAA had permitted repositionable landing gear for seaplanes. The FAA had not intended to only permit repositionable landing gear for fixed wing airplanes intended for operation on water. Upon further consideration, the FAA has changed the term "seaplanes" to "aircraft designed for operation on water." This change in terminology is consistent with FAA's original intention to permit powered parachutes and weight-shift-control aircraft to be used for operation on water. It also removes the restrictions on powered parachutes and weight-shift-control aircraft designed for operation on water implied by the use of the term "seaplanes." As noted previously in the discussion of light-sport aircraft weight limits, the FAA has also intended to permit the light-sport aircraft definition to include flying boat aircraft. For this reason, the FAA has added the term "hull" to paragraph (12) of the light-sport aircraft definition.

Several commenters saw no difference between simple retractable landing gear, and the repositionable landing gear that the FAA's proposal would permit for seaplanes. The FAA disagrees. The FAA did not intend to permit retractable landing gear for aircraft designed for operation on water. The FAA believes that the repositionable landing gear that will be permitted for light-sport aircraft that are designed for operation on water is consistent with the FAA's original position that sport pilots flying aircraft other than gliders should not have to concern themselves with verifying the position of a light-sport aircraft's landing gear.

Although no comments were received on the topic, FAA did not intend for the definition of light-sport aircraft to preclude the installation of skis. FAA believes that fixed skis are acceptable for light-sport aircraft, and retractable skis are not acceptable for light-sport aircraft.

Some commenters pointed out a need for provisions for a simple retractable wheel for gliders that are light-sport aircraft. The FAA agrees that retractable landing gear is acceptable for use on light-sport gliders. Most of the gliders that otherwise meet the definition of a light-sport aircraft do make use of retractable landing gear. Reduction of drag is of critical importance for gliders, because they do not use power to generate airspeed and maintain lift. Because of these considerations, the FAA is revising the definition of a light-sport aircraft to permit a retractable landing gear (wheel or skid) for gliders. The consensus standards for light-sport aircraft gliders should assure that the retractable landing gear will be a simple mechanically operated system.

Changes

The words, "since its original certification has continued to meet the following" are added to the introductory text of § 1.1. The reasons for this are discussed in the section titled "Modification of Type-Certificated Aircraft to Meet the Light-Sport Aircraft Definition."

The FAA is restructuring the maximum takeoff weight requirements in paragraph (1) of the definition of "light-sport aircraft." In addition, the FAA is changing the maximum takeoff weight from "1,232 pounds (560 kilograms)" to "not more than 1,320 pounds (600 kilograms)" and is adding "1,430 pounds (650 kilograms) for an aircraft designed for operation on water."

For the V_H requirements in paragraph (2), "115 knots CAS under standard atmospheric conditions" is changed in the final rule to read "120 knots CAS under standard atmospheric conditions at sea level."

In paragraph (3) (regarding V_{NE} for a glider), "115 knots CAS" is changed to "120 knots CAS."

Proposed paragraph (4) (regarding V_{S0}) is not adopted in the final rule.

Proposed paragraph (5) (regarding V_{S1}) is adopted as paragraph (4) in the final rule, with the following change. The words "44 knots CAS" are changed to read, "45 knots CAS at the aircraft's maximum certificated takeoff weight and most critical center of gravity."

Proposed paragraph (6), prescribing a maximum seating capacity of two seats, is renumbered as paragraph (5) in the final rule and adopted with the addition of a non-substantive change to include the words "no more than."

Proposed paragraph (7), prescribing a single, non-turbine engine for powered light-sport aircraft, is renumbered as paragraph (6) in the final rule and modified by replacing the word "nonturbine" with "reciprocating."

The fixed or ground-adjustable propeller requirements for light-sport aircraft in proposed paragraph (8) are divided into paragraphs (7) and (8) in the final rule to distinguish between powered gliders and other powered aircraft. In the final rule, paragraph (7) requires a fixed or ground-adjustable propeller for powered aircraft other than a powered glider. Paragraph (8) requires a fixed or autofeathering propeller system for a powered glider.

Paragraph (9), regarding the gyroplane rotor system, is adopted without change.

Paragraph (10), concerning a nonpressurized cabin, is adopted without change.

Proposed paragraph (11) contained requirements for fixed landing gear for

light-sport aircraft, with an exception permitting repositionable landing gear for seaplanes. In the final rule, this is modified and divided into paragraphs (11) and (12) in the final rule for clarity. In the final rule, paragraph (11) requires fixed landing gear, except for an aircraft intended for operation on water or a glider. Paragraph (12) requires fixed or repositionable landing gear, floats, or a hull for an aircraft intended for operation on water.

Paragraph (13) is added to permit fixed or retractable landing gear for gliders.

Definition of "Powered Parachute"

Several commenters requested that the powered parachute definition be broadened to permit paragliders and paramotors, or other forms of foot-launched aircraft. Some commenters were opposed to identifying these aircraft as powered parachutes. The FAA does not intend light-sport aircraft to include foot-launched aircraft because the variety of these aircraft combined with the lack of an aircraft fuselage and an aircraft geometry based on the individual characteristics of the operator would not be consistent with the FAA's desire for training aircraft built to specific design and performance standards.

Commenters proposed that the rule make provisions for land- and sea-classes for powered parachutes. The proposed rules for aircraft certification do not preclude this, assuming that appropriate aircraft design consensus standards for both land and sea class powered parachutes are developed. Similarly, the FAA did not intend to preclude the installation of skis on powered parachutes. As stated previously, the FAA believes that fixed skis are acceptable for light-sport aircraft. The FAA will participate in the development of the consensus standards for powered parachute design and performance, and will determine when these standards are completed and acceptable for use.

Some commenters proposed specific language for the definition of a powered parachute. The FAA agrees that the definition should make clear that the wing of a powered parachute does not deploy unless the aircraft is in motion, and is revising the definition to accommodate this. Also, the definition is being revised to characterize the powered parachute wing as "flexible" or "semi-rigid" instead of the term "non-rigid" that was used in the proposed rule. This change more closely represents current designs for powered parachutes. In the proposed rule, the definition described the wing as "* * * inflat[ing] into a lifting surface when exposed to a wind." The definition is revised to state "* * * the wing is not in a position for flight until the aircraft is in motion* * *" to more correctly correspond to powered parachute operational practice. The language in the proposed definition stated that the engine is an integral part of the aircraft. The definition is revised to specify that the engine is a part of the fuselage, as was intended by the FAA. Also, the revised definition specifies that the seats are a part of the fuselage. That is consistent with current designs and was intended by the FAA. The language in the proposal did not address this consideration.

A commenter proposed that the definition identify different classes of powered parachutes, including utility or commercial. The FAA notes that powered parachutes will not be issued type certificates. Aircraft used for commercial purposes typically have a type certificate based on compliance with the airworthiness standards and certification procedural requirements contained in 14 CFR. The FAA intends that experimental and special light-sport aircraft be limited to activities generally considered to be sport and recreation. The operating limitations for experimental and special light-sport aircraft will generally prohibit these aircraft from being used for commercial purposes.

The FAA received comments that the definition for powered parachute aircraft should not be limited to aircraft with a fuselage. The FAA does not agree for reasons stated in the proposed rule and notes that to remove this restriction would permit foot-launched vehicles, such as powered paragliders, to be considered light-sport aircraft. The FAA retains the requirement for a fuselage in the definition.

Changes

The proposed rule stated: "A powered parachute means a powered aircraft that derives its lift from a non-rigid wing that inflates into a lifting surface when exposed to a wind." This is changed to state: "A powered parachute means a powered aircraft comprised of a flexible or semi-rigid wing connected to a fuselage so that the wing is not in position for flight until the aircraft is in motion."

The proposed definition also stated: "A powered parachute is propelled by an engine that is an integral part of the aircraft and is controlled by a pilot within a fuselage that is suspended beneath the non-rigid wing." The definition is changed to state: "The fuselage of a powered parachute contains the aircraft engine, a seat for each occupant and is attached to wheels or floats."

Definition of "Weight-Shift-Control Aircraft"

Several commenters proposed alternative definitions for the weight-shift-control aircraft that would permit rigid wings with ailerons and rudder control. One commenter noted that the consensus standard for weight-shift-control aircraft that is being developed makes provisions for rigid-wing aircraft. The commenter believes that this is a good feature. The FAA's definition identified "* * * a framed, pivoting wing * * *." A rigid wing is beyond what the FAA intended for these aircraft. The FAA intended for the weight-shift-control aircraft classification to address only flex-wing aircraft. The definition is being revised to clarify this by specifically indicating that the aircraft is "controllable only in pitch and roll."

A commenter questioned the FAA's objective in making a classification for weight-shift-control aircraft. The FAA believes that weight-shift-control aircraft should be distinguished not only by their use of flexible wings and weight shift for flight control, but also by the aircraft response to a pilot input. Pilot input is applied to a control bar that is a rigid wing member. The rigid wing member is limited to translation in a lateral plane that is either push forward (aircraft nose up)/pull aft (aircraft nose down), or push left (aircraft turn right)/push right (aircraft turn left). The former motions control aircraft pitch; the latter motions control aircraft roll. These motions cause aircraft response in the opposite sense for a conventional three-axis-control aircraft. The training for sport pilots to operate a weight-shift-control aircraft is based on these assumptions.

A commenter stated that the definition of a weight-shift-control aircraft should more correctly address control by changing the direction of wing lift, rather than changing the aircraft center of gravity location. The commenter also noted that if aircraft center of gravity location is calculated with respect to a fuselage station, then the pilot control inputs do not change the airplane center of gravity location. The FAA agrees with the commenter, and the weight-shift-control aircraft definition is revised to indicate that for flight control the center of gravity location is considered in relation to the wing.

The FAA did receive some comments that the definition for weight-shift-control aircraft should not be limited to

aircraft with a fuselage. The FAA does not agree for reasons stated in the proposed rule and notes that to remove this restriction would permit foot-launched vehicles, such as powered or unpowered hang gliders, to be considered light-sport aircraft. The FAA has retained the requirement for a fuselage.

The FAA is working with the weight-shift-control aircraft technical committee of ASTM. The FAA has discussed with this group that the definition of weight-shift-control aircraft should be limited to two-axis-control aircraft, in which the wing pitch attitude may vary, and the wing position may be moved about the longitudinal axis of the aircraft. The definition of weight-shift-control aircraft precludes yaw control by vertical surfaces, or hinged control surfaces such as a rudder or ailerons to distinguish these aircraft from airplanes.

Changes

The proposed definition of weight-shift control aircraft stated: "Weight-shift-control aircraft means a powered aircraft with a framed pivoting wing and a fuselage that is controllable in pitch and roll only by the pilot's ability to change the aircraft's center of gravity." This is changed to state: "Weight-shift-control aircraft means a powered aircraft with a framed pivoting wing and a fuselage controllable only in pitch and roll by the pilot's ability to change the aircraft's center of gravity with respect to the wing."

The FAA is also adding to the definition the following sentence: "Flight control of the aircraft depends on the wing's ability to flexibly deform rather than the use of control surfaces."

V.2. Part 21—Certification Procedures for Products and Parts

Section 21.175 Airworthiness Certificates: Classification

A few commenters recommended that light-sport aircraft be issued standard airworthiness certificates. The FAA agrees that a light-sport aircraft may be issued a standard airworthiness certificate if it meets the requirements of the airworthiness standards under § 21.175(a). But an aircraft issued a standard airworthiness certificate requires a type certificate for its design, and usually a production certificate to be manufactured. Any light-sport aircraft not manufactured under a type certificate cannot be issued a standard airworthiness certificate.

One commenter recommended that light-sport be added as a category of airworthiness certificate. The FAA agrees in part, but, as proposed in the NPRM and adopted in this final rule, determines that light-sport aircraft will be added as a category under special airworthiness certificate. Aircraft may receive a special airworthiness certificate in two separate ways. First, an aircraft may receive a special airworthiness certificate in the light-sport category if that aircraft meets a consensus standard. Second, if a light-sport aircraft does not meet a consensus standard, the owner may obtain an experimental certificate for it.

One commenter recommended retaining experimental as a purpose, and not as a classification, on the special airworthiness certificate. The FAA disagrees. Taking this action would not allow the FAA to distinguish the various purposes for which experimental certificates are issued. Also, this action was not proposed and is outside the scope of this rulemaking.

A few other commenters recommended that light-sport aircraft be required to have type certificates. One purpose of this rule is to provide for increased safety without substantially increasing the burden on the industry. Imposing type design requirements would add substantially to the cost of producing aircraft. A type certificate will not be necessary for light-sport aircraft that are certificated as special light-sport aircraft or experimental light-sport aircraft. They are issued airworthiness certificates with operating limitations that provide an appropriate level of safety for these aircraft. However, if the manufacturer of a light-sport aircraft chooses to apply to the FAA and demonstrates the appropriate level of compliance with the existing regulations, it may obtain a type certificate for its light-sport aircraft.

Finally, upon further review, the FAA is correcting the wording of paragraph (b) to remove the word "categories" and the words "experimental airworthiness certificate" are corrected to read "experimental certificate." This is necessary because all of the items in the list are not categories of special airworthiness certificates, and the experimental certificate does not indicate the airworthiness standards that the aircraft meets.

Changes

In paragraph (b), the word "categories" is removed, and the words "experimental airworthiness certificate" are corrected to read "experimental certificate."

Section 21.181 Duration [of Airworthiness Certificates]

Several commenters agreed with the FAA's position that the aircraft owner is ultimately responsible for the airworthiness of the light-sport aircraft. These commenters also assumed that the FAA could take certificate action against the holder of the airworthiness certificate if necessary. The FAA discussed certificate action in the NPRM, but realizes that the proposed rule would not have provided a sufficient regulatory means to invalidate the airworthiness certificates issued to these aircraft. The FAA is therefore adopting language to include several limitations to the duration of the airworthiness certificate.

The proposed rule would have revised paragraph (a)(1) to include requirements for special airworthiness certificates in the light-sport category. The FAA has decided not to amend (a)(1) but to move the proposed requirements for maintaining a valid special airworthiness certificate in the light-sport aircraft category to new paragraph (a)(3) (and redesignate proposed (a)(3) as (a)(4)). The new paragraph clarifies that those requirements must be continuously met to maintain the validity of the airworthiness certificate. The paragraph indicates that the aircraft must meet the definition of a light-sport aircraft; conform to its original configuration, except for authorized alterations; have no unsafe condition or be likely to develop an unsafe condition; and be registered in the United States. If a special light-sport aircraft fails to meet the limitations listed under § 21.181(a)(3), the special airworthiness certificate issued under § 21.190(a) is no longer valid. However, the aircraft may still be eligible for an experimental certificate issued under § 21.191(i)(3) with a duration established by § 21.181(a)(4).

Changes

Paragraph (a)(1) is retained without change in the final rule. Proposed paragraph (a)(3), which discusses experimental certificates, is redesignated as (a)(4), and a new paragraph (a)(3) addressing special airworthiness certificates is added. New paragraph (a)(3) adds requirements that the aircraft must meet to maintain eligibility for a special airworthiness certificate.

Section 21.182 Aircraft Identification

The FAA received no comments on this section.

Changes

The proposal is adopted without change.

Proposed § 21.186 (Adopted as § 21.190—See Discussion Below)

Proposed § 21.186 is renumbered as § 21.190 in the final rule. This is being done because § 21.45, which addresses privileges of the holder or licensee of a type certificate for a product, refers to §§ 21.173 through 21.189. Since light-sport aircraft are not issued type certificates, the FAA is moving this section on light-sport aircraft out of that group of sections to § 21.190.

Section 21.190 Issue of a Special Airworthiness Certificate for a Light-Sport Category Aircraft (Proposed as § 21.186)

Paragraph (a) Purpose: The FAA received comments that suggested using certification standards already acceptable in Europe and other countries. The FAA opted for design and performance standards developed through the consensus standard process. Those working on the consensus standards are aware of the other certification standards and may adopt all or a portion of them as deemed appropriate. See also discussions in § 1.1 above.

The FAA received several comments stating that gyroplanes also should be allowed to obtain special airworthiness certificates in the light-sport category under the terms of the proposed rule and not be limited to experimental certificates. The commenters recommended that gyroplanes have the same options as the other types of special light-sport aircraft to obtain a special light-sport aircraft airworthiness certificate. See the discussion of gyroplanes under the definition of "light-sport aircraft" in § 1.1 above.

In addition, upon further review by the FAA, the words "for sport and recreation," "flight training," and "rental" are deleted from this paragraph because these intended operations are more appropriate for inclusion under the operating rules of § 91.327. As discussed under that section, special light-sport aircraft may be used for these types of operations or purposes.

Paragraph (b) Eligibility: Proposed paragraph (b)(1) would have required that the registered owner of the aircraft provide the documentation listed in paragraph (b). Upon further review, the FAA realized that it was inappropriate to require the registered owner, rather than the applicant for the airworthiness certificate, to submit this information.

In many cases, the proposal may have resulted in the registered owner needing to resubmit the information required by paragraph (b) and the airworthiness certificate being needlessly re-issued with a change in ownership. This would be an unnecessary administrative burden to the owners, to the FAA, and to the manufacturers. As specified in § 21.179, airworthiness certificates for all aircraft are transferred with the aircraft. Accordingly, the term "registered owner" in proposed paragraph (b)(1) is changed to "applicant" in the final rule.

Proposed (b)(1)(i) would have required the submission of the applicable pilot operating handbook. Upon further review, the FAA is changing the name of the document to "aircraft operating instructions." The name change will distinguish it from a pilot operating handbook, which is normally developed for small aircraft certificated under part 23. The content of the aircraft operating instructions will be governed by applicable consensus standard.

A few commenters recommended that the FAA revise paragraph (b)(1) to allow light-sport aircraft manufacturers to apply for blocks of registration numbers. This is unnecessary since it can be done under 14 CFR part 47, Aircraft Registration.

Proposed paragraphs (b)(1)(iv) and (b)(1)(v) were intended to prevent past and future modifications that deviate from the consensus standards. The final rule deletes the proposed requirement that the registered owner produce statements regarding the past and future modification. Instead, the final rule addresses this issue with a limitation on the duration of the certificate's effectivity under § 21.181(a)(3), discussed above. Also, the FAA is addressing alterations to these aircraft in the operating limitations contained in § 91.327. The intent of the limitation is to preclude unauthorized alterations, repairs, and replacement parts. For additional discussion, see § 91.327(b)(5), and (b)(6) of the operating limitations concerning alterations and repairs for these aircraft.

Proposed paragraph (b) is also revised to require an applicant to submit the aircraft's flight training supplement. The FAA proposed that the manufacturer of an aircraft intended for certification with a special airworthiness certificate in the light-sport category issue a statement of compliance that identified the applicable pilot flight training manual and state that it would be made available to any interested person. The FAA is changing the term "flight training manual" to "flight training supplement," as this document is intended to supplement the aircraft's operating instructions. To ensure that all owners of these aircraft possess appropriate flight training information to safely operate the aircraft, the FAA is requiring an applicant for a special airworthiness certificate in the light-sport category to submit the aircraft's flight training supplement when application for that certificate is made.

Proposed paragraph (b)(2) would have prevented an aircraft having either a standard or a primary category airworthiness certificate from obtaining a special light-sport aircraft airworthiness certificate. This prohibition is broadened in the final rule to include not only aircraft issued standard or primary airworthiness certificates, but also those issued restricted, limited, or provisional airworthiness certificates or equivalent foreign airworthiness certificates. In broadening the rule's provisions, the FAA is using the same rationale that it used in the proposed rule. In the preamble of the proposed rule, the FAA stated that allowing aircraft with standard or primary airworthiness certificates to obtain a special light-sport certificate would be an unnecessary burden on the manufacturers, the operators, and the FAA. The FAA also stated that there would be little interest in "downgrading," as a special light-sport aircraft airworthiness certificate would have more restrictive operating limitations. (See discussion of proposed § 21.186(b)(2).) The FAA is making these changes for the same reasons. These provisions are not intended to preclude a special light-sport aircraft airworthiness certificate from being issued to an aircraft that has been previously issued an experimental certificate.

A few commenters also recommended that the FAA revise paragraph (b)(3) to allow use of designated airworthiness representatives (DARs) at factories for the purpose of performing FAA inspections. DARs are FAA designees and, as authorized, they may perform FAA inspections. They may be employed by manufacturers. No revision is necessary to allow DARs the authority to perform the inspections under (b)(3). See also the discussion on DARs under § 21.191(i)(1).

A commenter stated that requiring an individual FAA inspection before issue of a special airworthiness certificate is unnecessary. The FAA disagrees. The FAA, through an aviation safety inspector or a designee, inspects all aircraft before issuing an airworthiness certificate. An inspection is necessary to establish a minimum level of safety for special light-sport aircraft. The inspection is a way of determining that

the aircraft complies with the applicable consensus standard. As discussed above, an inspection may be performed by an appropriately authorized FAA designee.

Another commenter wanted to know if minimum equipment required under § 91.205 will apply to these aircraft. Section 91.205 only applies to powered civil aircraft with standard category U.S. airworthiness certificates. Instead, the appropriate minimum equipment requirements for specific categories and classes of light-sport aircraft will be established by the applicable consensus standard. In addition, the operating rules in part 91 may establish specific requirements for particular operations. See part 91 general issues discussion on minimum equipment.

Another commenter recommended that the rule address alterations. The FAA agrees and is revising the definition of "consensus standard" in § 1.1 to permit authorized alterations. The FAA is also adding § 91.327(b)(5) and (b)(6) to better address repairs and alterations. See the discussions of those sections.

A commenter questioned if § 21.190(b) requires that the FAA perform an inspection every time a different wing is used or installed on a powered parachute or weight-shift-control aircraft. Owners of these types of aircraft regularly change the wings to change the performance and maneuverability of the aircraft. This allows the aircraft to have different capabilities depending on what the owner wants to do on the particular flight. The FAA does not consider an inspection necessary each time a wing is installed or removed, if the different wings have been inspected and authorized for installation on the light-sport aircraft. If the manufacturer has authorized the installation of the different wings and the initial inspections have been done, the changing of wings does not need to be inspected again for installation, except as part of the regular aircraft maintenance. As discussed under part 45, the aircraft registration number must be placed on the fuselage, but is not required on the wing. Therefore, if the registration number is placed on the wing, it must have the same registration number as the one placed on the fuselage. The FAA notes that the inspection requirement under § 21.190(b)(3) pertains to the issuance of an airworthiness certificate only and not to inspection after maintenance or repair activities.

Paragraph (c) Manufacturer's statement of compliance: Two commenters recommended that the FAA stop all rulemaking activity until it does a survey of manufacturers to determine how many would retroactively issue statements of compliance for a special airworthiness certificate. The FAA disagrees. The rule permits a manufacturer to issue a statement of compliance for any aircraft manufactured prior to the effective date of the rule. Therefore, each manufacturer would make a business decision whether to issue a retroactive statement of compliance.

Several commenters recommended delaying the effective date of the rule until the consensus standards are issued. Several other commenters said the proposal should be re-opened for comment when the consensus standards are developed. The FAA disagrees and notes that there are adequate opportunities for the public to participate in the development of the consensus standards. Also, alternative consensus standards may be developed and presented to the FAA for consideration. Any consensus standards accepted by the FAA will constitute one means, but not the only means, of complying with the rule. This is discussed under the definition of "consensus standard" in § 1.1.

In the NPRM, under paragraph (c)(4) (now (c)(3)), the FAA referred to a "quality system." This was intended to be consistent with other references to a "quality assurance system" in the NPRM. In the final rule, paragraph (c)(3) has been revised accordingly.

Several commenters recommended that the pilot operating handbook and maintenance and aircraft operating instructions comply with the consensus standard. The FAA agrees, and the final rule, under § 21.190(c)(4), includes the requirement that both the aircraft operating instructions and maintenance and inspection procedures comply with the consensus standard. As discussed under § 1.1 above, the FAA is changing the term "pilot operating handbook" to "aircraft operating instructions."

A few commenters recommended that the pilot flight training manual be deleted from the list of items that need to be submitted in proposed paragraph (c)(5) (now (c)(4)). The FAA disagrees. These commenters stated that this information is normally provided by the FAA or another third party. The FAA agrees that a person other the manufacturer may develop this manual. However, the manufacturer must provide this manual if the aircraft model is to be eligible for the special airworthiness certificate in the light-sport category because it provides specific training information necessary for a make and model endorsement. In addition, in final rule paragraph (c)(4), the term "flight training manual" is changed to "flight training supplement." This is being done to more clearly indicate that this document supplements the aircraft operating instructions.

Several commenters suggested that the manufacturer's system for monitoring and correcting unsafe conditions comply with the consensus standard. The FAA agrees. The FAA intended that the continued airworthiness system meet the consensus standard, as evidenced by including this requirement in § 1.1 under the definition of "consensus standard" in the proposed rule. Proposed § 21.186(c)(6) would only have required that the manufacturer identify its system for monitoring and correcting safety-of-flight issues in the statement of compliance. The final rule, under § 21.190(c)(5), requires that the manufacturer's continued airworthiness system comply with an identified consensus standard. Additionally, the final rule clarifies that the process the manufacturer will use to monitor and correct safety-of-flight issues will include the issuance of safety directives.

Some commenters recommended that there be independent third-party audits of manufacturer compliance with consensus standards, including those dealing with monitoring of continued operational safety. The FAA believes that the manufacturer's statement of compliance is appropriate for determining whether a light-sport aircraft meets the consensus standards. Past experience with construction of non-type-certificated aircraft that meet the definition of light-sport aircraft has not indicated a need for significant FAA oversight. The FAA accepts that a manufacturer can participate in a system that includes voluntary third-party audits, but there is no requirement in this rule for these audits. The FAA generally will not perform compliance evaluations of these manufacturers. Note that manufacturers will, however, have to comply with any audit requirements defined in the consensus standards.

A commenter wanted the FAA to establish criteria for a third party to use to conduct compliance audits within industry standards. As stated above, the FAA is not requiring third-party audits of manufacturers. However, the consensus standards may establish criteria for audits to be performed.

Another commenter states that FAA oversight of the consensus standards is not clear once the FAA has accepted them. The FAA agrees that more clarification is needed and has added

more detail on FAA participation in consensus standards in § 1.1, as discussed above.

In proposed paragraph (c)(8), the FAA proposed that the manufacturer test its aircraft in accordance with a production acceptance test procedure established in the consensus standard. The FAA is modifying the final rule (now (c)(7)) to specify that these production and acceptance test procedures include both ground and flight tests. Production acceptance tests are also discussed in the definition of "consensus standard" in § 1.1.

Paragraph (d) Imported light-sport aircraft: A few commenters recommended that manufacturers in other countries meet the same consensus standards that the United States-manufactured aircraft must meet. Other commenters recommended that imported aircraft be issued a special airworthiness certificate without meeting the consensus standards, if the country of origin considered the aircraft airworthy. The proposed rule would have required all aircraft, regardless of the country of manufacture, to meet a consensus standard. This provision is retained in the final rule. This ensures a uniform level of safety for these aircraft, regardless of the country of manufacture. The FAA may accept a consensus standard developed in another country.

One commenter questioned whether foreign-manufactured ultralights would be eligible for a special light-sport aircraft airworthiness certificate, or whether they would have to be imported as experimental aircraft. As stated in paragraph (d), foreign-manufactured aircraft are eligible for a special light-sport aircraft airworthiness certificate. These aircraft must meet the same eligibility requirements as U.S.-manufactured aircraft and an applicant seeking a special airworthiness certificate for a light-sport category aircraft must also submit a manufacturer's statement of compliance. The FAA notes that these aircraft must not have been issued a foreign airworthiness certificate equivalent to a U.S. standard, primary, restricted, limited, or provisional airworthiness certificate. A foreign-manufactured ultralight would, therefore, not necessarily have to be imported as an experimental aircraft.

The FAA notes that in the regulatory text of paragraph (d), references to "imported light-sport aircraft" are changed to "light-sport aircraft manufactured outside the United States" Since a light-sport aircraft could be issued an airworthiness certificate in the light-sport category long after the aircraft has been physically imported into the United States, the FAA is revising the term "imported light-sport aircraft" to "light-sport aircraft manufactured outside the United States." This change clarifies that an applicant for an airworthiness certificate for an aircraft manufactured outside the United States must provide the evidence specified in paragraph (d) whenever an application for an airworthiness certificate under § 21.190 is made. In addition, references to "import" and "export" are removed, since the use of these terms is redundant when referring to bilateral agreements.

Proposed paragraph (d)(1) would have required evidence that the imported light-sport aircraft was manufactured in a country with which the United States had an agreement for import or export of that particular product. The FAA has determined that the proposed rule language would unduly limit the number of exporting countries. To ease this restriction, the FAA has determined that the existence of a Bilateral Airworthiness Agreement (BAA) concerning airplanes or a Bilateral Aviation Safety Agreement (BASA) with associated Implementation Procedures for Airworthiness (IPA) concerning airplanes, or equivalent airworthiness agreement, provides a suitable basis for issuing an airworthiness certificate for aircraft manufactured outside the United States. Any BAA, BASA with an IPA, or equivalent airworthiness agreement concerning airplanes between the country of export and the United States is sufficient, even if the agreement does not address light-sport aircraft. These agreements establish a working history and relationship between the countries, even though light-sport aircraft may not be specifically addressed in the agreement. These bilateral agreements provide a means by which the FAA could, if necessary, seek assistance from the local Civil Aviation Authority (CAA) on any light sport aircraft problems dealing with production, continued airworthiness, or other matters needing investigation or analysis.

Proposed paragraph (d)(2) would have required evidence that the make and model of the aircraft manufactured outside of the United States is eligible for an airworthiness certificate or flight authority in the country of manufacture. The final rule removes the words "make and model." As the provisions of the rule address specific aircraft, the use of the term "make and model" is redundant. The FAA is also adding the words "or other similar certification" to recognize additional methods of providing evidence of airworthiness certification in the country of manufacture. Special light-sport aircraft imported into the United States may meet other national certifications for which there may not be an equivalent in the United States.

The FAA is deleting proposed paragraph (d)(3) that required that the civil aviation authority of the country of export to determine that the aircraft is in a condition for safe operation. This requirement is deleted because an inspection by a foreign CAA is redundant. Special light-sport aircraft will be inspected as part of the process for issuing an airworthiness certificate under paragraph (b)(3).

Changes

Paragraph (a): The FAA is changing the paragraph caption of paragraph (a) to read "Purpose." Elsewhere in the paragraph, the words "for sport and recreation," "flight training," and "rental" are deleted.

Paragraph (b): In paragraph (b)(1), the term "a registered owner" is changed to "an applicant," and the word "submit" is changed to "provide."

In paragraph (b)(1)(i) "applicable pilot operating handbook" is changed to "the aircraft's operating instructions."

In paragraph (b)(1)(ii), "applicable maintenance and inspection procedures" is changed to "the aircraft's maintenance and inspection procedures."

The provisions of proposed paragraphs (b)(1)(iv) and (v) are not adopted. The intent of these provisions is now addressed in § 91.327.

In the final rule, new paragraph (b)(1)(iv) states that an applicant must provide the FAA with "the aircraft's flight training supplement."

In paragraph (b)(2), "in the standard or primary category" is revised to include aircraft with restricted, limited, or provisional airworthiness certificates.

Paragraph (c): The paragraph was reworded and reorganized for improved clarity as follows:

Proposed paragraphs (c)(1) and (c)(2) are combined so that (c)(1) now includes "the consensus standard used."

Proposed paragraph (c)(3) is redesignated as (c)(2) and revised with no substantive change.

Proposed paragraph (c)(4) is redesignated as (c)(3) and revised. The term "quality system" is changed to "quality assurance system."

Proposed paragraph (c)(5) is redesignated as (c)(4) and reorganized. In addition, the term "applicable pilot operating handbook" is changed to "aircraft operating instructions," and "pilot flight training manual" is

changed to "aircraft flight training supplement."

Proposed paragraph (c)(6) is redesignated as (c)(5) and is revised. Paragraph (c)(5) now states that the manufacturer will monitor and correct safety-of-flight issues, rather than identify a document to that effect. The paragraph also includes the requirement that the continued airworthiness system comply with the consensus standard and that the process to monitor and correct safety-of-flight issues will include the issuance of safety directives.

Proposed paragraph (c)(7) is redesignated as (c)(6).

Proposed paragraph (c)(8) is redesignated as (c)(7) and is reorganized and revised. The paragraph now includes the requirement that the manufacturer will ground and flight test the aircraft.

Paragraph (d): The paragraph heading is changed from "Imported light-sport aircraft" to "Light-sport aircraft manufactured outside the United States."

The words "imported," "import," and "export" are removed in the final rule, and the words "manufactured outside the United States" are used.

In the introductory text, the words "registered owner" are changed to "applicant."

Paragraph (d)(1) includes more specific language regarding the types of international agreements that are required for aircraft manufactured outside of the United States to be certificated as special light-sport aircraft.

In paragraph (d)(2), the words "make and model" are removed; the words "flight authority" are changed to "flight authorization;" and the words "other similar certification" are added.

Proposed paragraph (d)(3) is deleted.

Section 21.191 Experimental Certificates

Paragraph (i) Operating light-sport aircraft: The proposed rule made several references to "for the purpose of sport and recreation and flight training." These are not purposes related to the certification of light-sport aircraft, but are operational privileges and limitations. Therefore, all references to "sport and recreation" or "flight training" are removed from this section and addressed in the requirements for operating limitations set forth in part 91.

Proposed § 21.191(i)(1) would have permitted a light-sport aircraft with an experimental certificate to be used for training for compensation or hire until 36 months after the effective date of the regulation. Currently, two-seat ultralight vehicles are not permitted to be operated under part 103, but can be used for flight training for compensation or hire under exemptions to part 103. Because these provisions affect the operation, rather than the certification, of the aircraft, the rule language containing these provisions has been moved to § 91.319, and all comments addressing this issue are discussed under that section.

As discussed in the following paragraphs, there were numerous comments on the certification of existing two-seat ultralight vehicles. A few commenters also expressed concern over the certification of older unregistered ultralight-like aircraft. One commenter suggested that these unregistered ultralight-like aircraft be "grandfathered" into the rule. Paragraph (i)(1) effectively allows grandfathering if the aircraft meets the requirements for the issuance of an experimental certificate, and is safe for operation as a light-sport aircraft. There is no requirement that these aircraft meet a consensus standard. Another commenter stated that requiring that certain documents, such as operating instructions and inspection procedures manuals, for certification of older unregistered ultralight-like aircraft would be a problem. Owners may no longer possess or be able to obtain these documents. Paragraph (i)(1) has no requirements that the applicant have any manufacturer documents in order to be issued an airworthiness certificate.

Several commenters stated that they wanted to receive an experimental certificate for their existing unregistered ultralight-like aircraft without having to meet the "51%–build" requirement for amateur-built aircraft. The "51%–build" requirement applies only to amateur-built aircraft certificated under § 21.191(g). There is no "51% build" requirement for existing unregistered ultralight-like aircraft that are certificated under § 21.191(i)(1).

Several commenters expressed concern over the process of issuing airworthiness certificates for unregistered ultralight-like aircraft and recommended measures to speed the process and prevent backlogs, such as use of DARs. Another commenter wanted to know if the FAA would allow representatives from private ultralight organizations to be designated as inspectors, as is done in Great Britain. The FAA believes that after the effective date of this final rule, a large number of owners of existing two-seat ultralight-like aircraft operating under training exemptions will apply for an experimental light-sport certificate. The FAA believes that there are several thousand of these aircraft that have not been registered. The FAA intends to rely primarily on DARs to meet the initial need for issuing airworthiness certificates on light-sport aircraft. The FAA is working with industry to develop procedures to ensure that adequate numbers of DARs will be available. The FAA will issue advisory material on how to apply to be a DAR to certificate light-sport aircraft and how to get light-sport aircraft registered and certificated.

The FAA recognizes that a number of administrative and resource challenges will prevent the entire existing fleet of unregistered ultralight-like aircraft from being certificated on September 1, 2004. The FAA expects registration and certification to proceed as expeditiously as circumstances permit once this final rule becomes effective.

The FAA proposed that if a person sought to have an aircraft certificated under § 21.191(i)(1) that did not meet the definition of "ultralight vehicle" specified in part 103, that person would have to apply to register the aircraft with the FAA not later than 24 months after the effective date of the rule. Under the proposal, a person would then be required to have the aircraft inspected by the FAA (or a designated representative of the Administrator) and have an experimental light-sport certificate issued for the aircraft not later than 36 months after the effective date of the final rule.

Under the final rule, the FAA is revising § 21.191(i)(1) to remove language that many believed would have allowed a person to operate an aircraft, which exceeds the parameters of an ultralight vehicle yet meets the definition of light-sport aircraft, without registering that aircraft for a period of 24 months. The FAA is also revising § 21.191(i)(1) to avoid any implication that a person can operate these aircraft for 36 months without an airworthiness certificate. The revised language makes clear the original intent of the proposal, which was that an experimental certificate will not be issued for an aircraft under § 21.191(i)(1) after August 31, 2007.

The FAA notes that, except as specified in § 91.715, § 91.203(a) prohibits a person from operating a civil aircraft unless it has within it an appropriate and current airworthiness certificate and a registration certificate (or application as per § 47.31(b)). Once an aircraft registration certificate has been issued by the FAA and received by the applicant, a two-place training vehicle operated under an exemption to part 103 is considered an aircraft. Operation of the aircraft without an airworthiness certificate is a violation of

the provisions of § 91.203(a) and the statutory provisions of 49 U.S.C. 44711(a)(1). Preamble language contained in the notice may have misled some individuals operating under an exemption to part 103 to believe that an aircraft could be operated without both a registration certificate and an airworthiness certificate or that an aircraft issued a registration certificate could be operated without an airworthiness certificate. This impression may have been caused by using rule language that included a compliance date based on making an application for a registration certificate and not reiterating both the regulatory and statutory requirement for an aircraft to be issued an airworthiness certificate before it can be operated. The FAA should not have stated in the notice that if you currently operate an ultralight vehicle under a training exemption and have applied to the FAA for an aircraft registration, you would be allowed to continue to operate under a training exemption until you are issued an experimental, light-sport airworthiness certificate. The FAA strongly encourages those persons seeking airworthiness certificates for light-sport aircraft under 21.191(i)(1) to make the necessary arrangements to obtain airworthiness certification to coincide with the issuance of the aircraft's registration. Such action will minimize the amount of time that these aircraft cannot be legally operated.

The FAA also notes that if an ultralight-like aircraft does not meet the definition of an ultralight vehicle specified in part 103, or is not operated in accordance with the provisions of an exemption under part 103 to conduct flight training, the aircraft can not be operated under part 91 until the aircraft has been registered with the FAA and an airworthiness certificate has been issued for the aircraft. Additionally, any person operating the aircraft must possess a current and valid pilot certificate.

After reviewing the comments, the FAA believes it is necessary to clarify that only aircraft that have not been previously issued U.S. or foreign airworthiness certificates are eligible for the experimental light-sport certificate under § 21.191(i)(1). If an aircraft has previously been issued any airworthiness certificate under part 21, it is not eligible for an experimental light-sport certificate under § 21.191(i)(1). Language has been added to § 21.191(i)(1) in the final rule to reflect his intent. Also see the discussion above, "III.5.A. Comments on Ultralight Vehicles."

Proposed paragraph (i)(2) addressed operating a light-sport aircraft that was assembled from an eligible kit. Proposed § 21.0193(e)(5) stated that the assembler of an aircraft, seeking certification under paragraph (i)(2), had to provide the instructions used to assemble the aircraft. There was no requirement in § 21.191(i)(2) that a person had to assemble the aircraft in accordance with the manufacturer's assembly instructions. In the final rule, therefore, § 21.191(i)(2) now includes the requirement that the aircraft kit be assembled in accordance with the manufacturer's assembly instructions that meet an applicable consensus standard.

A commenter stated that experimental certificates should not be issued for light-sport aircraft that are not intended for experimental use but are intended to be mass-produced on production line. The commenter said that the FAA should create another status for aircraft whose certification falls between current type-certificated aircraft and true experimental aircraft. The FAA believes that the special light-sport aircraft certificate serves this purpose. In "experimental certificate," the word "experimental" indicates that there is no known standard for the design or production of the aircraft. Therefore, the FAA believes that experimental certificates are appropriate for kit-built aircraft.

The same commenter noted that proposed § 21.191(i) would allow certification of aircraft carrying persons for compensation or hire that have never been shown to meet any design or production airworthiness standard. The FAA notes that these aircraft will not be permitted to be used for the full range of compensation or hire operations normally carried out by aircraft with standard airworthiness certificates. Operating limitations for these aircraft will restrict their use, as specified in § 91.319. The commenter also stated that there is no rigid conformity requirement for kit-built aircraft certificated under this section. The FAA disagrees and notes that an applicant seeking to certificate a kit-built aircraft under § 21.191(i)(2) must also comply with § 21.193(e) and provide a statement of compliance issued by the aircraft's manufacturer that contains the information generally required by § 21.190(c). The commenter was also concerned that an operator of a special light-sport aircraft could decide to obtain an experimental light sport certificate when that operator no longer intends to comply with the more stringent operating limitations of the special light-sport aircraft. The commenter asserts that the operator could still engage in many of the operations permitted for special light-sport aircraft without meeting those more stringent limitations. The FAA disagrees. Operating limitations specified in § 91.319 for experimental light-sport aircraft certificated under § 21.191(i)(3) are more restrictive than the operating limitations issued to special light-sport aircraft.

The FAA is deleting the requirement that aircraft certificated under § 21.191(i)(2) be assembled without the supervision and quality system of the manufacturer. The FAA does not want to preclude individuals seeking certification of these aircraft under this section from obtaining the assistance of the manufacturer.

In paragraph (i)(3), the FAA is changing the reference to § 21.190 from § 21.186. In addition, the words "sport and recreation and flight training" are deleted. These limitations are addressed in operating limitations specified in § 91.319.

A few commenters wanted the FAA to amend § 39.1 to permanently relieve experimental aircraft from airworthiness directives. The FAA did not propose this action in the NPRM and considers it to be outside the scope of this rule.

Changes

The proposed amendment to paragraph (h) is adopted without change.

Paragraph (i) is changed by removing the words "for the purpose of sport and recreation and flight training" throughout.

Paragraph (i)(1) is changed to state that the paragraph applies to light-sport aircraft that have "not been issued an airworthiness certificate under [part 21]."

In paragraph (i)(1), the references to the time a person must apply for registration and receive an experimental certificate are removed and replaced with the sentence, "An experimental certificate will not be issued under this paragraph for these aircraft after August 31, 2007."Also in paragraph (i)(1), the allowable period for which the aircraft may be used for compensation and hire for initial flight training was moved to § 91.319.

In paragraph (i)(2), the term "eligible kit" is changed to "aircraft kit," and a reference to § 21.193(e) is included to clarify what constitutes an eligible kit. The paragraph is also changed to specify that the aircraft must be assembled in accordance with the manufacturer's assembly instructions that meet applicable consensus standards. In addition, the requirement that the kit be

assembled without the supervision and quality system of the manufacturer is deleted.

In paragraph (i)(3), the FAA is changing the reference to § 21.190 from § 21.186. In addition, the words "sport and recreation and flight training" are deleted.

Section 21.193 Experimental Certificates: General

One commenter suggested that the proposal would not permit a manufacturer to produce only kits. The FAA disagrees. The rule does not contain such a limitation. As proposed, the manufacturer is required to manufacture and assemble at least one complete aircraft of each make and model before an airworthiness certificate is issued for a kit-built aircraft under § 21.191(i). The aircraft assembled by the manufacturer must have been issued a special light-sport airworthiness certificate. This provides evidence that the aircraft meets an applicable consensus standard.

Other commenters recommended that the FAA clarify what an applicant must provide to the FAA to show that the kit-built light-sport aircraft was assembled in accordance with the manufacturer's instructions. The FAA agrees and has made changes to the final rule in response to these comments. The changes to § 21.191(i)(2) mentioned above require the applicant to provide evidence that the aircraft was assembled in accordance with the manufacturer's assembly instructions and that the assembly instructions meet an applicable consensus standard.

One commenter questioned the need for the requirement that a registered owner provide evidence that an imported aircraft kit was manufactured in a country with which the United States had an agreement for its import or export. The commenter noted that kit-built aircraft would be classified as experimental light-sport aircraft under the rule. The FAA disagrees. Kit-built experimental light-sport aircraft certificated under § 21.191(i)(2) must comply with consensus standards. The FAA believes that all aircraft designed to a consensus standard must be manufactured in a country with which the United States has a BAA, BASA with an IPA concerning airplanes, or equivalent airworthiness agreement, regardless of whether the aircraft is a kit or a completed aircraft. The requirement in § 21.193(e)(6) is similar to that imposed under § 21.190(d). The requirement specified in § 21.193(e)(6) is retained and modified in a manner similar to § 21.190(d) to better describe the applicable international agreements. See discussion of § 21.190(d).

Proposed paragraph (e)(5) would have required that the assembler of a kit aircraft provide the assembly instructions. This requirement has been removed; however, § 21.191(i)(2) has been changed to require that these aircraft be assembled in accordance with the manufacturer's assembly instructions that meet an applicable consensus standard. Under that section, the FAA does not specifically require that an applicant submit manufacturer's assembly instructions; however, it may be necessary for the applicant to present those instructions to show that the kit was assembled in accordance with those instructions.

The FAA has added new § 21.193(e)(5) to the final rule to require that the assembler of a kit aircraft provide the aircraft flight-training supplement. This is to assure that the assembler, who must operate and test the aircraft according to the manufacturer's instructions as part of the assembly process, is aware of any flight-training requirements that the manufacturer may specify. This document should also identify the set of aircraft to which the individual aircraft belongs. This is consistent with requirements for a ready-to-fly aircraft under § 21.190(b)(1).

A few commenters requested direct assistance from the FAA in the assembly and certification of their specific aircraft. This is outside the scope of rulemaking. The FAA does not assist persons in the assembly of aircraft. The FAA will, however, respond to questions regarding the certification of aircraft.

Additionally, the FAA received comments pertaining to the construction of kit-built light-sport aircraft and the FAA's control of kit manufacturers. The FAA provides for the safety of the kit-built aircraft through the inspection of the assembled aircraft prior to issuing an experimental certificate. Each kit-built aircraft is inspected prior to certification. An aircraft that is not in a condition for safe operation will not be issued an experimental certificate.

Changes

In paragraph (e), "registered owner" is changed to "applicant."

Paragraph (e)(1) is revised for clarity with no substantive change.

In paragraph (e)(2), "applicable pilot operating handbook" is changed to "the aircraft operating instructions."

In paragraph (e)(3), "applicable maintenance and inspection procedures" is changed to "the aircraft maintenance and inspection procedures."

Paragraph (e)(4) is revised for clarity and to correct references to § 21.190 (which was proposed as § 21.186). Also, the paragraph is modified to require that assembly instructions must meet an applicable consensus standard.

The provisions of proposed paragraph (e)(5) are not adopted. Instead, its provisions have been revised and placed in § 21.191(i)(2).

In the final rule, new paragraph (e)(5) adds the requirement to provide the aircraft flight training supplement.

Proposed paragraph (e)(6) is revised to include more specific language regarding the types of international agreements that are required for an experimental light-sport aircraft to be certificated from an aircraft kit manufactured outside the United States.

V.3. Part 43—Maintenance, Preventive Maintenance, Rebuilding, and Alteration

V.3.A. Part 43—General Issues

The NPRM proposed to give repairmen (light-sport aircraft) the authority to work on special light-sport aircraft without complying with part 43. The proposal was based on the three factors—(1) special light-sport aircraft would be very basic in design and construction; (2) these aircraft, and parts installed on them, would not be FAA approved; and (3) work could be performed on these aircraft under operating limitations that would contain provisions similar to part 43. The proposal would have required maintenance on these aircraft to be performed in accordance with operating limitations. This parallels the current requirement to have annual condition inspections on experimental amateur-built aircraft performed in accordance with the aircraft's operating limitations.

Several commenters expressed concern that there would be a degradation of safety by excepting special light-sport aircraft from part 43 maintenance performance standards and recording requirements. One commenter specifically expressed concerns that safety would be compromised without a maintenance standard and wanted part 43 to be required, or equivalent standards included in the aircraft operating limitations. The FAA agrees and is changing the rule to require maintenance to be performed in accordance with part 43 for reasons described below. These requirements will apply to repairmen, repair stations, or mechanics when performing and recording work on special light-sport aircraft.

After reviewing public comments on the definition of "light-sport aircraft" in § 1.1, the FAA is increasing the takeoff weight of light-sport aircraft to allow incorporation of more reliable FAA-approved type-certificated engines and propellers. As a result of that change, the FAA anticipates that type-certificated engines and propellers will be installed on special light-sport aircraft, the majority of which will be used for flight training and rental.

The FAA wants to encourage the use of these type-certificated products, as they will enhance safety and reliability of special light-sport aircraft. This change necessitates more clearly established maintenance performance and recording procedures, in part to address work that may be performed to satisfy ADs issued on products installed on these aircraft.

The need to perform and record maintenance on these aircraft in accordance with part 43 was highlighted when, on September 3, 2002, the FAA issued Airworthiness Directive 2002–16–07 on Bombardier-Rotax 912 and 914 series type-certificated engines. These engines may be used on ultralight-like aircraft used for flight training and amateur-built aircraft, the kinds of aircraft that may fall within the weight, speed, and two-seat occupancy parameters of light-sport aircraft. The AD demonstrates that it is reasonable to expect that some special light-sport aircraft used for training and rental will be subject to ADs.

Generally, the changes in this rule require compliance with §§ 43.9, 43.12, and 43.13. Repairmen performing maintenance and pilots performing preventive maintenance on light-sport special aircraft will be held to the following:

- The recording requirements in § 43.9 for maintenance;
- The falsification and alteration of records prohibitions in § 43.12; and
- The performance requirements in § 43.13, which requires the repairman and pilot to do the work in accordance with the manufacturer's instructions and states that the work performed must be done in a way that the aircraft condition is equal to its original or properly altered condition.

Other sections of part 43 are changed to address the newly created sport pilots and repairmen (light-sport aircraft) under §§ 43.9, 43.12, and 43.13. These changes will permit these persons to perform maintenance in accordance with the provisions of part 43; however, a person performing work equivalent to a major repair or a major alteration on a non-FAA-approved product installed on a special light-sport aircraft will not need to—

- Use the repair and alteration form (FAA Form 337) required by §§ 43.5(b) and 43.9 (d);
- Use the list of major repairs and major alterations in part 43, appendix A, sections (a) and (b) to determine what constitutes a major repair or major alteration; or
- Record major repairs and major alterations as prescribed in part 43, appendix B.

The use of Form 337 is not required because special light-sport aircraft will be built to a consensus standard "accepted" by the FAA, but not "approved" by the FAA. Since data used to comply with the consensus standard will be accepted design data only, the FAA will not require the use of approved data for major repairs or major alterations, nor will the FAA require the use of a form that requires the listing of "approved" data for a major repair or major alteration of a special light-sport special aircraft. The FAA expects that the consensus standards will address the identification and recording of major repairs and major alterations for each category of light-sport aircraft.

For major repairs and major alterations performed on FAA-approved products installed on special light-sport aircraft, the recording requirements to document major repairs and major alterations in part 43 will apply.

Another commenter expressed concern that communication and navigation equipment required by part 91 would not be adequately maintained. The FAA agrees this kind of equipment should be maintained in accordance with part 91 and the applicable provisions of part 43 and these requirements are now reflected in the rule.

Several commenters wanted part 43 to be amended to allow sport pilots to perform preventive maintenance as defined in part 43. The FAA agrees that sport pilots should be permitted to perform preventive maintenance on certain light-sport aircraft. Therefore § 43.3 is revised to permit sport pilots to perform preventive maintenance, but only on special light sport aircraft the pilot owns and operates.

V.3.B. Part 43—Section-by-Section Discussion

Section 43.1 Applicability

The FAA's response to comments regarding the applicability of part 43 to light sport aircraft are addressed in the discussion above. In the final rule, paragraph (b) is revised to remove proposed language stating that part 43 would not apply to any aircraft issued a special airworthiness certificate in the light-sport category.

In addition, paragraph (d) is added to create exceptions for major repairs and major alterations performed on products not produced under an FAA approval installed on special light-sport aircraft. If the parts are produced under an FAA approval, the exceptions in paragraph (d) do not apply.

Changes

The introductory text of paragraph (a) is amended to include a reference to the exception established by new paragraph (d).

Paragraph (b) is revised to remove the proposed exception for special light-sport aircraft.

Paragraph (d) is added to address the performance of major repairs and major alterations on special light-sport aircraft.

Section 43.3 Persons Authorized To Perform Maintenance, Preventive Maintenance, Rebuilding, and Alterations

As stated above, § 43.1 now includes maintenance performance and recording requirements for special light-sport aircraft. In § 43.3, paragraph (c) is revised to allow repairmen to perform alterations as provided in part 65. This change is being made because part 65 has been revised to permit repairmen (light-sport aircraft) to perform alterations on special light-sport aircraft. Also, § 43.3(g) is revised to allow the holder of a sport pilot certificate to perform preventive maintenance on special light-sport aircraft, if he or she owns or operates the aircraft.

The new maintenance privileges for sport pilots and repairmen (light-sport aircraft) do not extend to work performed on type-certificated aircraft that meet the definition of light-sport aircraft. Sport pilots and repairmen (light-sport aircraft) will not be permitted to perform preventive maintenance and maintenance on type-certificated aircraft. This decision is based on the fact that they do not have the same level of experience as persons who currently perform maintenance and preventive maintenance on type certificated aircraft. The FAA believes the amount of training required under this rule for sport pilots and repairmen (light-sport aircraft) is not sufficient to permit them to sign off maintenance-related tasks on more complicated type-certificated aircraft and this lack of training would create additional safety concerns.

The FAA wants to make it clear that, while an appropriately rated sport pilot

may fly a type-certificated aircraft that meets the definition of light-sport aircraft, only certificated airframe and powerplant mechanics with inspection authorization and appropriately rated repair stations must conduct the annual inspection and ensure compliance with ADs and other inspections required to maintain a standard airworthiness certificate or other special airworthiness certificate issued to a type certificated aircraft.

Some commenters expressed confusion over what the term "preventive maintenance" means. As defined in § 1.1, preventive maintenance means "...simple or minor preservation operations and the replacement of small standard parts not involving complex assembly operations." Preventive maintenance operations are listed in appendix A of part 43. As the term pertains to special light-sport aircraft, preventive maintenance may be performed by the holder of at least a sport pilot certificate. That aircraft must be owned or operated by that pilot and the work must be performed in accordance with the performance rules specified in § 43.13.

Experimental aircraft do not meet a recognized standard for certification, and the FAA has not imposed the maintenance rules in part 43 for the continuing airworthiness of these aircraft. Therefore, the limitations on the performance of preventive maintenance in part 43 do not apply, and experimental aircraft may have preventive maintenance performed by any individual.

Light-sport aircraft manufacturers are not included in the list of persons authorized to perform maintenance, preventive maintenance, rebuilding or alterations, or approve an aircraft for return to service, because they are not required to hold an FAA-issued production approval or repair station certificate. This lack of FAA certification does not prevent the manufacturer from having FAA-certificated persons on its staff who are authorized to perform maintenance and inspection functions.

Changes

Paragraphs (c) and (g) of § 43.3 are revised in the final rule as discussed above.

Section 43.7 Persons Authorized To Approve Aircraft, Airframe, Aircraft Engines, Propellers, Appliances, or Component Parts for Return to Service After Maintenance, Preventive Maintenance, Rebuilding, or Alteration

In § 43.7, paragraph (g) is added to enable the repairman (light-sport aircraft) with a maintenance rating to approve an aircraft certificated as a special light-sport category aircraft for return to service. This includes approving both special and experimental light-sport aircraft for return to service after the performance of either an annual condition inspection or a 100-hour inspection. It also includes approving a special light-sport aircraft for return to service after maintenance is performed on that aircraft.

Paragraph (h) is added to allow the holder of a sport pilot certificate to approve a special light-sport aircraft for return to service after performance of preventive maintenance as authorized in § 43.3(g).

For reasons similar to those discussed under § 43.3, light-sport aircraft manufactures are not authorized to approve aircraft for return to service, unless otherwise certificated.

Changes

Paragraphs (g) and (h) are added to § 43.7 as discussed above.

Section 43.9 Content, Form, and Disposition of Maintenance, Preventive Maintenance, and Alterations Records (Except Inspections Performed in Accordance With Part 91, Part 125, § 135.411(a)(1), and § 135.419 of This Chapter)

Section 43.9 is amended and reorganized for clarity. In the final rule, the FAA is adding a new paragraph (d) using the language presently at the end of paragraph (a) (beginning with the words "In addition to the entry required * * *"). This new paragraph contains the obligation for persons who perform major repairs and major alterations on type-certificated aircraft to record that work as prescribed in appendix B to part 43. As stated above, the FAA will not require that major repairs and major alterations on non-FAA-approved products installed on an aircraft certificated as a special light-sport category aircraft meet these requirements. New paragraph (d) is being established to facilitate the exception specified in § 43.1(d)(1), which states that the repair or alteration form specified in this section is not required to be completed when work is performed on a non-FAA-approved product. Major repairs and major alterations performed on FAA-approved products must still meet the recording requirements in part 43. For a complete discussion, see "V.3.A. Part 43—General Issues" above.

In addition, although not related to the amendments for the recording major repairs and major alterations, the FAA is taking this opportunity to revise the heading of § 43.9 and paragraph (c) to remove the reference to part 123, which no longer exists.

Changes

The heading for § 43.9 is revised to remove the reference to part 123.

In paragraph (a), the concluding text (beginning with the words, "In addition to the entry required * * *") is designated as a new paragraph (d). In addition, the words, "required by this paragraph" are changed to "required by paragraph (a) of this section."

In paragraph (c), the reference to part 123 is removed.

V.4. Part 45—Identification and Registration Marking

Section 45.11 General

Although not proposed in the NPRM, the FAA is including an amendment to § 45.11 in the final rule. The change is necessary because current § 45.11 sets forth a requirement that an aircraft's identification plate must be secured either adjacent to and aft of the rearmost entrance door or on the fuselage surface near the tail surfaces. Powered parachutes and weight-shift-control aircraft have neither entrance doors or tail surfaces. Therefore, the FAA is adding an exception in a new paragraph (e) to address powered parachutes and weight-shift-control aircraft. Identification plates on these aircraft may be secured to the aircraft fuselage exterior so that they are legible to a person on the ground.

Changes

Paragraph (a) is amended to add a reference to the exception in new paragraph (e).

Paragraph (e) is added, as discussed above.

The changes were not proposed.

Section 45.23 Display of Marks; General

Section 45.23(b) sets forth the general requirements for displaying registration marks ("N" numbers) on an aircraft, as well as other display markings for other types of aircraft. Although not originally included in the proposed rule, the FAA is adopting a revision to § 45.23(b) to respond to commenters' requests that light-sport aircraft have additional markings identifying them as light-sport aircraft similar to other marking requirements for experimental aircraft. This change to § 45.23 adds the requirement for special light-sport aircraft certificated under § 91.190 to include the mark "light-sport." The FAA emphasizes that aircraft having a standard airworthiness certificate that

meet the definition of a light-sport aircraft are not required to have the mark "light-sport" displayed on the aircraft. Aircraft that are required to be marked "experimental" also are not required have the mark "light-sport" displayed on the aircraft.

Changes

Paragraph (b) is revised to add light-sport aircraft to the list of other aircraft to which the section applies. This amendment was not proposed.

Section 45.27 Location of Marks; Nonfixed-Wing Aircraft

The FAA received several comments on the where marks should be located on non-fixed-wing aircraft. Some commenters recommended that the FAA require powered parachute owners to place markings on the airframe and not the airfoil. One commenter requested that markings be required on gas tanks. Another commenter wanted to be able to "swap out" the wings on weight-shift-control aircraft, as they have multiple wings that attach directly to one powered fuselage unit, and it only takes minutes to change them. The FAA believes that all of these commenters' concerns can be addressed by requiring that the markings be placed on the fuselage, as that is a permanent structure of these aircraft. The FAA has revised the rule language accordingly.

Another commenter requested that marks be required on the wing or the canopy, as is done in Europe. The FAA will allow markings on the wings or canopy if the operator wants to place them there; however, they will not be required. As discussed above, the markings are required on the fuselage. This allows the interchanging of wings without having to have the wings and the fuselage recertificated as one unit each time they are changed.

Changes

In paragraph (e), the words "on any structural member or airfoil" have been changed to "on any fuselage structural member."

Section 45.29 Size of Marks

Some commenters suggested that the rule allow experimental light-sport aircraft to use 1.5-inch-high markings instead of 3-inch-high markings already required for most similar types of aircraft. These commenters noted that because some light-sport aircraft are constructed using narrow tubular metal spars to form the aircraft's fuselage, there is not sufficient area on the side of such aircraft to display 3-inch-high markings. The FAA disagrees with these observations. Aircraft that do not have the required surface area for the display of the required 3-inch-high markings may be modified easily to be in compliance with this requirement through the installation of a plate on the side of the aircraft large enough to accommodate the required markings. The FAA does not believe that the markings for these aircraft should be smaller than those required for other certificated aircraft. The FAA will continue to require that all registered aircraft display at least 3-inch-high markings.

Some commenters wanted all light-sport aircraft to display 12-inch markings, regardless of the type of aircraft. The FAA disagrees that all light-sport aircraft must display such marks. While most aircraft are required to display 12-inch-high marks, part 45 allows for certain types of aircraft and experimental aircraft with airspeeds under 180 knots CAS to display 3-inch-high marks. The size and speed of light-sport aircraft does not necessitate the display of marks of a size more appropriate for larger and faster aircraft.

Changes

The proposed rule is adopted without change.

V.5. Part 61—Certification: Pilots, Flight Instructors, and Ground Instructors

V.5.A. Part 61—General Issues

V.5.A.i. SFAR No. 89 Conversion Table

As discussed above, the FAA proposed the sport pilot certification provisions as Special Federal Aviation Regulation (SFAR) No. 89. Those provisions now have been incorporated into the main body of part 61. Please use the chart below to determine how the SFAR section numbers correspond to part 61 section numbers.

SFAR section	Part 61 section
1. What is the purpose of this SFAR?	§61.1 Applicability and definitions. §61.301 What is the purpose of this subpart? §61.401 What is the purpose of this subpart?
3. When am I eligible for a certificate under this SFAR?	§61.213 Eligibility requirements. §61.215 Ground instructor privileges. Existing §61.83, Eligibility requirements for student pilots, contains the same requirements as the proposed rule. §61.305 What are the age and language requirements for a sport pilot certificate? §61.403 What are the age, language, and pilot certificate requirements for a flight instructor certificate with a sport pilot rating?
5. Does this SFAR expire?	Not adopted in final rule.
7. Does a sport pilot certificate issued under this SFAR expire?	Existing §61.19, Duration of pilot and instructor certificates, contains the same requirements as the proposed rule.
9. What is a light-sport aircraft?	§1.1 General definitions.
11. Who is an authorized instructor?	Existing §61.1, Applicability and definitions, contains the same requirements as the proposed rule.
13. Do regulations other than those contained in this SFAR apply to a sport pilot?	§61.303 If I want to operate a light-sport aircraft, what operating limits and endorsement requirements in this subpart must I comply with?
15. Must I hold an airman medical certificate?	§61.3 Requirement for certificates, ratings, and authorization. §61.23 Medical certificates: Requirement and duration.
17. Am I prohibited from operating a light-sport aircraft if I have a medical deficiency?	§61.53 Prohibition on operations during medical deficiency?
Student Pilot Certificate to Operate Light-Sport Aircraft	
31. How do I apply for a student pilot certificate to operate light-sport aircraft?	Existing §61.85, Application, contains the same requirements as the proposed rule.
33. (a), (b), and (c): What solo requirements must a student pilot operating light-sport aircraft meet?	§61.87 Solo requirements for student pilots.

SFAR section	Part 61 section
33. (d), (e), and (f): What solo requirements must a student pilot operating light-sport aircraft meet?	§61.93 Solo cross-country flight requirements.
35. Are there any limits on how a student pilot may operate a light-sport aircraft?	§61.89 General limitations. §61.23 Medical certificates: Requirement and duration.
37. How do I obtain privileges to operate in Class B, C, or D airspace and at an airport located in Class B, C, or D airspace?	§61.94 Student pilot seeking a sport pilot certificate or recreational pilot certificate: Operations at airports within, and in airspace within, Class B, C, and D airspace, or at airports with an operational control tower in other airspace.
Sport Pilot Certificate	
51. What aeronautical knowledge must I have to apply for a sport pilot certificate?	§61.309 What aeronautical knowledge must I have to apply for a sport pilot certificate?
53. What flight proficiency requirements must I meet to apply for a sport pilot certificate?	§61.311 What flight proficiency requirements must I meet to apply for a sport pilot certificate?
55. What aeronautical experience must I have to apply for a sport pilot certificate?	§61.313 What aeronautical experience must I have to apply for a sport pilot certificate?
57. What tests do I have to take to receive a sport pilot certificate?	§61.307 What tests do I have to take to obtain a sport pilot certificate?
59. Will my sport pilot certificate list light-sport aircraft category and class ratings?	§61.317 Is my sport pilot certificate issued with aircraft category and class ratings?
61. May I operate all categories, classes, and makes and models of light-sport aircraft with my sport pilot certificate?	§61.303 If I want to operate a light-sport aircraft, what operating limits and endorsement requirements in this subpart must I comply with? §61.319 Can I operate a make and model of aircraft other than the make and model aircraft for which I have received an endorsement?
63. How do I obtain privileges to operate an additional category or class of light-aircraft?	§61.321 How do I obtain privileges to operate an additional category or class of light-sport aricraft?
65. How do I obtain privileges to operate an additional make and model of light-sport aircraft?	§61.323 How do I obtain privileges to operate a make and model of light-sport aircraft in the same category and class within a different set of aircraft?
67. Must I carry my logbook with me in the aircraft?	§61.51 Pilot logbooks.
Privileges and Limits of Holders of a Sport Pilot Certificate	
71. What type of aircraft may I fly if I hold a sport certificate?	§61.303 If I want to operate a light-sport aircraft, what operating limits and endorsement requirements in this subpart must I comply with?
73. What are my limits for the operation of light-sport aircraft?	§61.315 What are the privileges and limits of my sport pilot certificate?
75. May I demonstrate an aircraft in flight to a prospective buyer?	§61.315 What are the privileges and limits of my sport pilot certificate? Paragraph (c)(9).
77. May I carry a passenger?	§61.315 What are the privileges and limits of my sport pilot certificate?
79. May I share operating expenses of a flight with a passenger?	§61.315 What are the privileges and limits of my sport pilot certificate? Paragraph (b).
81. How do I obtain privileges to operate in Class B, C, or D airspace?	§61.325 How do I obtain privileges to operate a light-sport aircraft at an airport within, or in airspace within, Class B, C, and D airspace, or in other airspace with an airport having an operational control tower?
83. How do I obtain privileges to operate a light-sport aircraft that has a V_H greater than 87 knots CAS?	§61.327 How do I obtain privileges to operate a light-sport aircraft that has a V_H greater than 87 knots CAS?
Transitioning to a Sport Pilot Certificate	
91. How do I obtain a sport pilot certificate if I already hold at least a private pilot certificate issued under 14 CFR part 61?	§61.303 If I want to operate a light-sport aircraft, what operating limits and endorsement requirements in this subpart must I comply with?
93. How do I obtain a sport pilot certificate if I do not hold a pilot certificate issued under 14 CFR part 61, but I have been flying ultralight vehicles under 14 CFR part 103?	§61.52 Use of aeronautical experience obtained in ultralight vehicles. §61.329 Are there special provisions for obtaining a sport pilot certificate for persons who are registered ultralight pilots with an FAA-recognized ultralight organization?
95. How do I obtain a sport pilot certificate if I don't hold a pilot certificate and have never flown an ultralight vehicle?	Subpart J—Sport Pilots establishes all requirements.
Flight Instructor Certificate With a Sport Pilot Rating	
111. Must I hold an airman medical certificate?	§61.3 Requirement for certificates, ratings, and authorizations. §61.23 Medical certificates: Requirement and duration.
113. What aeronautical knowledge requirements must I meet to apply for a flight instructor certificate with a sport pilot rating?	§61.407 What aeronautical knowledge must I have to obtain a flight instructor certificate with a sport pilot rating?
115. What training must I have in areas of operation to apply for a flight instructor certificate with a sport pilot rating?	§61.409 What flight proficiency requirements must I meet to apply for a flight instructor certificate with a sport pilot rating?
117. What aeronautical experience must I have to apply for a flight instructor certificate with a sport pilot rating?	§61.411 What aeronautical experience must I have to apply for a flight instructor certificate with a sport pilot rating?
119. What tests do I have to take to get a flight instructor certificate with a sport pilot rating?	§61.405 What tests do I have to take to obtain a flight instructor certificate with a sport pilot rating?
121. What records do I have to keep and for how long?	§61.423 What are the recordkeeping requirements for a flight instructor with a sport pilot rating?

SFAR section	Part 61 section
123. Will my flight instructor certificate with a sport pilot rating list light-sport aircraft category and class ratings?	§ 61.417 Will my flight instructor certificate with a sport pilot rating list aircraft category and class ratings?
125. Am I authorized to provide training in all categories and classes of light-sport aircraft with my flight instructor certificate with a sport pilot rating?	§ 61.413 What are the privileges of my flight instructor certificate with a sport pilot rating? § 61.415 What are the limits of a flight instructor certificate with a sport pilot rating?
127. How do I obtain privileges to provide flight training in an additional category or class of light-sport aircraft?	§ 61.419 How do I obtain privileges to provide training in an additional category or class of light-sport aircraft?
129. How do I obtain privileges authorizing me to provide flight training in an additional make and model of light-sport aircraft?	Not adopted in final rule.
131. Do I need to carry my logbook with me in the aircraft?	§ 61.51 Pilot logbooks.
133. What privileges do I have if I hold a flight instructor certificate with a sport pilot rating?	§ 61.413 What are the privileges of my flight instructor certificate with a sport pilot rating?
135. What are the limits of a flight instructor certificate with a sport pilot rating?	§ 61.52 Use of aeronautical experience obtained in ultralight vehicles. § 61.415 What are the limits of a flight instructor certificate with a sport pilot rating?
137. Are there any additional qualifications for training first-time flight instructor applicants?	§ 61.415 What are the limits of a flight instructor certificate with a sport pilot rating?
139. May I give myself an endorsement?	§ 61.421 May I give myself an endorsement?
Transitioning to a Flight Instructor Certificate With a Sport Pilot Rating	
151. What if I already hold a flight instructor certificate issued under 14 CFR part 61 and want to exercise the privileges of a flight instructor certificate with a sport pilot rating?	§ 61.429 May I exercise the privileges of a flight instructor certificate with a sport pilot rating if I hold a flight instructor certificate with another rating?
153. What if I am only a registered ultralight instructor with an FAA-recognized ultralight organization?	§ 61.52 Use of aeronautical experience obtained in ultralight vehicles § 61.431 Are there special provisions for obtaining a flight instructor certificate with a sport pilot rating for persons who are registered ultralight instructors with an FAA-recognized ultralight organization?
155. What if I've never provided flight or ground training in an aircraft or an ultralight vehicle?	Subpart K—Flight Instructors with a Sport Pilot Rating establishes all requirements.
Pilot Logbooks	
171. How do I log training time and aeronautical experience?	§ 61.51 Pilot logbooks.
173. How do I log pilot-in-command flight time?	§ 61.51 Pilot logbooks.
175. May I use training time and aeronautical experience logged as a sport pilot toward a higher certificate or rating issued under 14 CFR part 61?	§ 61.51 Pilot logbooks. § 61.52 Use of aeronautical experience obtained in ultralight vehicles.
177. May I credit training time and aeronautical experience logged as an ultralight operator toward a sport pilot certificate?	§ 61.52 Use of aeronautical experience obtained in ultralight vehicles.
179. May I use aeronautical experience I got as the operator of an ultralight vehicle to meet the requirements for a higher certificate or rating issued under 14 CFR part 61?	§ 61.52 Use of aeronautical experience obtained in ultralight vehicles.
Recent Flight Experience Requirements for a Sport Pilot Certificate or a Flight Instructor Certificate With a Sport Pilot Rating	
191. What recent flight experience requirements must I meet for a sport pilot certificate?	Existing § 61.57 contains the same requirements as the proposed rule.
193. What are the flight review requirements for a sport pilot certificate?	Existing § 61.56 contains the same requirements as the proposed rule.
195. How do I renew my flight instructor certificate?	§ 61.425 How do I renew my flight instructor certificate?
197. What must I do if my flight instructor certificate with a sport pilot rating expires?	§ 61.427 What must I do if my flight instructor certificate with a sport pilot rating expires?
Ground Instructor Privileges	
211. What are the eligibility requirements for a ground instructor certificate?	§ 61.213 Eligibility requirements.
213. What additional privileges do I have if I hold a ground instructor certificate with a basic ground instructor rating?	§ 61.215 Ground instructor privileges.
215. What additional privileges do I have if I hold a ground instructor certificate with an advanced ground instructor rating?	§ 61.215 Ground instructor privileges.

V.5.A.ii. Medical Provisions

Under Section 15 of SFAR No. 89, the FAA proposed to require sport pilot certificate holders; student pilots operating within the limitations of a sport pilot certificate; and higher-rated pilots who elect to exercise only sport pilot privileges to hold and possess either a current and valid U.S. driver's license or a current and valid airman medical certificate issued under part 67. These provisions, as revised in the final rule, are located under §§ 61.3, 61.23, and 61.303 in the operating rules where medical certificate requirements for all pilots are found.

Under Section 111 of SFAR No. 89, the FAA proposed to require individuals exercising the privileges of a flight instructor certificate with a sport pilot rating and acting as pilot in command of a light-sport aircraft other than a glider or balloon, to hold and possess a current and valid U.S. driver's license or a current and valid airman medical certificate issued under part 67. These provisions, as revised in the final rule, are located under §§ 61.3 and 61.23 in the operating rules where medical

certificate requirements for all flight instructors are found.

Under Section 17 of SFAR No. 89, the FAA set forth circumstances under which a medical deficiency would preclude operators from exercising sport pilot privileges. In the final rule, these provisions are located under § 61.53 where medical deficiency provisions are found. These provisions are also found in §§ 61.23 and 61.303.

Comments received on the proposed medical provisions were mainly supportive. A minority of commenters opposed the rule. Several commenters, however, raised questions or offered other alternatives. Some requested that the FAA extend sport pilot medical provisions to recreational, and even private, pilots. A few commenters recommended minor editorial changes.

The FAA has reconsidered the circumstances in which a current and valid U.S. driver's license should be allowed in lieu of a valid airman medical certificate and has made substantive revisions to the medical provisions in the final rule. These revisions are based on the FAA's concern that pilots whose airman medical certificates have been denied, suspended, or revoked or whose Authorization for Special Issuance of a Medical Certificate (Authorization) has been withdrawn would be allowed to operate light-sport aircraft other than gliders and balloons under the proposed rule. Therefore, possession of a current and valid U.S. driver's license alone is not enough to dispel this concern. For this reason, this final rule permits using a current and valid U.S. driver's license as evidence of medical qualification based on certain conditions. If a person has applied for an airman medical certificate, that person must have been found eligible for the issuance of at least a third-class airman medical certificate. If a person has held an airman medical certificate, that person's most recently issued airman medical certificate must not have been revoked or suspended. If a person has been granted an Authorization, that Authorization must not have been withdrawn.

These provisions apply only to persons who have held or applied for an airman medical certificate or who have been granted an Authorization. It does not require the pilot of a light-sport aircraft to apply for an airman medical certificate. The words "most recent application" refer to the latest medical application that is on file with the FAA and on which action was taken. In addition, the words "most recently issued airman medical certificate" refer to the latest airman medical certificate on file with the FAA.

In addition, the FAA has determined that the rule should explicitly provide that a pilot may not use a current and valid U.S. driver's license in lieu of a valid airman medical certificate if the pilot knows or has reason to know of any medical condition that would make that person unable to operate a light-sport aircraft in a safe manner. This reiterates the requirement of § 61.53, but ensures that a person using a driver's license to exercise sport pilot privileges focuses on it. This does not require a pilot to qualify for an airman medical certificate, but if an individual has any question about his or her medical capacity to fly, that person should consult his or her personal physician. The individual still has the responsibility to determine whether he or she meets the provisions of § 61.53.

An applicant for a student pilot certificate seeking sport pilot privileges may be asked whether:

- He or she was found eligible for the issuance of at least a third-class airman medical certificate (if he or she recently applied for an airman medical certificate).
- His or her most recently issued airman medical certificate has been suspended or revoked.
- His or her most recent Authorization has been withdrawn.

The applicant may also be asked whether he or she knows or has reason to know of any medical condition that would make that person unable to operate a light sport aircraft in a safe manner. If the applicant answers "yes" to any of these questions, the applicant will be reminded that while he or she may be issued a student pilot certificate, he or she may not use a driver's license as evidence of medical qualification.

By incorporating these provisions, the FAA confirms that persons who would exercise sport pilot privileges must consider their medical fitness before operating. If a person should not be exercising airman privileges for medical reasons, that person should not be conducting sport pilot privileges unless and until it is safe for that person to do so.

Comments that supported the proposed medical provisions: The majority of the comments received on the proposed medical provisions were supportive. Supporting commenters regarded these proposed sections as the most critical part of the action and stated that if the FAA publishes a final rule with more restrictive medical requirements, they would withdraw support for the entire proposal. They stated that using a current and valid U.S. driver's license as proof of general medical qualification would permit older pilots no longer qualifying for an airman medical certificate to continue flying. In addition, commenters indicated that operators of light-sport aircraft are less likely to jeopardize the safety of surrounding individuals than motorists driving vehicles on public roadways. Commenters indicated that driving a motor vehicle is often more demanding and stressful than piloting an aircraft and that the overall incidence of crashes related to medical incapacitation is very low. According to commenters, most pilots are conscientious enough to take their own health into consideration when making the decision on whether to fly.

Numerous supporters of proposed medical provisions mentioned the financial and time burden placed on pilots to maintain an airman medical certificate, noting specifically the backlog for special-issuance medical certificates. Commenters stated that many pilots cannot obtain a third-class airman medical certificate and that some pilots, while medically capable of flying, cannot afford the medical testing needed to maintain an airman medical certificate.

Many commenters viewed this proposal as a means to allow individuals who have lost their third-class airman medical certificates to operate light-sport aircraft. Commenters identifying themselves as senior citizens commonly shared this view and welcome the opportunity to return to flying after being unable to obtain an airman medical certificate for many years.

Other comments in support may be summarized generally as follows:

- The FAA airman medical certificate is aimed at more stressful tasks like those performed by commercial pilots who often fly IFR.
- FAA airman medical certificates do not provide a guarantee about how a person will feel 2 hours later and do not prevent in-flight health hazards.
- Sport pilots, in particular, do not have that "must get there" attitude.
- As long as the process of § 61.53 remains in place, there is no reason to require a non-commercial pilot to hold an airman medical certificate.
- The additional requirement of a driver's license covers the increase in risk that the public may perceive and is appropriate for the weight and speed of light-sport aircraft.
- The current regime probably leads pilots to avoid doctors and treatments for certain medical conditions (*e.g.*, depression), thus decreasing safety.

FAA Response to Supporting Comments

As stated in the NPRM, the FAA believes that the level of health evidenced by a current and valid U.S. driver's license is a necessary, minimum prerequisite to safely operate light-sport aircraft other than gliders and balloons. The FAA chose to use state driver standards because they require a minimum level of health to be met before issuance. The FAA recognizes that these standards are sufficient minimum standards for drivers operating their automobiles at high speeds and in close proximity to other automobiles. They also are sufficient as minimum standards for pilots of light-sport aircraft other than gliders and balloons, absent evidence of a medical condition that would make the pilot otherwise unsafe to fly. Further, a state driver's license may be revoked or suspended for certain offenses that also may impact the license holder's ability and fitness to fly a light-sport aircraft, thus providing an added level of protection. If the U.S. driver's license of a person holding a sport pilot certificate or rating (who does not possess a valid airman medical certificate) is revoked or rescinded for any offense—including, among others, substance abuse, excessive speeding, careless and reckless operation of a vehicle, numerous traffic violations—the individual will not be able to exercise sport pilot privileges until the license is reinstated or the person obtains a valid airman medical certificate.

While pilots of light-sport aircraft will be required to hold and possess at least a current and valid U.S. driver's license, meeting this requirement alone does not equate to fitness to fly. The FAA cannot over-emphasize the crucial responsibility placed on those exercising sport pilot privileges to carefully consider fitness to fly before every flight. The FAA has always understood that pilots' own judgment regarding their fitness to fly is their most basic and important safety responsibility and that no level of airman medical certification will ever alleviate this responsibility. Those who would exercise sport pilot privileges must understand that, by taking control of an aircraft as pilot in command, they have made an unequivocal declaration as to their belief in their fitness to fly. To ensure that pilots focus on this responsibility, the final rule, as adopted, specifically provides that a pilot may not use a current and valid U.S. driver's license as evidence of medical qualification if he or she knows or has reason to know of any medical condition that would make that person unable to operate a light-sport aircraft in a safe manner.

The FAA believes that these minimum standards constitute only one aspect of the overall determination as to fitness to fly light-sport aircraft. The possession of a current and valid U.S. driver's license is not in and of itself sufficient to establish the fitness of the pilot. Therefore, it must be clear that a U.S. driver's license is not, for the purposes of this action, an FAA airman medical certificate. The FAA cautions that reference to a sport pilot "driver's license medical" should be avoided because a current and valid U.S. driver's license does not become a sport pilot certificate holder's airman medical certificate.

Moreover, the FAA is concerned that a number of commenters believe that the proposed rule would have presented an avenue for pilots who have been denied an airman medical certificate under part 67 to continue to fly. The FAA believes that most pilots who become aware through an airman medical examination of a condition that could prevent them from flying safely would not continue to fly. The commenters reveal, however, that a number of pilots might not give sufficient weight to the evidence of their medical conditions in deciding whether they are fit to fly. The FAA has determined, therefore, that the best course of action for aviation safety is to not allow a current and valid U.S. driver's license as evidence of medical qualification if a person's most recent application for an airman medical certificate has been denied or most recently issued airman medical certificate has been suspended or revoked.

The possession of a current and valid U.S. driver's license in no way constitutes a certification by the FAA that the holder of that license is fit to fly light-sport aircraft-that certification is provided by the pilot alone. It merely allows that the holder has met minimum FAA requirements and is permitted to operate a light-sport aircraft subject to the requirements of part 61 and the pilot's own determination of his or her fitness to fly.

Comments That Supported the U.S. Driver's License Proposal for Ultralight Operations But Not for More Complex Light-Sport Aircraft Operations

One commenter agreed that a U.S. driver's license is acceptable for ultralights and powered parachutes, but indicated that "all pilots of powered flight (single-engine aircraft) should undergo initial and periodic medical examinations." According to this commenter, since a third-class airman medical certificate is the current FAA standard for general aviation, it should be the same standard for sport pilots flying within the single-engine category.

One commenter had no objection to those exercising sport pilot privileges being able to use a U.S. driver's license to verify health. According to this commenter, this proposal can benefit those who cannot pass an FAA medical examination for whatever reason, but the commenter points out that a certain level of physical ability is required for safe flight. This commenter has compiled data that indicates that medical issues are virtually no problem when considering ultralight flight and therefore it strongly objects to a medical physical requirement for those pilots and instructors. Pilot medical data specifically relating to the operation of the significantly heavier and faster aircraft (up to 130 mph) as now proposed by the FAA, however, is not so clear. Therefore, the commenter could not comment on the safety of allowing pilots of heavier, faster aircraft which fly over congested areas and into controlled airspace to fly without a medical examination.

FAA Response to Commenters Who Supported the Proposal in Part

Commenters seem to be suggesting that the FAA adopt separate sets of standards; a two-tiered approach for this rulemaking action that would require airman medical certification for certain sport pilot certificate holders. The FAA did not propose such an approach because, by doing so, the regulations basically would remain as they are today. By establishing new rules and creating a new sport pilot certificate the FAA intends to allow for limited operations in a safe manner that will bring pilots operating ultralight-like aircraft into a more uniform regulatory system. Because the commenters do not describe how the FAA could implement their proposals other than to essentially maintain current regulatory parameters, the FAA could not consider them.

Comments That Opposed the Proposed Medical Provisions

One medical organization commented that its general membership was "overwhelmingly against" the NPRM's recommended use of a driver's license. According to this organization, the FAA desire for not "creating a significant financial barrier" is without merit with respect to the airman medical certificate. The organization indicated that a 2001 survey of airmen medical examiners with at least a 66% response rate indicates the average cost of a third-

class medical is $66.69. Annualized for those under 40, the cost is $22.23 and for those over 40, $33.35, which can hardly be considered a financial burden.

In addition, this organization stated that the NPRM's conclusion that driving fast in close proximity to other automobiles is safe and achieved by the varied medical clearances for driver's licenses, as applied across states, is misleading and supporting statistics are glaringly absent. Using only fatal crashes where a driver was reportedly "ill, passed out/blacked out" as a percent of total fatal crashes for just the year 2000 shows 0.9%. This percentage goes up if other driver factors such as medication reaction, not using medication, or other physical impairment are also considered. In 1 year, this figure is nearly five times that of the NPRM-quoted 7-year period where an airman medical certificate is required in aviation. According to this organization, "[t]he FAA's belief that the medical standards that permit an individual to drive * * * provides an adequate level of safety to operate * * * aircraft is not supported. Actually the opposite is true in that the numbers indicate an unreasonable risk to aviation safety for any level of piloting."

FAA Response to Comments That Opposed the Proposed Medical Provisions

The FAA concurs that, in the case of some applicants for airman medical certification, the cost of an airman medical examination is not cost-prohibitive. If the AME directs an applicant to undergo further testing beyond a standard physical, however, the cost to obtain an airman medical certificate can become more expensive. Under this action, individuals will have to obtain an airman medical certificate if they do not have or do not want to obtain a U.S. driver's license. The intent of this action. however, is not to recommend a practical fee or to analyze the cost factors for obtaining an airman medical certificate; it is to assure that, for sport pilot operations, an applicant can meet a basic level of health. The 2001 survey the commenter referenced was a compilation of information obtained from 3,800 individuals over a 4-year period who filled out a questionnaire at FAA-sponsored airman medical examiners periodic training seminars about their familiarity with and use of the *Federal Air Surgeon's Bulletin*. It was not specifically a questionnaire aimed at performing an analysis of AME fees.

The FAA does not intend to imply that driving an automobile and piloting an aircraft are exactly similar or that driving fast and in close proximity to other automobiles is safe. The FAA makes the comparison to driving to indicate only that, when compared to sport pilot operations, driving can be more stressful and can require more skill sometimes than flying a light-sport aircraft. For the NPRM, the FAA reviewed accident data relating to the medical condition(s) of a pilot not required to hold an airman medical certificate as a causal factor in general aviation accidents and not accident data relating to a driver's medical condition as causal factors in fatal automobile accidents. Therefore, the FAA cannot respond to the commenter regarding the 0.9% rate of total fatal automobile crashes in 2000 relating to a certain medical condition of the driver. Further, the FAA does not have enough accidents related to medical causes to be able to assign a yearly accident rate for fatal general aviation accidents. It should be noted, as stated in the NPRM, that the NTSB will investigate any accidents or incidents involving certificated sport pilots, light-sport aircraft, or persons exercising the privileges of a sport pilot. The FAA anticipates working closely with the NTSB to analyze light-sport aircraft accidents suspected of being caused by a pilot's medical condition.

General Opposing Comments

Opposing commenters also addressed the following:

- The ease with which a U.S. driver's license may be obtained in most states.
- The variation in standards among the states.
- The lack of serious medical testing during the application process for a U.S. driver's license.
- Inconsistent and inadequate vision tests.
- The process for obtaining a U.S. driver's license differs from that involved with obtaining an airman medical certificate and that driver's license medical standards and FAA airman medical standards differ.
- The FAA did not enact its 1995 proposal to allow recreational pilots to exercise privileges without an airman medical certificate for many reasons, including safety concerns, and there have been no substantial changes in need or requirements for safety since that ruling.

FAA response to general opposing comments: The FAA reiterates that the intent of this action is not to reduce safety or to encourage those experiencing medical problems, including vision problems, to exercise any type of sport pilot operation. Individuals with medical conditions that would prevent them from flying safely must not exercise sport pilot privileges. Additionally, individuals using a driver's license to exercise sport pilot privileges whose most recent application for an airman medical certificate has been denied or whose most recently issued airman medical certificate has been suspended or revoked must not exercise sport pilot privileges.

This action requires a basic level of health for sport pilot operations, if that basic level cannot be met then sport pilot privileges must not be exercised. The intent of this action is not to encourage those who have medical conditions or who may develop a medical condition(s) to become lax about their health and take chances piloting a light-sport aircraft. As it does with all pilots, the FAA recommends that persons holding a sport pilot certificate or rating consult with their private physician routinely and especially if they have any indication of adverse health. The FAA recommends routine vision screening.

The FAA acknowledges that the process to obtain and maintain an airman medical certificate versus that to obtain and maintain a U.S. driver's license is different and that U.S. driver's license standards vary from state to state. Even though the process for applying for and renewing a U.S. driver's license varies throughout the United States, U.S. issuing authorities require applicants to verify some basic level of health on their various driver's license applications. Each state requires an applicant to meet minimum vision standards. Many authorities require applicants to reveal any medical condition(s) that might preclude them from obtaining a U.S. driver's license in that jurisdiction. If any of these applicants affirm having received treatment for a medical condition (*e.g.*, stroke or paralysis, brain disorder, heart disorder, seizures) on an application, a licensed physician must further evaluate whether that person should be allowed to drive a motor vehicle. The same is true for an individual who applies for an airman medical certificate who indicates that he or she has a medical condition. That individual's Aviation Medical Examiner (AME) must further evaluate whether that person should be issued an airman medical certificate. Individuals who are not medically fit to operate a motor vehicle should not exercise the privileges of a sport pilot certificate. It is true that an individual who holds either a U.S. driver's license or an airman medical certificate could choose to operate a motor vehicle or conduct sport pilot

operations when not medically fit to do so. If sport pilots choose to do so, however, they are violating not only the terms of their U.S. driver's license or airman medical certificate but also the long-standing provisions of § 61.53 that pertain to prohibition on operations during medical deficiency. Sport pilots using a driver's license must also comply with the provisions of §§ 61.3, 61.23, and 61.303.

The FAA rescinded its 1995 proposal to allow recreational pilots to self-evaluate under the provisions of § 61.53 because it had no experience allowing recreational pilots, who may pilot more sophisticated and faster aircraft, to fly without FAA airman medical certification. Conversely, the FAA has had many years of experience allowing pilots of what are considered ultralight vehicles today to fly without medical certification and, based on this experience, believes this rule provides an equivalent level of safety for those being brought into compliance. Validating this experience is the accident data that the FAA has received under the terms of exemptions that have been granted to operate a two-seat ultralight vehicle for training purposes.

Comments That Favored Extending Sport Pilot Medical Provisions to Other Pilots

Several commenters favored extending proposed sport pilot medical provisions to pilots with higher-level certificates. These commenters contended that the same reasoning and justification proposed for sport pilots should apply to other pilots, recreational pilots in particular, who are subject to many of the same limitations such as those on carrying passengers, use of aircraft not having fixed gear, night flight, and visibility restrictions. It is suggested that the FAA review sport pilot data over time to provide for private pilots to use the sport pilot medical provisions that will be adopted under this rule.

According to commenters it has been adequately proven that existing medicine cannot predict heart attacks or strokes, so elimination of the FAA airman medical examination would have no adverse affect on safety.

FAA Response to Comments That Favored Extending Sport Pilot Medical Provisions to Other Pilots

The medical provisions the FAA proposed under this action were proposed for sport pilot operations only. The FAA has never considered expanding these provisions nor would it be within the scope of this action to consider doing so. The FAA agrees with commenters that it must gain experience with sport pilot medical provisions.

Commenters' General Remarks and Questions About Proposed Medical Provisions

Some commenters who expressed support for the proposal in principle and for the option of a U.S. driver's license over an airman medical certificate raised the following issues:

Question: What "known medical conditions" would prevent a person from exercising sport pilot privileges?

Response: The FAA has not established a list of disqualifying medical conditions under § 61.53. That could prevent a person from relying on a driver's license as the sole evidence of medical qualification. If a person chooses to exercise sport pilot privileges using an airman medical certificate, the FAA's disqualifying medical conditions set forth under part 67 apply. The ability to certify no known medical conditions becomes a matter between the pilot and his or her AME. If an individual's most recent application for an airman medical certificate has been denied after examination by an AME, that person would not be able to use a driver's license as evidence of medical qualification.

If an individual chooses to medically qualify for light-sport aircraft operations using a current and valid U.S. driver's license, then the restrictions and limitations listed on the U.S. driver's license apply, as do those imposed by judicial or administrative order for the operation of a motor vehicle. The determination as to whether a pilot has a medical condition that would make him or her unable to operate the aircraft in a safe manner is the sole responsibility of the pilot. The ability to certify no known medical conditions that would prohibit the safe operation of an aircraft is a matter about which a pilot should consult his or her personal physician.

Those experiencing medical symptoms that would prevent them from safely exercising the privileges of their sport pilot certificate, or that raise a reasonable concern, however, cannot claim to have no known medical deficiencies.

The FAA acknowledges that those interested only in exercising sport pilot privileges may not seek airman medical certification or may allow their current airman medical certificate to expire. This is acceptable under this rule. Depending on the FAA's experience under this rule, however, it could choose to establish a list of disqualifying medical conditions or even revert to requiring airman medical certification if it becomes apparent that those exercising sport pilot privileges are not exercising reasonable judgment with regard to their medical fitness to fly.

Question: Is the special issuance of a medical certificate under § 67.401 considered a denial of an application for an airman medical certificate?

Response: No. A pilot who has received a special issuance of a medical certificate may also exercise sport pilot privileges using a U.S. driver's license, provided he or she is medically fit to fly.

Remark: The proposed medical provisions discriminate against the following:

- Those who live in rural Alaska who do not drive and therefore cannot take advantage of the option of using a driver's license.
- Those who hold foreign pilot certificates or foreign driver's licenses.
- Those who could qualify for a third-class airman medical certificate but do not choose or otherwise have the need, desire, or money to have a U.S. driver's license.
- Those pilots other than sport pilots who are required to hold an FAA airman medical certificate.

It is not the FAA's intention to discriminate against anyone or to disadvantage those who do not have or cannot obtain a current and valid U.S. driver's license. This action provides an alternate means of compliance with full FAA airman medical certification for sport pilot certificate holders only and for those who are able to obtain and maintain a current and valid U.S. driver's license only. Standards for those who wish to maintain higher-level pilot certificates and ratings remain unaffected by this action; therefore this action cannot be considered discriminatory against them because operations they would conduct do not fall within the scope of this action.

The FAA understands that there may be individuals in the United States who may have difficulty traveling to their licensing entities to acquire a U.S. driver's license. The FAA notes that it may be similarly difficult for some individuals to obtain an FAA airman medical certificate. While the FAA appreciates that requiring those holding a sport pilot certificate or rating to hold and possess either a current and valid U.S. driver's license or a valid airman medical certificate does place a disproportionately higher burden on those individuals who live some distance from the appropriate certification resources, no regulation can have an entirely uniform effect on all entities subject to its requirements and limitations. The FAA believes that

these minimum standards are necessary and that it would not be in the interest of safety to alter them because they may place a slightly greater hardship on certain individuals over others.

Because this rule requires a current and valid U.S. driver's license, a foreign driver's license would not be acceptable. Because of the events of September 11, 2001 and ongoing harmonization efforts, guidance on issuing U.S. pilot certificates and airman medical certificates based on foreign certificates continues to evolve. Current guidance can be found in FAA Order 8700.1 "General Aviation Inspector's Handbook," chapter 29, "Issue of a U.S. Pilot Certificate on the Basis of a Foreign-Pilot License."

Remark: Many drivers operate motor vehicles while taking narcotics and tranquilizers even when counseled not to do so. Also, individuals who have been advised by their physician not to drive due to a medical condition may continue to drive anyway.

Response: The FAA acknowledges that people may choose to continue to drive and even fly against medical advice or while taking certain medications. What is more, some may not even consult with a private physician about a medical condition or before taking medication. Unfortunately, there are those who will take chances and any action the FAA may take would not dissuade these individuals. Further, this situation can apply not only to drivers and pilots, but to operators of any kind of transport vehicle, machinery, or equipment. Fortunately, however, aviation accident statistics rarely indicate medical factors as probable cause. This would seem to indicate that, for the most part, pilots do not take chances flying when they know they are not medically fit to do so.

Question: Why are the requirements for operating light-sport aircraft higher than requirements to operate gliders?

Response: Today's technological advances in light-sport aircraft call for a set of standards that could no longer be served by those set forth for balloons and gliders. The FAA is adopting this rule to increase safety in the light-sport aircraft community by closing gaps in existing regulations and accommodating new advances in technology. Therefore, requirements for light-sport aircraft and sport pilot certificate holders are necessarily more rigid than those for glider operations. The FAA believes that a permanent and appropriate level of regulation is necessary. Because the FAA has added more requirements for certification and training for light-sport aircraft, it also determined that some medical provisions for sport pilot certificate holders would be necessary. While airman medical certification is optional for light-sport operations, some minimum level of proof of general good health is warranted. The FAA determined that the ability to meet the medical requirements necessary to obtain a U.S. driver's license would be appropriate.

Question: Can deaf individuals obtain a sport pilot certificate?

Response: Yes. Deaf individuals are eligible to apply for pilot certificates. Deaf individuals interested in piloting should consult the FAA Web site at *http://www2.faa.gov/avr/afs/deaffaq.htm*.

Question: Will flight instructors and employees of flight schools be required to adhere to DOT drug-testing policies?

Response: For sport pilot operations, flight instructors and employees of flight schools are not considered "employees who must be tested" as defined under part 121, appendix I. Flight instructors with a sport pilot rating acting as pilot in command of a light-sport aircraft other than a glider or balloon, however, must adhere to the provisions of existing §§ 61.15, 91.17, and 91.19 regarding offenses involving alcohol or drugs.

Other Suggested Modifications From Commenters

Many commenters provided suggested alternatives to the proposed medical provisions. Among others, these suggestions included the following:

- Institute a fourth-class airman medical certificate;
- Require a third-class airman medical certificate for those with no, or no recent, appreciable flight time;
- Require a third-class airman medical certificate for night flight and IFR flight;
- Require an eye examination at a local clinic in lieu of a U.S. driver's license;
- Have the option of having an evaluation from a private physician once every 5 years in lieu of a U.S. driver's license;
- Allow a written medical declaration or certificate of good health to replace the driver's license for those who do not want to get a U.S. driver's license or an airman medical certificate;
- Do not allow by-mail or on-line renewals of a U.S. driver's license for sport pilot operations;
- Have a "grandfather clause" to allow pilots, who might lose airman medical certification but who have a lifetime of flying experience and flying time, to continue to fly the aircraft they have flown all their lives even if that aircraft would not meet the weight restrictions laid out in the proposal.

FAA Response to Other Suggested Modifications From Commenters

The FAA considered several viable alternatives to airman medical certification. As discussed in the proposed rule, the ARAC also proposed many alternatives. The FAA proposed to allow either airman medical certification as currently set forth under part 67 or a current and valid U.S. driver's license as a means for holders of sport pilot certificates and ratings to meet medical qualifications because it wanted to avoid creating a new class of airman medical certificate that might not be viable. The FAA already has an elaborate airman medical certification program for higher-rated pilots. If sport pilots do not want to choose airman medical certification then they choose to be subject to the medical protocols established by U.S. driver's licensing entities. The FAA wanted a viable, proven means of certification such as that already established within the FAA and among U.S. driver's licensing entities. Creating a new class of airman medical certificate would involve more comprehensive regulations (*e.g.*, amendments to parts 61, 67, and 183) because it would involve new airman certification rules, new medical standards, and perhaps new designees or an expansion of the role of existing designees. It would require a new, special category of disqualifying medical conditions, new forms, new certificates, and further paperwork and recordkeeping requirements that light-sport operations do not appear to warrant. Any of these alternatives proposed by commenters, ARAC, or considered by the FAA would be difficult to regulate and a burden to implement.

While many of these comments for alternatives and additions to the proposed sport pilot medical provisions may have merit, the commenters did not provide cost justification or any detailed discussion of how the FAA could propose adopting and implementing them.

Editorial Comments on Proposed Medical Provisions

One organization recommended that proposed Section 111 be entitled "Must I hold an airman pilot and medical certificate as a Sport Pilot Flight Instructor?" rather than "Must I hold an airman medical certificate?" It recommended that proposed Section 111 be reworded to bring the requirement of this regulation in line with the requirements of § 61.183,

which is to hold a pilot certificate in order to be flight instructor.

Another commenter suggested that the word "requirement," used in SFAR No. 89 section 3(b), should be replaced with the word "reasons." According to this commenter, "requirements" is not the correct word because "requirements" never prevented anyone from speaking, reading, or understanding English. Using the word "reasons" would allow for consistent usage of the term under current regulations.

FAA Response to Editorial Comments on Proposed Medical Provisions

The comments requesting editorial changes have merit. The FAA adopts medical provisions that more clearly define requirements for flight instructors and that avoid the incorrect use of the terminology "medical requirements." The terminology the FAA uses under existing §§ 61.123, 61.153, 61.183, and 61.213 is "medical reasons," which is correct.

Other Editorial Change

The FAA is changing the words "current and valid" when referring to an airman medical certificate to "valid" to avoid redundancy. An airman medical certificate is "valid" provided it has not expired as set forth under existing § 61.23. Because there are no recency-of-experience requirements associated with an airman medical certificate, the word "current" is redundant and therefore not necessary.

Future Rulemaking on Private Pilots With Weight-Shift-Control or Powered Parachute Ratings

During the process of drafting the final rule, the FAA recognized that it did not specifically propose medical eligibility requirements for private pilots with a weight-shift-control or powered parachute rating. This would have inadvertently defaulted these pilots to a requirement to hold at least a third-class airman medical certificate to exercise the privileges associated with those ratings. This was not the FAA's intent. However, because the FAA did not propose and seek public comment on allowing private pilots with a weight-shift-control or powered parachute rating to operate those aircraft without holding a third-class airman medical certificate, the FAA must initiate future rulemaking action. It should be noted that persons wishing to operate weight-shift-control aircraft or powered parachutes while exercising sport pilot privileges, but not private pilot privileges, may do so under this rule. In addition, under current rules, a weight-shift-control aircraft can be operated as an experimental powered glider, with an endorsement for self-launching, without an airman medical certificate.

V.5.A.iii. Flight Training and Proficiency Requirements

As a result of this rulemaking action, the new sport pilot certificate has been established with training, experience, and testing requirements commensurate with the privileges and limits associated with this certificate level. This pilot certificate will fall between the part 103 regulations that address ultralight pilot privileges and those that address the recreational pilot certificate. Two of the key privileges a sport pilot will be granted are: (1) The ability to operate a simple, non-complex light-sport aircraft, defined in § 1.1, that exceed the parameters of an ultralight vehicle; and (2) permission to carry a passenger. Light-sport aircraft comprise the following categories of aircraft—airplane, gyroplane, glider, balloon, airship, powered parachute, and weight-shift-control aircraft.

Several commenters wished to see the minimum number of hours required to obtain a sport pilot certificate raised, while a few commenters wished to see the number of hours required lowered.

The FAA expects that the 20-hour minimum flight time requirement for all aircraft (except gliders, balloons, and powered parachutes) is adequate to train a person to exercise the privileges of a sport pilot. Sport pilots are limited in the types of aircraft they may operate and the operations they may conduct. The flight time and flight training are minimum requirements that an applicant for a sport pilot certificate must meet and even if satisfied, there are several additional checks before a sport pilot certificate is issued. Importantly, the applicant must be recommended by an authorized instructor who endorses the applicant's logbook indicating that he or she is prepared to take and pass the practical test. The applicant must also have been recommended for and passed a knowledge test on the general knowledge requirements necessary to exercise sport pilot privileges and operate a light-sport aircraft in the NAS. Once recommended by the authorized instructor, the applicant must demonstrate to the FAA, or FAA designated examiner, that the practical test standards can be met before the certificate is issued.

The knowledge and flight training requirements, established for a sport pilot, requires the ability to comply with the operating rules in part 91, the certification rules in part 61, and NTSB rules in 14 CFR part 830. After satisfying all of these requirements for a pilot certificate, a sport pilot may—

- Operate an aircraft that meets the definition of light-sport aircraft that does not exceed 87 knots V_H and carry only one passenger
- Fly only between sunrise and sunset, below 10,000 feet MSL, with visual reference to the surface, and when the visibility is 3 miles or greater
- Operate in class E and G airspace, but not in class A, B, C, and D airspace where you need to communicate with ATC, and fly cross-country
- Not tow any object, not conduct sales demonstration rides if an aircraft salesman, not fly for compensation or hire, or carry a passenger for compensation or hire.

Additionally, to accommodate the approach originally proposed by the ultralight industry, the FAA established a building-block approach to permit a sport pilot to obtain additional privileges. After meeting the requirements for a sport pilot certificate, the pilot must obtain additional experience, training, and/or testing to receive an endorsement allowing the pilot to—

- Operate a new category or class of light-sport aircraft
- Operate a make and model of light-sport aircraft within a different set of aircraft
- Operate a light-sport aircraft that exceeds 87 knots V_H (but does not exceed 120 knots V_H)
- Operate in Class B, C, and D airspace and other airspace in which communication with ATC is required.

One commenter suggested that the training and proficiency requirements be made commensurate with the complexity of aircraft on which the training is being given. The FAA believes that the rule does this. All student pilots, regardless of the certificate levels they are seeking, or the complexity of the aircraft, are trained to safely operate the aircraft in which they are receiving training in order to conduct solo operations. The FAA does not set a minimum time to meet the solo requirement, although an endorsement from an authorized flight instructor and continued supervision during solo training is required. A student pilot then continues training that is specific to the pilot certificate he or she is seeking.

The minimum training required for a sport certificate will be appropriate for a light-sport aircraft, in the category the student wishes to fly, and in an aircraft that operates at an airspeed below 87 knots CAS V_H (100 mph). Although, the student does have the option to operate

a light-sport aircraft that exceeds 87 knots V_H this will require training beyond the minimums set forth for a sport pilot certificate. How much additional training will depend on the complexity of the light-sport aircraft and the skills of the pilot.

An important factor to remember when comparing the training requirements of an ultralight pilot, a sport pilot, a recreational pilot, and a private pilot is that the rules do consider the type of aircraft operated (category, class, weight, speed, and complexity), and the operating privileges and limitations. Reference the charts under "IV. Comparative Tables" for an overview of these factors.

Additionally, some commenters raised concerns about the minimum training requirements for a sport pilot who would have the authority to operate an experimental, primary, or standard category aircraft that currently can only be operated by a recreational pilot or higher certificate level. The FAA believes that pilot training, and subsequent privileges and limitations of the pilot certificate, are based on an aircraft's operating characteristics, speed, weight, and complexity. They are not based on how the aircraft was manufactured and the type of airworthiness certificate the aircraft has been issued. The FAA believes that any aircraft that meets the definition of a light-sport aircraft can be safely operated by a sport pilot with the required training, testing, and endorsements. How the aircraft is operated and maintained is dependent on the type of airworthiness certificate issued. A sport pilot is trained and tested to ensure that he or she can make those determinations.

The FAA received numerous comments recommending that cross-country distances for weight-shift-control aircraft training be decreased to distances similar to those required for gyroplane training. The FAA proposed that the training requirements for weight-shift-control aircraft be identical to those for powered fixed-wing requirements. The commenters pointed out that a weight-shift-control aircraft have an open fuselage and fly at much slower speeds than fixed-wing aircraft. They stated that speeds of weight-shift-control aircraft are rarely in excess of 87 knots CAS, which are similar to speeds achieved by gyroplanes. The FAA agrees that weight-shift-control aircraft have similar operating speeds to gyroplanes; therefore, the FAA is reducing the training requirements for cross-country distances at the sport pilot and private pilot certificate levels to reflect the lower operating speeds of these aircraft.

The FAA also received numerous comments on the flight training requirements in a powered parachute for sport pilot and private pilot certificates. Most commenters said that powered parachute training requirements should parallel the training requirements for gliders and balloons, as opposed to paralleling the training requirements for fixed-wing aircraft, which was proposed. After gaining operational experience in powered parachutes during the development of the practical test standards, the FAA agrees, and, therefore, in the final rule the training requirements for powered parachutes are modified to parallel those for gliders and balloons. This change to the final rule reflects the need for training in the critical takeoff and landing phases of flight, as well as ground handling during set-up and after landing. The powered parachute minimum flight time and flight training time for sport pilots and private pilots is decreased. For a sport pilot, the decrease is from 20 hours to 12 hours for total flight time, which must include 10 hours of flight training time. Even though the minimum time requirement is decreased, the training time must now include an additional requirement for at least 20 takeoffs and landings with an authorized instructor and 10 solo takeoffs and landings to a full stop. For a private pilot, the decrease is from 40 hours to 25 hours of total time, and from 20 hours to 10 hours of flight training time. However, the training time must now include at least 30 takeoffs and landings with an authorized instructor to a full stop and 20 solo takeoffs and landings to a full stop. These revised flight times are in excess of what is required for a glider or balloon pilot at the sport pilot and private pilot certificate levels.

In addition, although cross-country and night training is not required for a glider or balloon rating at the private pilot level, the FAA is requiring this training at the private pilot level for a powered parachute rating. Night training is not required at the sport pilot level because sport pilots are not authorized to fly at night; however, cross country training is required at the sport pilot level with a powered parachute rating. These additional training requirements for a powered parachute rating are necessary because powered parachutes, unlike gliders and balloons, are powered aircraft. The cross-country requirements were changed to reflect the significantly slower speeds of powered parachutes, generally 30 mph, as opposed to the proposed requirements that were applicable to much faster fixed wing aircraft. For sport pilots, the requirement for 2 hours cross-country flight training is reduced to 1 hour, and the solo cross-country flight requirements are reduced to require only one solo flight with a straight-line distance of 10 NM between the take off and landing locations.

The FAA received comments on powered parachute and weight-shift-control navigational training requirements. In addition to considering those comments, while developing practical test standards for these aircraft, the FAA became more familiar with the characteristics of these aircraft. During that process, the FAA realized that weight-shift-control aircraft and powered parachutes typically navigate by dead reckoning, which requires the aid of a magnetic compass, as opposed to pilotage, which does not require one. Most powered parachutes and weight-shift-control aircraft do not have a magnetic compass. This is also the case with many of other open-cockpit, slower light-sport aircraft such as gyroplanes and some fixed-wing aircraft. In the final rule, therefore, the FAA is adding words such as "as applicable" or "as appropriate" to §§ 61.1, 61.93, and 61.309 when addressing the use of navigation systems. This means that training is required only on the navigation systems appropriate for the kind of aircraft flown. The practical test standards will provide specific guidelines for meeting this training requirement. Additionally, the FAA reviewed the proposed solo cross-country flight requirement for persons seeking weight-shift-control aircraft privileges and is revising the proposal to require the flight to include a full-stop landing at a minimum of two points. This change is also being made to the proposed requirements for persons seeking airplane and rotorcraft privileges. It is being made to preclude cross-country flights that include only a takeoff and landing at the original point of departure.

The Administrator's Safer Skies Program reviews general aviation accidents and determines new methods to prevent future accidents. One program recommendation was that the FAA review part 61 for how it addresses training and testing pilot judgment. As a result of that review, the FAA will require sport pilot training that is specifically aimed at aeronautical decision making and risk management. This training will provide a way of evaluating whether a sport pilot adequately uses risk management techniques in conjunction with

aeronautical decision making. The FAA and industry are currently developing new training and certification materials to meet these new requirements. Accordingly, the FAA is changing references in aeronautical knowledge requirements that refer to "judgment" to "risk management."

Several commenters noted that the FAA proposed to require solo cross-country training to obtain a sport pilot certificate to operate a balloon, but not to obtain other pilot certificates to operate a balloon. The commenters noted that this proposed requirement in the regulatory text conflicted with the discussion in the preamble. This was an error in the regulatory language, and § 61.313(f) is changed to reflect the FAA's intent that solo cross-country training for balloons is not required.

There were several commenters who noted that certain proposed flight training and proficiency maneuver requirements would have been inappropriate for training in powered parachutes and weight-shift-control aircraft. The maneuvers the commenters cited for powered parachutes were meta-stable stalls and partial canopy collapses. The commenters said that meta-stable stalls are a result of a design and rigging issue not a flight training issue. They recommended that meta-stable stall avoidance is one of ensuring proper rigging of the canopy and should be addressed during the training segments on proper rigging. For weight-shift-control aircraft, the commenters cited spins, and tumble entry and avoidance techniques. In addition, a few commenters suggested eliminating the powered parachute training requirement for crosswind takeoffs and landings because a powered parachute does not have rudder or aileron control surfaces, and a pilot cannot compensate for crosswinds on takeoffs and landings. Many commenters suggested that the rule be revised to either require recognition and avoidance training for those areas of operation or to eliminate those training requirements. The FAA agrees. While it is crucial that pilots of powered parachutes and weight-shift-control aircraft be capable of recognizing and avoiding such emergencies, it is not safe for pilots to experience them in training. The FAA is therefore revising the rule as follows.

In SFAR No. 89 sections 33, 53, and 115 and § 61.107, the FAA proposed flight proficiency training requirements for student pilots seeking a sport pilot certificate, sport pilots, private pilots, and persons seeking a flight instructor certificate with a sport pilot rating in the areas of stalls, meta-stable stalls, and partial canopy collapses in powered parachutes. Flight proficiency training requirements are now included in §§ 61.87, 61.107, 61.311, and 61.409. However, in the final rule, the requirements for flight proficiency in crosswind takeoffs and landings, meta-stable stalls, and partial canopy collapses are removed for the reasons cited in the previous paragraph. Those subjects will be covered in the aeronautical knowledge sections of the final rule and addressed in the practical test standards.

Proposed SFAR No. 89 section 51 would have required sport pilots to receive ground training in stall awareness, spin entry, spins, and spin recovery techniques (if applicable). It also would have required sport pilots seeking to operate weight-shift-control aircraft to receive training in tumble entry, and tumble avoidance techniques. Proposed section 53 of SFAR No. 89 would have required a sport pilot to receive ground and flight training in slow flight and stalls, except when seeking privileges in a lighter-than-air aircraft or a gyroplane.

In the final rule, the FAA is removing the requirement to receive training in tumble entry and tumble avoidance techniques for a sport pilot seeking to operate a weight-shift-control aircraft. The FAA is also removing the requirements for both a sport pilot and a private pilot seeking to operate a powered parachute to receive training in slow flight and stalls. In addition, the FAA is also removing the requirement for sport pilots seeking to operate a lighter-than-air aircraft to receive training in slow flight. Sport pilots will be required to receive ground training in stall awareness, spin entry, spins, and spin recovery techniques. This training should provide applicants with a general understanding of these aeronautical knowledge areas and include specific training applicable to the category and class of aircraft in which privileges are sought.

For flight instructors seeking a sport pilot rating, the FAA is revising proposed section 115 of SFAR No. 89 by not requiring an applicant to receive training in slow flight if the person is seeking to operate a lighter-than-air aircraft or a powered parachute. The rule also does not require an applicant to receive training in stalls if the person is seeking to operate a lighter-than-air aircraft, a powered parachute, or a gyroplane. In addition, the final rule removes the proposed requirements for spin training for those individuals seeking flight instructor privileges in weight-shift-control aircraft because a weight-shift-control aircraft does not spin. In the final rule, the FAA is adding a requirement for training in tumble entry and avoidance techniques for those persons seeking flight instructor privileges in weight-shift-control aircraft. A flight instructor must be knowledgeable about this particular maneuvering characteristic and have the skills to provide proper instruction on tumble entry and avoidance techniques.

Similarly, proposed § 61.107 (b)(9)(viii) would have contained a requirement to conduct slow flight in a powered parachute. During the development of the practical test standards, the FAA determined that since powered parachutes only fly no more than 30 mph, this training requirement is not applicable for this category of aircraft. In the final rule, this requirement is removed. This requirement is also removed from § 61.311.

A few commenters noted that in proposed SFAR No. 89 section 55, the FAA did not address the aeronautical experience required for a class privilege for land or sea in the airplane, powered parachute, and weight-shift-control aircraft categories. Although the FAA did not specifically address requirements for land and sea privileges, the requirements set forth in that section applied to both classes of aircraft. The FAA is revising the final rule in §§ 61.311 and 61.313(a), (g), and (h) to differentiate between land and sea privileges. The final rule requires specific endorsements for the exercise of either set of privileges.

Additionally, the commenters were not sure if the proposed rule addressed the requirements for the addition of class privileges. For the addition of class privileges, refer to § 61.321, which requires that the appropriate ground and flight training specified in §§ 61.309 and 61.311 for the new class of aircraft. This training and recommendation must be accomplished with an authorized instructor with a different authorized instructor completing a proficiency check.

V.5.A.iv. Make and Model Logbook Endorsements, and Sets Of Aircraft

In proposed section 61 of SFAR No. 89 (now § 61.319), the FAA proposed that the holder of a sport pilot certificate must have a logbook endorsement from an authorized flight instructor for each category, class, or make or model of light-sport aircraft that he or she wished to operate. In addition, proposed SFAR No. 89 section 125 (now §§ 61.413 and 61.415), stated that a flight instructor with a sport pilot rating could provide training only in a category and class and make and model of light-sport aircraft in which he or she is authorized to provide

training. These proposed requirements were intended to ensure that any sport pilot flying in, or any flight instructor with a sport pilot rating instructing in, one of the unique light-sport aircraft that fall into the broad categories and classes of aircraft established in § 61.5 would receive additional flight training that was make-and-model specific.

The FAA notes that the preamble to the NPRM (under "Proposed Sections 59 and 61") stated that the FAA would work with industry to develop procedures to allow flight instructors with a sport pilot rating to issue logbook endorsements "for a particular group of make and model aircraft having similar operating characteristics." The agency recognized then that grouping aircraft having similar performance and operating characteristics could reduce the administrative burden of obtaining logbook endorsements for all make and models of aircraft. The agency asked for comments, both in the NPRM and in the on-line public forum, on whether make and model endorsements for sport pilots would be in the public interest.

Nearly all of the numerous comments addressing this issue criticized the make and model endorsement requirement as overly burdensome and unnecessary. Several commenters noted the particular burden the endorsement requirement would place on flight instructors with a sport pilot rating, who would be required to obtain a logbook endorsement for every make and model of light-sport aircraft they wished to use for training. Many commenters noted that this proposed requirement might have the unintended effect of discouraging a current ultralight instructor from becoming a flight instructor with a sport pilot rating because that instructor would be required to obtain specific training for each aircraft on which he or she wished to provide training. Many commenters also noted that, in some remote areas of the United States, obtaining training for a specific make and model of light-sport aircraft might require a prospective flight instructor with a sport pilot rating to travel some distance and incur relatively high expenses to gain an endorsement. This could make qualified instructors hard to find and consequently make their services more expensive, the commenters said. The commenters also pointed out that, if a flight instructor with a sport pilot rating had difficulty obtaining the appropriate logbook endorsement to train on a specific make or model of light-sport aircraft, a student pilot seeking a sport pilot certificate or a sport pilot might have difficulty finding an instructor in his or her area qualified to offer training on the aircraft he or she wishes to fly.

Most commenters felt that the differences between various makes and models of light-sport aircraft were minor and generally would not affect the ability of a flight instructor with a sport pilot rating to safely provide training in various makes and models of light-sport aircraft, nor would those minor differences affect a sport pilot's ability to operate them. Many commenters suggested removing the requirement completely for these reasons. Commenters also suggested the FAA organize light-sport aircraft of similar performance and handling characteristics into broad groups and allow flight instructors with a sport pilot rating to receive logbook endorsements within each group, rather than obtain one endorsement for each make and model of aircraft. Most commenters felt this modification would reduce the cost to flight instructors with a sport pilot rating, consequently reducing the cost passed to sport pilots and student pilots seeking a sport pilot certificate.

An industry organization suggested that it would be reasonable to allow for the operation of an additional make and model of light-sport aircraft if the sport pilot became familiar with the operating limitations, emergency procedures, operating speeds, and weight and balance for the particular make and model of aircraft. Additionally, the sport pilot would be required to perform the following flight operations prior to carrying a passenger, accomplishing a cross-country flight, or operating solo in Class B or C airspace—take-offs and landings (minimum of 3 to a full stop), power-off stalls (as appropriate), and 1 hour of pilot-in-command flight time. The sport pilot would then endorse his or her logbook specifying that these actions had been completed. The endorsement would permit the sport pilot to operate that make and model of aircraft.

After reviewing the comments and gaining a better understanding of the technical similarities between certain makes and models of light-sport aircraft, the FAA agrees that the proposed rule could have been administratively and economically burdensome. Although the FAA does not believe the requirements should be completely eliminated, the FAA is changing the final rule as discussed below.

The FAA now recognizes that grouping makes and models of light-sport aircraft that have very similar performance and operating characteristics as a set of aircraft would be an effective means to permit sport pilots to operate any aircraft within that set once an endorsement to operate any aircraft within that set has been received. The FAA now believes that it is possible to group light-sport aircraft into sets of aircraft, as defined in current § 61.1. Section 61.1 states that the term "set of aircraft" refers to aircraft that "share similar performance characteristics, such as similar airspeed and altitude operating envelopes, similar handling characteristics, and the same number and type of propulsion systems." This concept of grouping aircraft having similar operating characteristics, or using sets of aircraft, has been used successfully for many years through the National Designated Pilot Examiner Registry (NDPER) program for training and checking pilots operating warbirds and other vintage aircraft.

A working group of FAA and industry representatives, including pilots, flight instructors and manufacturers, will be established to develop standards for defining and establishing sets of aircraft. Sets of light-sport aircraft will be established according to the definition of "set of aircraft" in § 61.1 and made available to the public. The parameters to establish sets of aircraft will be referenced in the advisory material, and a list of aircraft that meet the parameters for a specific set of aircraft will be available on the FAA's website. All experimental, primary, and standard category light-sport aircraft will be grouped into sets. In addition, newly manufactured light-sport aircraft will be required to have "flight training supplements" to identify the sets of aircraft to which they belong. As a member of the working group, the FAA will recommend that sets of aircraft include experimental aircraft with modifications and single-seat aircraft.

The FAA is revising the rule (under §§ 61.319 and 61.323) to require that, before conducting flight operations, the holder of a sport pilot certificate—

- Must receive training from an authorized instructor in a make and model of light-sport aircraft that is in the same set as the aircraft in which the pilot intends to conduct flight operations.
- Must record a make and model logbook endorsement from an authorized instructor for the make and model of light-sport aircraft in which flight privileges are desired.
- May operate any additional make and model of light-sport aircraft within a set of light-sport aircraft under a single make and model logbook endorsement issued by an authorized flight instructor.

Under the final rule (under § 61.415), the FAA is not requiring an additional make and model endorsement for a flight instructor with a sport pilot rating. The FAA recognizes that such a requirement would be superfluous. Also, as discussed in the following paragraph, if a flight instructor with a sport pilot rating holds a higher pilot certificate, a make and model endorsement is not required under the final rule.

The FAA received several comments from individuals and industry organizations that stated that the FAA should reconsider the proposed requirement that the holder of a recreational pilot certificate or higher who is exercising sport pilot privileges be required to receive flight training and a make and model logbook endorsement from an authorized instructor before being permitted to fly a specific make and model light-sport aircraft. The FAA recognizes that the holder of a recreational pilot certificate or higher pilot certificate with the applicable rating has received more training than a sport pilot, which in most cases was in more complex and larger aircraft. Therefore, the FAA is revising the final rule under § 61.303 to establish that the holder of a recreational pilot certificate or higher is not required to obtain a make and model logbook endorsement from an authorized instructor to operate a light-sport aircraft while exercising the privileges of a sport pilot certificate.

Several commenters said it would be burdensome to require a flight instructor with a sport pilot rating to have at least 5 hours of required pilot-in-command time in each make and model of light-sport aircraft in which he or she is authorized to provide flight training. This was proposed in SFAR No. 89 section 135(c). After gathering additional technical information and considering the comments, the FAA still believes that flight instructors with a sport pilot rating must become familiar with the light-sport aircraft on which they intend to provide training and must have at least 5 hours of flight time in the make and model of aircraft within a set of aircraft. The ability to satisfy the make and model requirement within the set of aircraft provisions discussed above partially relieves the burden. Additionally, the FAA no longer believes it necessary for a flight instructor to receive this training from another flight instructor. The final rule is changed to provide the level of safety intended under the proposed rule and to reduce the administrative burden and possibly the economic burden. In the final rule (§ 61.415(e)), before conducting flight-training operations, a flight instructor with a sport pilot rating must log at least 5 hours of flight time in a make and model of light-sport aircraft within the same set of aircraft in which flight-training operations are to be conducted.

Although the final rule does not require endorsements for each individual make and model flown within a set of aircraft, the FAA believes, and will recommend through advisory material, that all pilots and flight instructors should consider a familiarization flight in each light-sport aircraft in which flight operations will be conducted. Guidelines for the familiarization flights will be established in the standards for the aircraft training supplement and in advisory material provided by the FAA. Make and model familiarization training should address the aircraft's performance envelope, preflight, cockpit orientation, use of flaps, takeoff, climb, cruise, required maneuvers, slow flight, stalls, approach, landing, aircraft operating instructions, and aircraft flight training supplement.

V.5.A.v. Changes to Airspace Restrictions

As described in the proposed rule, with additional training, a sport pilot may operate in Class B, C, or D airspace with a U.S. driver's license or an airman medical certificate. Currently ultralight pilots operating under part 103 are permitted to operate within Class B, C, or D airspace with prior air traffic control authorization. They may not, however, operate over any congested area of a city, town, or settlement. Ultralight pilots have had the authority to operate any type of ultralight vehicle (*i.e.*, fixed wing, powered parachute, weight-shift-control) in Class B, C, and D airspace without an airman medical certificate for approximately 20 years. Additionally, the FAA has allowed balloon and glider pilots to operate in this airspace without an airman medical certificate since 1945. In consideration of a sport pilot's limited privileges within this airspace, and after analyzing relevant accident data, the FAA has determined that, as proposed in the NPRM, it is appropriate to allow sport pilots to operate in Class B, C, and D airspace with a U.S. driver's license or an airman medical certificate. For further discussion on medical provisions, see "V.5.A.ii. Medical Provisions."

Some commenters, including the NTSB, expressed concern about the slower light-sport aircraft operating in close proximity to faster general aviation and commercial aircraft in Class B, C, and D airspace, and said that this could pose difficulty for air traffic controllers and present a potentially dangerous situation. A few commenters, including the NTSB, expressed concern that training requirements for sport pilots may not be sufficient to permit sport pilots to operate in the same airspace as transport category aircraft. The FAA also received comments expressing concern over the lack of experience of sport pilots operating light-sport aircraft in Class B, C, or D airspace, or at major airports located in Class B airspace, as listed in 14 CFR part 91, appendix D, section 4. The commenters said that this would pose a burden on other pilots in those classes of airspace and for ATC facilities.

The FAA has considered these comments and maintains the position it took in the NPRM regarding operations in Class B, C, and D airspace. See the discussions of proposed SFAR No. 89 sections 37, 81, 121, and 135, and § 61.101 in the preamble to the NPRM. However, the FAA agrees with the commenters who felt that some airspace is too busy and congested, not only for sport pilots, but also for recreational pilots, and has reconsidered sport pilot and recreational pilot operations at the major airports located in Class B airspace, as listed in 14 CFR part 91, appendix D, section 4. The FAA is changing § 91.131(b)(2) to provide that, like all student pilots, a sport pilot or a recreational pilot is not authorized to take off or land at the major airports located in Class B airspace, as listed in 14 CFR part 91, appendix D, section 4. It should also be noted that sport pilots and recreational pilots are prohibited from operations in Class B, C, and D airspace unless they have received the required training and an endorsement, in accordance with §§ 61.325 and 61.101(d). Those sections establish equivalent training requirements to those that a private pilot must receive for operating in those classes of airspace. Furthermore, a sport pilot may not fly above 10,000 feet, at night, or when flight or surface visibility is less than 3 statute miles. Basic VFR weather minimums specified in § 91.155 also apply to sport pilots. A private pilot, however, has more privileges than a sport pilot in airspace that transport category aircraft operate in. Specifically a private pilot is authorized to land at the major airports located in Class B airspace, as listed in 14 CFR part 91, appendix D, section 4, and a private pilot may operate in Class A, B, C, D, E, and G airspace without any additional training.

The FAA notes that, in the final rule under § 61.89, the FAA defines the limitations for a student pilot seeking a

sport pilot certificate. The rule provides that a student pilot seeking a sport pilot certificate is prohibited from operations in Class B, C and D airspace; at an airport located in Class B, C, or D airspace; and to, from, through, or on an airport having an operational control tower. Therefore, he or she is not required to receive training on procedures for operations in these classes of airspace. If, however, he or she wishes to operate in Class B, C, or D airspace; at an airport located in Class B, C, or D airspace; or to, from, through, or on an airport having an operational control tower, under § 61.94, that student pilot seeking a sport pilot certificate is required to receive airspace and airport-specific training and an endorsement.

A recreational pilot is prohibited from operations in Class B, C and D airspace; at an airport located in Class B, C, or D airspace; and to, from, through, or on an airport having an operational control tower, unless he or she wishes to receive the additional training specified in § 61.101(d). Therefore, a student pilot seeking a recreational pilot certificate is prohibited from operating in this airspace unless receiving the additional training specified under § 61.94.

The FAA is also modifying § 61.95 to exclude a student pilot seeking a sport pilot or recreational pilot certificate from the requirements of this rule because new § 61.94 will apply to persons. Section 61.94 parallels the requirements of § 61.95, although it is more restrictive. The required training in § 61.94 encompasses training on Class B, C, D airspace and airport-specific training, as opposed to the training requirements in § 61.95 that is limited to only Class B airspace and airport-specific training and the required endorsement.

In the proposed rule, the FAA would have prohibited a sport pilot from operating in Class B, C, and D airspace without additional training and an endorsement, and would have revised the rule for the recreational pilot to parallel the new sport pilot rule language. Currently, recreational pilots are prohibited from operating in airspace that requires communication with ATC.

The FAA intended the proposed language to prohibit sport pilots and recreational pilots without appropriate ground and flight training from conducting light-sport aircraft operations in airspace that has an operational control tower. Upon further review, the FAA realized that this would not have prohibited operations as described in §§ 91.126(d) and 91.127(e), which prohibit operations in Class E and G airspace that have an operational control tower. Pilots operating in airspace and at airports with operational control towers must receive training and have appropriate equipment. Therefore, in the final rule, §§ 61.94, 61.101(d), and 61.325 address not only how student pilots seeking a sport pilot and recreational pilot certificate and sport pilots and recreational pilots, respectively, obtain privileges to operate a light-sport aircraft at airports within, or in airspace within, Class B, C, and D airspace, but also at other airspace with an airport having an operational control tower. The headings of those sections are revised, and within the regulatory text the words "* * * and to, from, through, or at an airport having an operational control tower" are added. In addition, § 61.425 includes parallel language to describe endorsement records that must be kept by flight instructors with a sport pilot rating.

For further discussion of equipment required for operating light-sport aircraft in these classes of airspace, see "V.7.A. Part 91—General Issues" below.

V.5.A.vi. Changes to Altitude Limitations

Proposed section 73(b)(6) of SFAR No. 89 (now § 61.315(c)(11)) would have restricted the operation of a light-sport aircraft to altitudes of no more than 10,000 feet above MSL or 2,000 feet above ground level (AGL), whichever is higher. The FAA received several comments on this proposed restriction, and nearly all of them opposed it. Most stated that allowing pilots to fly at higher altitudes would enhance safety.

Several commenters noted that higher altitudes permit safer stall and spin recovery training because of the increased margin for error. One commenter specifically noted that visibility is often better above 10,000 feet MSL, which enhances safety. Another commenter offered a similar observation, noting that pilots often choose to fly at higher altitudes to avoid flying through dangerous weather systems. Many commenters also noted that glider pilots often need to fly at altitudes greater than 10,000 feet MSL to take full advantage of areas of rising warm air, called thermals, which help to keep gliders aloft.

The FAA does not believe that these commenters provided valid justification for amending the rule. After considering these comments and other comments expressing concern about sport pilots operating in congested, high-altitude airspace, the FAA has revised § 61.315(c)(11) to be more restrictive. The rule now prohibits operations above 10,000 feet MSL, and the latitude that was proposed for operations up to 2,000 feet AGL, if higher, is removed. The FAA is making this revision for the following reasons.

First, operations above 10,000 feet MSL require that a pilot have skills and training on oxygen requirements and medical factors, reduced aircraft performance, and the other risks associated with operations at higher altitudes. The minimum training that a sport pilot receives does not encompass these additional training requirements.

Second, given that the aircraft that typically operate above 10,000 feet MSL are often much larger than light-sport aircraft and usually cruise at considerably higher speeds, the FAA is concerned about permitting light-sport aircraft to operate at the same altitudes as these aircraft.

Third, light-sport aircraft typically do not have position or anticollision lights to help other pilots see and avoid these aircraft, which would be beneficial at higher speeds.

Lastly, there are still many areas in the United States where operations above 10,000 feet MSL do not require communication with ATC or the equipment required to be easily identified on radar by ATC, such as transponders. Most light-sport aircraft do not have transponders or the capability to conduct radio communications, reducing their ability to coordinate their operations with ATC and be easily identified to ensure collision avoidance.

Several commenters disagreed with the limit of 2,000 feet AGL, arguing that most pilots would prefer, in the interest of safety, to clear mountains by more than 2,000 feet AGL. The FAA agrees with these commenters in that there could be circumstances in which a sport pilot would need more than 2,000 feet AGL to safely clear a mountain. However, as discussed above regarding training and equipment required for high-altitude operations, the FAA does not believe it is necessary to permit operations above 10,000 feet MSL solely for the purpose of crossing mountainous terrain. The pilot must determine whether it is safe to clear mountainous terrain and remain below 10,000 feet MSL.

The FAA is revising § 61.311(c), and limiting sport pilot operations at all times to below 10,000 feet MSL. The FAA believes that this revision will simplify the altitude restrictions and increase the level of safety.

The FAA maintains that any pilot who wishes to exercise the privilege of operating above 10,000 feet MSL must gain the necessary experience and receive the additional training required

for at least a private pilot certificate, or, in limited cases, a recreational pilot certificate.

V.5.G.vii. Gyroplanes

Most gyroplanes historically have not been designed and manufactured to a specific regulatory standard. These aircraft are typically issued experimental certificates, which prohibit them from being used to conduct flight training operations for compensation or hire. Under the existing regulations, gyroplanes can be issued a standard category or primary category airworthiness certificate, which will permit such use; however, very few manufacturers have chosen this certification path. Today most of the gyroplanes that fit under the definition of a light-sport aircraft are certificated as experimental amateur-built aircraft or are being operated under part 103. Those gyroplanes that exceed the limits of part 103 will need to be certificated as experimental light-sport aircraft to continue operating under this rule.

The FAA has issued exemptions to permit gyroplanes without standard category airworthiness certificates to be operated for compensation or hire while conducting flight training. The three FAA-recognized ultralight organizations, the Experimental Aircraft Association (EAA), Aero Sports Connection (ASC), and the United States Ultralight Association (USUA) hold exemptions that permit its members to conduct flight training in a two-place ultralight-like gyroplane, and the Popular Rotorcraft Association (PRA) holds an exemption for gyroplanes issued an experimental amateur-built certificate.

The FAA received numerous comments, including comments from an industry association, regarding the inclusion of gyroplanes and helicopters in the proposed rule. The comments reflected two general areas of concern. A primary concern was whether gyroplanes would be manufactured under a consensus standard and issued special airworthiness certificates, permitting these aircraft to conduct training operations for compensation or hire. Commenters expressed the need for appropriate training aircraft to be available for gyroplane flight instruction. The ability to manufacture a gyroplane under a consensus standard would provide new training aircraft that meet a design standard.

Secondly, many expressed significant concern about the lack of pilot training and the lack of qualified flight instructors available for gyroplanes. The gyroplane industry submitted comments requesting that the FAA consider the importance of ensuring that flight instructors with a sport pilot rating have the ability to instruct in light-sport gyroplanes. FAA and industry analysis and data supports the conclusion that a lack of training, flight experience, and flight proficiency account for about half of all gyroplane accidents. Lack of proficiency or poor judgment under which a pilot flies a gyroplane beyond the aircraft's or the pilot's own safe limits are often factors in many gyroplane accidents.

The FAA acknowledges that the gyroplane training infrastructure is less developed than other traditional aircraft training networks, owing in part to historical and cultural influences within the gyroplane community, the scarcity of training aircraft, gyroplane instructors and DPEs, the lack of gyroplane knowledge training resources, and even to a widespread inconsistent and often inadequate understanding and appreciation of gyroplane control and stability issues, by both instructors and pilots and the general aviation community. These factors, coupled with an inappropriate reliance on the use of fixed-wing training methodologies by students and instructors, sometimes leave less experienced pilots unaware of the limits of a particular gyroplane. This lack of consistent, comprehensive, and gyroplane-specific training often leaves new gyroplane pilots unaware of their aircraft's handling characteristics, and ill-prepared to make sound flight decisions, particularly when they encounter the limits of the aircraft flight envelope.

The FAA notes that there are a total of approximately 35 gyroplane instructors throughout the U.S. who are either certificated by the FAA or who are operating under a part 103 training exemption. Many of these instructors provide training only part-time. Further, those gyroplanes used for training possess flight handling and stability characteristics that are often very different from the characteristics of the small, single-place gyroplanes into which a student pilot might later transition. Additionally, the scarcity of both instructors and qualified FAA aviation safety inspectors and DPEs provide further discouragement for an individual attempting to undertake training for a gyroplane rating. All of these impediments to an individual becoming a gyroplane pilot are compounded by existing night and night cross-country training requirements, which most gyroplane training aircraft are not equipped to accomplish. Further, many gyroplane instructors are often not willing to endure the risk and difficulty of conducting night cross-country flights in open cockpit experimental aircraft.

Many individuals presented such reasoning in their comments, arguing that, given the existing obstacles to an individual obtaining gyroplane flight instruction, the FAA should avoid exacerbating the problem and allow light-sport gyroplanes to obtain special airworthiness certificates under this rule. These commenters stated that, without the availability of special light-sport gyroplanes, or the ability of gyroplane instructors to use existing two-place gyroplanes to conduct training for compensation or hire, a significant percentage of gyroplane instructors (currently ultralight flight instructors) will not be able to continue instructing.

Based on these concerns, the gyroplane industry identified numerous general training issues it felt should be addressed in the final rule regarding light-sport gyroplane aircraft. Many of the comments addressed have been considered for all categories of aircraft and discussed elsewhere in this preamble. Specific gyroplane-only issues included:

- Removal of the mandatory requirement for night training at all pilot certificate levels and the addition of a limitation on the pilot certificate;
- Elimination of the requirement that a single-place ultralight gyroplane pilot take a check ride in a two-place light-sport aircraft;
- Extension of the training exemptions or issuance of Letters of Deviation Authority for an indefinite period if gyroplanes can not be certificated under § 21.186 (now § 21.190);
- Review of current exemptions and practical test standards to incorporate more stringent training requirements that flight instructors understand pitch and stability, and recognize departure from controlled flight and apply appropriate recovery techniques.

With regard to the gyroplane industry's request for revisions to the training requirements, the FAA is making changes to the rule, not only for sport pilots and flight instructors with a sport pilot rating, but also for recreational pilots and private pilots flying gyroplanes.

The new two-place experimental light-sport gyroplanes certificated under § 21.191(i)(1), consisting of the existing fleet of two-place ultralight-like gyroplanes, will be permitted to be used for training for compensation or hire for a 5-year period, similar to all other categories of light-sport aircraft. Experimental light-sport gyroplanes, as well as any experimental amateur-built

light-sport gyroplanes, will be authorized to be operated by a sport pilot to carry a passenger and to receive flight training. If the gyroplane industry develops an industry consensus standard through the ASTM process (as discussed under § 21.190), the FAA can examine the safety performance of gyroplanes that are built according to that standard. If there are positive safety benefits for gyroplanes built to the consensus standard, the FAA may consider future rulemaking that would permit gyroplanes built to the consensus standard to receive a special light-sport aircraft airworthiness certificate under § 21.190 and also allow light-sport kit-built manufactured to a consensus standard to receive an experimental light-sport aircraft certificate under § 21.191(i)(2). The FAA may favorably consider petitions for exemption to allow flight training in an aircraft built to this standard to gain operational data to support future rulemaking.

If the gyroplane industry is unable to agree on a consensus standard, the FAA will decide at that time whether to favorably consider petitions for exemption to allow training in experimental light-sport gyroplanes for compensation or hire or alternative arrangements. In addition, the FAA will need to evaluate the safety of continuing the current exemption issued to the Popular Rotorcraft Association to conduct training for compensation or hire in experimental gyroplanes.

V.5.A.viii. Demonstration of Aircraft to Prospective Buyers

Commenters suggested that the FAA consider allowing aircraft salespersons who are sport pilots, flight instructors with a sport pilot rating, or recreational pilots to demonstrate aircraft in flight to prospective buyers after meeting experience requirements similar to those for a private pilot under § 61.113(f). The commenters also requested the FAA consider allowing a recreational pilot who is not an aircraft salesperson to demonstrate a light-sport aircraft to a prospective buyer because a similar privilege was proposed for sport pilots.

In section 75 of SFAR 89 (now § 61.315(c)(9)), the FAA proposed that a sport pilot who is not an aircraft salesperson would be permitted to demonstrate a light-sport aircraft in flight to a prospective buyer. The proposal, however, would not have allowed a sport pilot who is an aircraft salesperson to demonstrate a light-sport aircraft in flight to a prospective buyer. The FAA did not propose this privilege for a flight instructor with a sport pilot rating because these types of privileges are typically addressed by the underlying pilot certificate. Additionally, § 61.101(d)(12) currently states that a recreational pilot is prohibited from demonstrating an aircraft in flight to a prospective buyer.

The FAA maintains that aircraft salespersons must hold at least a private pilot certificate to demonstrate an aircraft in flight to a perspective buyer. With the addition of ratings at the private pilot certificate level for weight-shift-control aircraft and powered parachutes, the regulations will now permit appropriately rated private pilots who are aircraft salespersons to demonstrate these categories of aircraft in flight to prospective buyers.

The FAA maintains that, for sales demonstrations that are not conducted by an aircraft salesperson, a sport pilot or a recreational pilot can conduct this activity. Therefore, to ensure that recreational pilots have at least the same privileges as sport pilots, the FAA is revising § 61.101(d)(12) to allow a recreational pilot to conduct sales demonstration flights as long as the pilot is not acting as an aircraft salesperson.

V.5.A.ix. Category and Class Discussion: FAA Form 8710–11 Submission

After further consideration of the NPRM, the FAA is adding a requirement to § 61.321 (proposed as SFAR No. 89 section 63) to require that the holder of a sport pilot certificate seeking to operate in an additional category or class of light-sport aircraft complete an application for those privileges on a form and in a manner acceptable to the FAA. The FAA expects that FAA Form 8710–11, Sport Pilot Certificate and/or Rating Application, will be used for this process. Since the sport pilot certificate does not list category and class privileges, this form will be used to provide a record of the completed proficiency check and will provide a record available to the FAA and the NTSB when conducting accident and incident investigations or enforcement actions. Also it can provide a method for an airman to reconstruct a lost logbook, document endorsements that establish additional category and class privileges, or establish proof of required endorsements for insurance purposes.

This requirement will also provide a method to gather additional data. Although this will require that additional paperwork be completed by airmen and authorized instructors, the FAA believes that the requirement is necessary, considering the previously discussed benefits to the public and the government. To facilitate compliance with this requirement, the FAA has modified the automated procedure, through Integrated Airman Certificate and/or Rating Application (IACARA), for completing FAA Form 8710–11.

Pursuant to § 61.423, FAA Form 8710–11 must be signed by the recommending instructor. The applicant must present this form to the authorized instructor conducting the proficiency check. In accordance with § 61.423, the authorized instructor conducting the proficiency check must complete, sign and submit FAA Form 8710–11 within 10 days to the FAA upon satisfactory completion of the proficiency check. The authorized instructor must retain a copy of the form and retain it for three years in accordance with the recordkeeping requirements of § 61.423.

V.5.B. Part 61—Section-by-Section Discussion

Section 61.1 Applicability and Definitions

The FAA received comments on the definition of "cross-country" in § 61.1(b)(3). They also commented on the provisions for pilotage, dead reckoning, electronic navigation aids, radio aids, and other navigation systems, which were not revised under the proposal. Commenters pointed out that the regulation would require training on each of these navigation techniques and systems. The commenters said that training on each of these requirements could not be accomplished for weight-shift-control aircraft and powered parachutes. After considering the comments and becoming more familiar with powered parachute and weight-shift-control aircraft during the development of the practical test standards, the FAA recognizes that training on each of these navigation techniques and systems should be required when appropriate. Most of these aircraft do not have any electronic navigation equipment or radio aids and are not required to demonstrate this for the issuance of a sport pilot certificate. Therefore, the FAA is changing the final rule to add the words, "as applicable" paragraph (b)(3)(iii)(B) and (iv)(B). This is also discussed above under "V.5.A.iii. Flight Training and Proficiency Requirements."

The FAA also is adding a definition of "student pilot seeking a sport pilot certificate" to § 61.1. This definition is added to differentiate these student pilots from other student pilots. The definition specifies that a student pilot seeking a sport pilot certificate either receives an endorsement from a certificated flight instructor with a sport pilot rating or an endorsement from a certificated flight instructor with other

than a sport pilot rating, which includes a limitation for the operation of a light-sport aircraft as specified § 61.89(c). See discussion of § 61.89(c) below.

Changes

The proposed amendments to § 61.1 are adopted with formatting and wording changes for improved readability. In addition, the following changes are made.

The proposed amendment to paragraph (b)(2)(iii) is not adopted in the final rule. As proposed, the amendment would have added a reference to SFAR No. 89, the provisions of which are now incorporated into part 61. Since existing § 61.1(b)(2)(iii) already contains a reference to part 61, the amendment is no longer necessary.

In the final rule, paragraph (b)(3)(ii) introductory text is revised to add the words "(except for a powered parachute category rating)" after the words "for a private pilot certificate." This revision is made because the definition of cross-country time in paragraph (b)(3)(iv) addresses persons seeking a private pilot certificate with a powered parachute category rating.

Proposed paragraphs (b)(3)(iii)(A) and (b)(3)(iv)(A) have been included in the introductory language of (b)(3)(iii) and (b)(3)(iv) respectively. Proposed paragraphs (b)(3)(iii)(B) and (b)(3)(iv)(B) are therefore adopted as (b)(3)(iii)(A) and (b)(3)(iv)(A) respectively.

Proposed paragraphs (b)(3)(iii)(C) and (b)(3)(iv)(C) are adopted as (b)(3)(iii)(B) and (b)(3)(iv)(B) respectively, and each is amended by adding the words "as applicable."

Paragraph (b)(15) is added to define the term "student pilot seeking a sport pilot certificate."

Section 61.3 Requirements for Certificates, Ratings, and Authorizations (Proposed as SFAR No. 89 Sections 15 and 111)

The FAA received numerous comments on the topic of medical provisions. For a complete discussion of the comments and the FAA's responses, see "V.5.A.ii. Medical Provisions."

In the final rule, the provisions of proposed SFAR No. 89 sections 15 and 111 are found in §§ 61.3(c)(2) and 61.23(a), (b), and (c). Current §§ 61.3(c)(2) excepts persons from having to meet the airman medical certificate requirements of the section in certain circumstances. That paragraph is amended in the final rule to include the medical provisions found in proposed SFAR No. 89 section 15 for student pilots seeking a sport pilot certificate and for sport pilots. In addition, the paragraph is further amended to require that persons using a current and valid U.S. driver's license meet certain requirements. If a person has applied for an airman medical certificate, that person must have been found eligible for the issuance of at least a third-class airman medical certificate at the time of his or her most recent application. If a person has been issued an airman medical certificate, his or her most recently issued airman medical certificate must not have been suspended or revoked. If a person has been granted an Authorization, that Authorization must not have been withdrawn. Further, a person must not know or have reason to know of any medical condition that would make him or her unable to operate a light-sport aircraft in a safe manner.

Proposed SFAR No. 89 section 111 set forth medical provisions for flight instructors with a sport pilot rating. The provisions of current § 61.3(c)(2)(ii) through (c)(2)(iv) address these flight instructors, and a rule change to incorporate proposed section 111 is not therefore required.

See the discussion under "V.5.A.ii. Medical Provisions." In addition, § 61.23, which describes what a person needs to satisfy medical eligibility requirements, is discussed below.

Changes

The medical provisions proposed in SFAR No. 89 sections 15 and 111 are transferred to § 61.3(c)(2) with the following change. New language is added to provide that persons may not use a current and valid U.S. driver's license as evidence of medical qualification if his or her most recent application for an airman medical certificate has been denied based on being found not eligible for the issuance of at least a third-class airman medical certificate, his or her most recently issued airman medical certificate has been suspended or revoked, or his or her most recent Authorization has been withdrawn. Further, that person must not know or have reason to know of any medical condition that would make him or her unable to operate a light-sport aircraft in a safe manner.

Section 61.5 Certificates and Ratings Issued Under This Part

Several commenters noted that the proposed rule made no provisions for a powered parachute-sea class rating. The FAA assumed that it was only necessary to establish a powered parachute category rating and not establish separate land and sea class ratings because the FAA was not aware that a powered parachute capable of water operations existed. The FAA is now aware that design innovation and new use of existing technologies has allowed manufactures to design a powered parachute with an inflatable wing that is suitable for water operations. Therefore, the FAA is establishing both powered parachute-land and powered parachute-sea class ratings in § 61.5.

Several commenters suggested adding additional categories of aircraft to this section. All of these suggestions were to add ultralight vehicles that the FAA has stated will remain under part 103. Some examples are paramotors, paragliders, and unpowered foot-launched parachute aircraft. The FAA has been working closely with the ultralight industry to establish common definitions and common industry standards for these vehicles. Additional categories and classes of aircraft may be addressed in future rulemaking. Existing exemptions for tandem ultralight training vehicles under part 103 may also be revised to address these new categories and classes of aircraft. See the discussion under "III.5.A. Comments on Ultralight Vehicles" and "III.5.B. Future Rulemaking on Ultralight Vehicles."

Several other commenters requested that the FAA consider commercial pilot certificates with category ratings for powered parachutes and weight-shift-control aircraft. They thought that this level of pilot certification would be required when the FAA was ready to consider some limited commercial operations for these new categories of aircraft. The commenters pointed out that powered parachutes and weight-shift-control aircraft are ideal for sightseeing, crop dusting, pipeline and powerline patrols, aerial photography, and traffic reporting. The FAA agrees that limited types of commercial operations may need to be considered in the future. If there is a need to require a commercial pilot certificate for those types of operations, the FAA may initiate rulemaking for that purpose. However, the FAA is not adding training and certification requirements that will permit a person to add a powered parachute or weight-shift-control category rating to a commercial or airline transport pilot (ATP) certificate.

Changes

In § 61.5, new paragraphs (b)(6)(i) and (ii) are added to include class ratings for powered parachute land and powered parachute sea, respectively.

In the final rule also corrects a typographical error in the body of the rule text. The paragraph designated "(i) * * * (5) Sport pilot rating" should

have read "(c) * * * (5) Sport pilot rating."

Section 61.23 Medical Certificates: Requirement and Duration (Proposed as SFAR No. 89 Sections 15, 35, and 111)

The FAA received numerous comments on the topic of medical provisions. For a complete discussion of the comments and the FAA's responses, see "V.5.A.ii. Medical Provisions."

As noted above, in the final rule, the provisions of proposed SFAR No. 89 sections 15 and 111 are found in §§ 61.3(c)(2) and 61.23(a), (b), and (c). Among other things, § 61.23 describes which operations do and do not require an airman medical certificate. In the final rule, the FAA is adding new paragraph (c) to describe operations that require either an airman medical certificate or a U.S. driver's license. The FAA notes that the final rule includes a provision that all restrictions listed on a current and valid U.S. driver's license, as well as those imposed by judicial and administrative order, apply at all times when a U.S. driver's license is used to meet the requirements of this section. This is also established under the privileges and limits for a sport pilot in § 61.315(c)(17). This intent was discussed in the preamble of the NPRM for proposed SFAR No. 89 sections 15 and 35.

In addition, paragraph (c)(2) is further amended to require that persons using a current and valid U.S. driver's license meet certain requirements. A person using a driver's license who has recently applied for an airman medical certificate must have been found eligible for the issuance of at least a third-class airman medical certificate. If a person has been issued an airman medical certificate, his or her most recently issued airman medical certificate must not have been suspended or revoked. If a person has been granted an Authorization, his or her most recent Authorization must not have been withdrawn. Further, a person must not know or have reason to know of any medical condition that would make him or her unable to operate a light-sport aircraft in a safe manner.

Changes

The medical provisions proposed in SFAR No. 89 sections 15, 35, and 111 are transferred to §§ 61.3 and 61.23. Under § 61.23(c)(2)(i), a requirement is added that each restriction and limitation, including those imposed by judicial and administrative order on a current and valid U.S. driver's license, apply at all times when a U.S. driver's license is used to meet the requirements of this section.

In addition, language is added to paragraph (c)(2) to provide that persons may not use a current and valid U.S. driver's license as evidence of medical qualification if his or her most recent application for an airman medical certificate has been denied based on being found not eligible for the issuance of at least a third-class airman medical certificate, his or her most recently issued airman medical certificate has been suspended or revoked, or his or her most recent Authorization has been withdrawn. Further, that person must not know or have reason to know of any medical condition that would make him or her unable to operate a light-sport aircraft in a safe manner.

Section 61.31 Type Rating Requirements, Additional Training, and Authorization Requirements

Paragraph (k)(1) is amended in the final rule to incorporate powered parachutes and weight-shift-control aircraft in the list of aircraft for which a category and class rating is not required if the aircraft is not type-certificated. The FAA recognized this oversight and is correcting it. Additionally, the FAA is making an editorial change to remove a reference to the class rating for gliders because this class rating no longer exists.

Under § 61.31(k)(2)(iii), the FAA proposed that, when conducting an operation while carrying passengers, the holder of a pilot certificate must have a category and class rating when operating an aircraft with an experimental certificate or provisional type-certificate. A few commenters said that this change would be unnecessary. They believed that if a person is qualified to fly an experimental aircraft, he or she should be qualified to carry passengers, regardless of whether he or she holds a category and class rating.

The FAA disagrees with these comments. The operation of experimental aircraft by pilots without appropriate category and class ratings was previously allowed under § 61.31(k)(2)(iii), and the operating limitations for those aircraft permitted the carriage of passengers. However, the FAA believes that, in the interest of safety, a category and class rating is necessary when carrying a passenger, regardless of the aircraft's airworthiness certificate. This is because there is an increase in the number of experimental aircraft being operated in the NAS, and increased numbers of accidents have been attributed to a lack of category and class ratings.

A few commenters, including the NTSB, suggested that a sport pilot should be required to hold a category and class privilege when operating an experimental light-sport aircraft regardless of whether he or she is carrying a passenger. The FAA agrees with these comments and proposed that a sport pilot, regardless of whether he or she is carrying a passenger, must hold a specific category and class privilege prior to operating any light-sport aircraft. If a sport pilot wishes to exercise category and class privileges in an aircraft with an experimental certificate, for which a category or class has not been established, the FAA will specify in the aircraft's operating limitations the specific category and class rating required to operate that aircraft. The category and class specified will be based on the category and class of an aircraft that has operating characteristics similar to that new aircraft. The FAA has the authority to limit the carriage of a passenger in the aircraft's operating limitations if this is necessary for safe operation.

The FAA also considered whether a pilot holding a recreational pilot certificate or higher, while operating an experimental aircraft without a passenger, should be required to hold a category and class rating. The FAA does not believe that this is necessary at this time. The FAA did not receive any information from commenters to support requiring a category and class rating while operating an experimental aircraft without a passenger. For operations without a passenger, the FAA will continue to address on a case-by-case basis the specific requirements for category and class ratings through the operating limitations issued for each experimental aircraft.

To ensure that pilots currently operating under the existing § 61.31(k)(2)(iii) comply with its revised provisions, the FAA is establishing a method for giving credit for previous experience gained in an experimental aircraft. This is established in the amendments to §§ 61.63(k) and 61.165(f). Certificated pilots holding a recreational pilot certificate or higher who do not have a category and class rating to operate the experimental aircraft, may apply for a category and class rating with the limitation "experimental aircraft only," and a designation for the make and model aircraft authorized to be operated. Pilots seeking this privilege must have logged at least 5 hours of pilot-in-command time in the same category, class, make, and model of aircraft issued an experimental certificate. The applicant is required to receive a logbook endorsement from an authorized flight instructor who has determined that he or she is proficient to act as pilot in

command of the same category and class of aircraft. Finally, the 5 hours of flight time must be logged between September 1, 2004 and August 31, 2005. Upon satisfaction of these requirements, the FAA will issue the applicant a new pilot certificate with the additional category and class rating and the limitation "experimental aircraft only" without any further testing.

The FAA believes that the 5 hours of pilot-in-command time received within the 12-month window ensures recent experience in the category and class of experimental aircraft that the applicant intends to operate. This, combined with an endorsement from a flight instructor, gives the FAA confidence that the applicant has the necessary skills to continue operating that make and model of experimental aircraft safely. The FAA believes this is sufficient to allow these pilots who have been previously operating without a category and class rating under the current regulation to continue operations safely. The FAA believes that it would be an unnecessary additional burden in these cases to require fulfilling the otherwise applicable testing requirements for a category and class rating.

A few commenters, including the NTSB, noted that in the proposed rule language for § 61.31(k)(2), the FAA did not recognize that the holder of a sport pilot certificate may operate an aircraft without having the appropriate category or class rating on the sport pilot certificate. This was an oversight. A sport pilot has category and class privileges that are authorized through endorsements and annotated in the pilot's logbook; therefore, an exception must be made in this section for a sport pilot. Accordingly, the FAA is adding § 61.31(k)(2)(vi).

Changes

Paragraph (k)(1) is amended in the final rule to incorporate powered parachutes and weight-shift-control aircraft in the list of aircraft for which a category and class rating is not required if the aircraft is not type-certificated. Additionally, the FAA is making an editorial change to remove the class rating for gliders because this class rating no longer exists. In paragraph (k)(2)(iii), the words "experimental or provisional aircraft type certificate, unless the operation involves carrying passengers" are designated as paragraphs (A) and (B) and corrected to read "(A) A provisional type certificate; or (B) An experimental certificate, unless the operation involves carrying a passenger."

New paragraph (k)(2)(vi) is added.

Section 61.45 Practical Tests: Required Aircraft and Equipment

Currently, an applicant for a certificate or rating must furnish an aircraft of U.S. registry with an airworthiness certificate and in a category specified in § 61.45(a) to conduct a practical test. Commenters noted that the FAA did not propose a change to this section to allow use of light-sport category aircraft. The FAA is therefore adding references to "light-sport category" to paragraphs (a)(1)(ii) and (a)(2)(i) to correct this oversight.

First, in paragraph (a)(1)(ii), the FAA will allow an applicant to use a light-sport category aircraft for a practical test because light-sport category aircraft are designed and manufactured to an FAA-accepted consensus standard. Therefore, for the purpose of conducting the entire flight segment of a practical test, these aircraft are considered equivalent to an aircraft issued a standard, limited, or primary category certificate.

Second, to address the addition of light-sport category aircraft to paragraph (a)(1)(ii), the FAA is providing in paragraph (a)(2)(i), that, at the discretion of the examiner, an applicant may also use an aircraft other than one in the standard, limited, or primary category, which are currently required by (a)(1)(ii), or a light-sport category aircraft. This makes it possible for an applicant to use an aircraft with an airworthiness certificate other than that specified in paragraph (a)(2)(i) for a practical test. An examiner could, therefore, permit the use of an experimental aircraft for a practical test. The FAA is leaving use of such an aircraft to the discretion of the examiner because experimental aircraft are not designed or manufactured to a specific regulatory standard.

Several commenters stated that the FAA should modify the regulations to allow the practical test to be administered in a single-seat aircraft. They indicated that there are many existing single-seat gyroplanes, fixed-wing aircraft, powered parachutes, and weight-shift-control unregistered ultralight-like aircraft that will be operated under this rule. The commenters said that revising § 61.45 to allow practical tests in these aircraft would help many pilots that are flying single-seat unregistered ultralight-like aircraft to obtain their sport pilot certificates without incurring the cost of training and testing in a two-seat aircraft with which they are not familiar.

The FAA agrees with the commenters and is establishing in § 61.45(f) specific requirements to allow a practical test to be conducted in a light-sport aircraft that has a single seat. The FAA notes that an ultralight pilot who is currently operating a single-seat ultralight-like aircraft that does not meet the definition of an ultralight vehicle will need to take a practical test to be issued a sport pilot certificate to operate that light-sport aircraft. According to information the FAA received from manufacturers, there are a number of pilots who intend to purchase single-seat light-sport aircraft, rather than ultralight vehicles, and this provision will allow them to take the practical test for the sport pilot certificate in these aircraft without incurring the cost of additional training and testing in a two-seat light-sport aircraft.

In the past, the FAA has encountered situations where pilots sought type ratings or letters of authorization in lieu of type ratings in aircraft not designed for two occupants. Testing in those aircraft has been accomplished in accordance with established FAA guidance. In these cases, testing procedures include observation from the ground or from chase airplanes.

The FAA believes that with certain limitations, it is appropriate to allow the practical test for a sport pilot certificate to be conducted from the ground by a DPE or an FAA inspector. An examiner must agree to conduct the practical test in a single seat aircraft and must ensure that the practical test is conducted in accordance with the sport pilot practical test standards for single seat aircraft. The pilot will have a limitation placed on his or her sport pilot certificate limiting operations to a single-seat light-sport aircraft, and he or she will not be authorized to carry passengers. Only a DPE or an FAA inspector is authorized to remove the limitation. This can be accomplished when the sport pilot takes a practical test in a two-place light-sport aircraft and conducts additional tasks identified in the practical test standards. It can also be accomplished if the sport pilot completes the certification requirements for a higher certificate, rating, or privilege in a two-place aircraft.

The FAA received several comments asking how a flight review required by § 61.56 would be accomplished in a single-seat aircraft. A sport pilot who is issued a certificate with a single-seat limitation must complete a flight review every 24 calendar months, as required by § 61.56. The flight review is required to establish that a sport pilot still maintains the knowledge and skills to exercise sport pilot privileges. There are several methods for accomplishing a flight review under § 61.56. If the flight review will be accomplished in an aircraft, it must be in an aircraft with a

minimum of two seats, in which the pilot is rated, and with an authorized instructor. In addition, the flight review must be conducted with a current and qualified authorized instructor who must act as pilot in command during the conduct of the flight. Therefore, a flight review cannot be conducted in a single seat aircraft.

Changes

Paragraphs (a)(1)(ii) and (a)(2)(i) are revised to add the words "light-sport category."

Paragraph (b)(1)(iii) is revised to add an exception to new paragraph (f).

Paragraph (f) is added to allow practical tests in a single-seat light-sport aircraft.

Section 61.51 Pilot Logbooks (Proposed SFAR No. 89 Sections 67, 131, 171, 173, and 175)

In the final rule, requirements proposed in SFAR No. 89 sections 67, 131, 171, 173, and 175 are transferred to § 61.51 with minor wording changes. Several commenters expressed concern about the ability to carry a logbook in an open-cockpit aircraft. They suggested that the FAA not require this. The FAA agrees with the commenters' concerns and notes that the proposed rule permitted pilots to carry either their logbooks or documented proof of all required endorsements on all flights. See the discussion of proposed SFAR No. 89 section 67 in the NPRM for a complete discussion on what the FAA intended by "documented proof." In the final rule, the FAA is changing the words "documented proof of all required endorsements" to "other evidence of required authorized instructor endorsements." This language more closely corresponds to language contained in current § 61.51(i). In addition, the FAA is not adopting the sentence in the NPRM that read, "Documented proof includes a photocopy of the logbook endorsements or a pre-printed form that includes the endorsements." Instead, the FAA will issue guidance material that will provide examples of what documents will be considered acceptable as evidence.

Changes

The provisions of proposed SFAR No. 89 sections 67, 131, 171, 173, and 175 are transferred to § 61.51 with the following changes. The words "documented proof of all required endorsements" are changed to "other evidence of required authorized instructor endorsements." In addition, the FAA is not adopting the sentence in proposed section 67 that would have described the kinds of documents that would have been accepted as documented proof.

Section 61.52 Use of Aeronautical Experience Obtained in Ultralight Vehicles (Proposed SFAR No. 89 Sections 135, 153, 175, 177, and 179)

The proposed requirements in SFAR No. 89 sections 135, 153, 175, 177 and 179 for using aeronautical experience obtained in ultralight vehicles (to include two-seat ultralight trainers) and for logging aeronautical experience to meet the requirements for a sport pilot certificate or for a flight instructor certificate with a sport pilot rating are moved to new § 61.52.

The FAA received one comment that stated that the agency should not allow the crediting of ultralight flight time towards higher certificate levels. That commenter, however, provided no justification to support this comment. The FAA does not agree with this commenter, and the final rule will permit aeronautical experience obtained in an ultralight vehicle to be credited towards a sport pilot certificate, a flight instructor certificate with a sport pilot rating, and a private pilot certificate with a weight-shift-control or powered parachute category rating. It will also permit aeronautical experience obtained in a two-seat ultralight trainer to be credited toward these certificates and ratings.

The FAA received many other comments that suggested the FAA should allow crediting of flight time towards other certificate levels and additional privileges. The FAA partially agrees with these commenters and is changing the final rule to allow crediting of ultralight aeronautical experience not only toward a sport pilot certificate, as proposed in the NPRM, but also toward a flight instructor certificate with a sport pilot rating, and a private pilot certificate with a weight-shift-control or powered parachute category rating. This will allow individuals who have gained experience in ultralight vehicles while operating with an FAA-recognized ultralight organization to receive credit for that experience.

In the NPRM, the FAA allowed crediting of ultralight experience to meet the requirement that, before providing flight training, a flight instructor with a sport pilot rating must log at least 5 hours of flight time in the make and model of light-sport aircraft in which flight training is to be conducted. The FAA is now establishing the provisions to credit this experience to meet the requirements of § 61.415(e) in § 61.52(b).

In addition, the FAA is also now allowing crediting of ultralight experience to qualify for glider or unpowered ultralight towing under § 61.69. The experience must be properly documented. This section permits the experience gained in an ultralight vehicle to be credited only toward a certificate, rating, or privilege when that experience was obtained in a category and class of vehicle corresponding to the rating or privileges sought. It does not allow crediting of time toward private pilot privileges other than weight-shift-control and powered parachute.

Many commenters suggested that the FAA allow sport pilots to conduct towing operations. The FAA believes that this privilege should be limited to individuals with at least a private pilot certificate. This portion of the rule remains unchanged.

The FAA recognizes that towing of light-sport aircraft is done almost exclusively by weight-shift-control and fixed-wing ultralights. Larger aircraft are not used because of the speed differential between the towing aircraft and the aircraft being towed. The FAA also recognizes that limiting towing to pilots with a private pilot certificate or higher may inhibit towing operations. This rule provides partial relief because of the ability of current weight-shift-control and powered parachute pilots to credit their time in ultralight vehicles toward the new categories of private pilot certificates. Further, such pilots will be able to credit their time towards that needed to qualify for towing under § 61.69 in accordance with § 61.52.

The FAA has considered allowing the same sort of credit for fixed-wing ultralight pilots to meet the requirements of a private pilot certificate with aircraft category ratings. However, this crediting was viewed as a significant change to the aeronautical experience requirements for this certificate. The FAA considered such a change outside the scope of the original proposal and significant enough to justify full public notice and comment. The FAA expects to address this issue in a separate future rulemaking and may favorably consider exemptions to this rule. See also the more detailed discussion of towing by persons with at least a private pilot certificate under § 61.69.

Under new § 61.52, the FAA will allow experience obtained in ultralight vehicles to meet the requirements of § 61.69. Much of this experience has been gained under an exemption that has been managed successfully by the USHGA for the last 20 years. Crediting of this experience will allow most

ultralight pilots currently conducting towing operations in weight-shift-control ultralights under that exemption to meet most of the minimum requirements for a private pilot certificate with a weight-shift-control aircraft category rating and the additional towing experience requirements under § 61.69. Additionally, those who hold at least a private pilot certificate will be eligible to credit their ultralight towing experience in a weight-shift-control ultralight vehicle towards the towing experience requirements of § 61.69. For more information on crediting flight time obtained in ultralight vehicles, refer to the discussion of § 61.329.

Changes

The proposed requirements in SFAR No. 89 sections 135, 153, 175, 177, and 179 are moved to new § 61.52 with the following change.

In paragraph (a)(3), language is added to establish that a person may use aeronautical experience obtained in an ultralight vehicle to meet the requirements for a private pilot certificate with a weight-shift-control or powered parachute category rating.

Section 61.53 Prohibition on Operations During Medical Deficiency (Proposed as SFAR No. 89 Section 17)

The FAA received numerous comments on the topic of medical provisions. For a complete discussion of the comments and the FAA's responses, see "V.5.A.ii. Medical Provisions."

Changes

The applicable medical provisions proposed in SFAR No. 89 section 17 are transferred to § 61.53(c) without substantive change.

Section 61.63 Additional Aircraft Ratings (Other Than on an Airplane Transport Pilot Certificate)

The FAA is adding a new paragraph (k) to § 61.63 to assist pilots currently operating under § 61.31(k)(2)(iii) without a category and class rating to comply with the new provisions of that paragraph. The revision to § 61.31(k)(2)(iii) and (k)(2)(vi) require a category and class rating for the holder of a recreational pilot certificate or higher when that pilot operates an aircraft with an experimental certificate and carries a passenger. To receive a category and class rating to operate these aircraft, a person must log at least 5 hours of flight time while acting as pilot in command in the same category, class, make, and model of experimental aircraft and receive an appropriate endorsement. Other aeronautical knowledge, flight proficiency, and aeronautical experience requirements for the issuance of the rating do not apply. This flight time must be logged between September 1, 2004 and August 31, 2005. Similar provisions are enacted for persons holding airline transport pilot certificates in § 61.165(f). A pilot who meets these requirements will be issued an appropriate category and class rating limited to a specific make and model of experimental aircraft. See the discussion of § 61.31.

Changes

Existing paragraph (k) is redesignated as (l), and a new paragraph (k), Category class ratings for the operation of aircraft with experimental certificates, is added for certificated pilots holding a recreational pilot certificate or higher who do not have a category and class rating to operate a specific make and model of experimental aircraft. They may apply for a category and class rating limited to a specific make and model of experimental aircraft.

Section 61.69 Glider and Unpowered Ultralight Vehicle Towing

One of the most common issues addressed by commenters was the towing of hang gliders, paragliders, and gliders by either ultralight vehicles or light-sport aircraft. Of the approximately 4,700 comments received, 691 related to eliminating exemptions from §§ 91.309 and 103.1(b). These exemptions allow ultralight pilots to use ultralight vehicles to tow hang gliders. In addition, 607 comments related to proposed SFAR No. 89 section 73 (b)(12), which would have prohibited the towing of any object, including a hang glider, paraglider, or glider towing by a light-sport aircraft. The vast majority of these commenters opposed the proposed rule.

Most commenters stated that the proposed rule would adversely affect the safety of training in unpowered ultralights, such as hang gliders and paragliders. Without the availability of hang glider and paraglider towing by ultralights, most commenters noted that the only way to learn to fly a hang glider or paraglider is to perform a foot launch from an elevated location. Many commenters also noted that these flights usually would be conducted without an instructor, unlike flights in which towing is involved. Therefore, many commenters argued, that without the benefits of being towed by an ultralight and the ability to receive tandem instruction while airborne, few people would endeavor to learn how to fly hang gliders or paragliders. These commenters stated that the proposed rule would have a crippling economic effect on hang glider and paraglider training.

Similarly, many commenters noted that prohibiting hang glider and paraglider towing by ultralights would eliminate the sport of hang gliding and paragliding in areas of the country without elevated terrain. In areas with a relatively flat topography, such as Florida, towing by ultralights is the only means of launching a hang glider or paraglider. Many commenters who are hang glider and paraglider instructors and ultralight tow pilots in Florida were concerned that the proposed rule would permanently curtail their operations.

Many commenters noted that hang glider and paragliding towing by ultralights has contributed to the growth of the sport, and that the proposed rule would jeopardize the future of the sport. They also noted that eliminating hang glider and paraglider towing by ultralights would prohibit the display of hang gliders and paragliders at airshows, where foot launches usually cannot be accomplished. Commenters added that this would further reduce the exposure of the sport and limit its growth potential.

The FAA agrees with the commenters' suggestions that light-sport aircraft should be permitted to be used for towing operations. The FAA recognizes that towing operations have been conducted safely for over 20 years using ultralight-like aircraft, which now will be certificated as light-sport aircraft. These same aircraft have been operated safely under an exemption from §§ 91.309 and 103.1(b) held by the USHGA since 1984.

The existing fleet of ultralights conducting towing operations consists of fixed-wing ultralight-like aircraft, which the industry refers to as "tugs," and weight-shift-control aircraft, both of which are specifically designed and equipped to withstand the load of towing hang gliders, gliders, and paragliders. These aircraft must meet the requirements of § 91.309. The FAA will issue additional guidance material to ensure that the aircraft are designed, equipped, and maintained, and operated safely. The FAA has not limited the period during which the small existing fleet of experimental light-sport aircraft that will be used for this purpose. These aircraft may be used for towing unless the FAA issues an operating limitation prohibiting this activity.

Newly manufactured aircraft issued a special airworthiness certificate in the light-sport category that will be used for towing will be designed and manufactured to meet criteria established in the consensus standard. If

the FAA determines that the aircraft was not manufactured in accordance with a consensus standard that identifies aircraft requirements for towing, the aircraft will be issued an operating limitation prohibiting the conduct of towing operations. The FAA will not authorize experimental light-sport kit aircraft to be used to conduct these types of operations. When an experimental or a special light-sport aircraft is used in towing operations for compensation or hire, these aircraft must also meet the 100-hour condition inspection requirement established for experimental and special light-sport aircraft in §§ 91.319(g) and 91.327(c), respectively.

While a substantial number of commenters suggested that sport and recreational pilots be allowed to conduct towing operations for compensation or hire, the FAA maintains that only private pilots or higher should be permitted to conduct these types of operations. Under § 61.69, only a private pilot or higher can tow a glider and is authorized to conduct towing operations for compensation or hire under § 61.113. The FAA is revising the final rule to allow ultralight vehicle pilots, qualified under an FAA-recognized ultralight organization, to credit experience under § 61.52 towards a private pilot certificate and towards the experience requirements of § 61.69. With the addition of a rating at the private pilot certificate level for weight-shift-control aircraft, the regulations will now accommodate these types of aircraft that will be used for towing operations under this new regulatory framework.

The FAA notes that for towing operations that are not conducted for compensation or hire, a pilot is still required to meet the minimum requirements established in § 61.69. Therefore, the FAA does not believe it is necessary to allow a sport or recreational pilot to conduct towing operations.

See discussions under §§ 61.113, 91.319, and 91.327 for more information on changes made regarding private pilots using powered ultralight vehicles to tow.

Changes

Section 61.69 is revised to permit towing of unpowered ultralight vehicles by holders of at least a private pilot certificate. In addition, all references to "gliders" are changed to "gliders or unpowered ultralight vehicles."

Section 61.87 Solo Requirements for Student Pilots (Proposed as SFAR No. 89 Section 33(a), (b), and (c))

Under section 33 of SFAR No. 89, the FAA proposed solo and solo-cross country requirements for student pilots operating light-sport aircraft. In the final rule, the pre-solo flight training provisions are located in § 61.87. Also, the FAA has moved the cross-country flight training requirements for student pilots seeking a sport pilot certificate with privileges in a weight-shift-control aircraft and a powered parachute to § 61.93. Student pilots, student pilots seeking a sport pilot certificate, and other pilots seeking privileges or a rating in a weight-shift-control aircraft or a powered parachute will be trained to the same standard prior to conducting solo or solo cross-country flight operations. This is consistent with the solo and solo cross-country flight-training requirements for all student pilots training in other categories of aircraft.

After considering the comments and becoming familiar with powered parachutes during the development of the practical test standards, the FAA recognizes that the requirements for student pilots training on meta-stable stalls and partial canopy collapses should be revised.

In addition, to specify that the maneuvers and procedures for pre-solo flight training listed in this section also apply to student pilots seeking sport pilot privileges in single-engine airplanes, gyroplanes, gliders, airships, and balloons, the FAA is adding the words "or privileges" after the word "rating" in the introductory text of paragraphs (d), (g), (i), (j), and (k).

For a complete discussion on specific changes to training and proficiency requirements please refer to "V.5.A.iii. Flight Training and Proficiency Requirements."

Changes

The proposed provisions of SFAR No. 89 section 33(a), (b), and (c) are transferred to new paragraphs (l) and (m) of § 61.87. The provisions are modified to remove the powered parachute pre-solo flight training requirements pertaining to recovery from partial canopy collapse, meta-stable stalls and avoidance.

In addition, the words "or privileges" are added after the word "rating" in the introductory text of paragraphs (d), (g), (i), (j), and (k).

Section 61.89 General Limitations (Proposed as SFAR No. 89 Section 35)

The proposed general limitations in SFAR No. 89 section 35 for student pilots seeking a sport pilot certificate are moved to § 61.89.

Proposed section 35(e) of SFAR No. 89 would have limited the maximum speed a student pilot could operate a light-sport aircraft to 87 knots CAS. There were many comments on this issue, and they criticized the proposed requirement as not being in the interest of safety and being unnecessarily restrictive of the manner in which a student pilot can learn to fly a light-sport aircraft. Nearly all of the commenters disagreed with the need for such a limit, and many commenters suggested that stall speed has a far greater impact on safety than maximum speed. One commenter noted that this section would require instructor pilots to use two sets of aircraft for instruction, thus increasing the cost of training. Several commenters suggested that it is safer for a student to train in the same aircraft he or she will later fly.

The FAA agrees with commenters and is eliminating this limitation. Each student pilot must have a specific make and model endorsement on his or her student pilot certificate authorizing solo flight, appropriate to the aircraft being operated. For each category, class, and make and model of light-sport aircraft a student pilot operates that exceeds 87 knots CAS, he or she will get additional training. Therefore, imposing a speed limit of 87 knots CAS on student pilot seeking a sport pilot certificate is unnecessary. The FAA is identifying the specific limitations that only apply to a student pilot seeking a sport pilot certificate in paragraph (c) of § 61.89. All other limitations on student pilots are noted in current paragraphs (a) and (b) of § 61.89. These limitations also apply to student pilots seeking a sport pilot certificate.

New paragraph (c) of § 61.89 identifies those restrictive privileges and limitations that distinguish a student pilot seeking a sport pilot certificate from other student pilots. This paragraph specifies that a student pilot seeking a sport pilot certificate may fly only a light-sport aircraft and is prohibited from flying at night and above 10,000 feet MSL. The paragraph also restricts the classes of airspace and types of airports a sport pilot seeking a sport pilot certificate may use without receiving additional training and an endorsement. Training for a sport pilot certificate does not include training for operating in Class B, C, and D airspace and airports, and in other airspace and airports with operational control towers because, unlike other student pilots, sport pilots do not have those additional privileges. These are additional privileges that are granted with the

appropriate additional training and endorsements established in § 61.94 for student pilots seeking a sport pilot certificate and in § 61.325 for a sport pilot.

For a complete discussion of changes made to training and proficiency requirements, refer to "V.5.A.iii. Flight Training and Proficiency Requirements."

Changes

The FAA is transferring the provisions of proposed SFAR No. 89 section 35 to new paragraph (c) of § 61.89. Other limitations from SFAR No. 89 section 35 are found in paragraphs (a) and (b) of the existing rule. Also, the 87-knot CAS speed restriction on student pilots seeking a sport pilot certificate is removed from the final rule.

Section 61.93 Solo Cross-Country Flight Requirements (Proposed as SFAR No. 89 Section 33(d), (e), and (f))

Under section 33 of SFAR No. 89, the FAA proposed solo and solo cross-country flight training requirements for student pilots. In the final rule, the solo cross-country flight training provisions are located under § 61.93. By moving the solo cross-country flight training requirements into the existing sections of part 61, both sport pilots and private pilots seeking either privileges or a rating in a weight-shift-control aircraft or a powered-parachute will be trained to the same standard prior to conducting solo cross-country operations. This is consistent with the solo cross-country flight training requirements for all other categories of aircraft.

After considering the comments and becoming familiar with powered parachute and weight-shift-control aircraft during the development of the practical test standards, the FAA recognized that dead reckoning should require the aid of a magnetic compass, although one is still not required for pilotage. The FAA is therefore adding the words "as appropriate" to paragraph (l) to allow latitude in determining when this requirement must be met.

Upon further consideration, the FAA realizes it should have included different solo cross-country training requirements for weight-shift-control aircraft and powered parachutes that were consistent with the solo cross-country flight training requirements for all other categories of light-sport aircraft. When the FAA began incorporating these requirements into the section, the agency determined that the solo cross-country flight training requirements for operations in a weight-shift-control aircraft for takeoff, approach, and landing procedures, including crosswind approaches and landings was not addressed in the NPRM. Therefore, these provisions are added to paragraph (m) of § 61.93. In addition, a new solo cross-country flight training requirement for takeoff, approach, and landing procedures in a powered parachute (without a requirement for crosswind approaches and landings) is added to paragraph (l) of § 61.93. The crosswind takeoff and landing requirements were not addressed in this section because powered parachutes are not designed for crosswind takeoffs and landings.

For a complete discussion on specific changes to training and proficiency requirements please refer to "V.5.A.iii. Flight Training and Proficiency Requirements."

Changes

The proposed provisions of SFAR No. 89 section 33(d), (e), and (f) are transferred to paragraphs (l) and (m) of § 61.93 with the following changes. The requirement for training with the aid of a magnetic compass has been revised, and the words "as appropriate" are added to (l)(1) and (m)(1).

In paragraph (l)(11), a provision for takeoff, approach, and landing procedures is added.

In paragraph (m)(11), a provision for takeoff, approach, and landing procedures, including crosswind approaches and landings, is added.

Section 61.94 Student Pilot Seeking a Sport Pilot Certificate or a Recreational Pilot Certificate: Operations at Airports Within, and in Airspace Located Within, Class B, C, and D Airspace, or at Airports With an Operational Control Tower in Other Airspace (Proposed as SFAR No. 89 Section 37)

The FAA is adopting this section with minor wording changes. The FAA recognizes that operational control towers may be located in other than Class B, C, or D airspace. To ensure that a student pilot seeking a sport pilot certificate or a recreational pilot has adequate training to safely operate within such airspace and at airports located within that airspace, the FAA is adding language to require that the training specified within § 61.94 be completed before such operations are conducted.

To facilitate changes made to § 61.101, which permit recreational pilots with sufficient training to operate in Class B, C, and D airspace, at an airport located in Class B, C, or D airspace, or to, from, through, or at an airport having an operational control tower, the requirements of § 61.94 will also apply to recreational pilots. Although the requirements of § 61.94 are more stringent than those found in § 61.95, the requirements to permit the conduct of operations in Class B airspace are equivalent for pilots affected by either section. For complete discussion of changes made to this section, see "V.5.A.v. Changes to Airspace Restrictions."

Changes

The proposed provisions of SFAR No. 89 section 37 are transferred to new § 61.94 with the words "to, from, through, or at an airport having an operational control tower" added, and with other minor wording changes. In addition, the heading and paragraph (a) are revised to include the words "or recreational pilot."

Section 61.95 Operations in Class B Airspace and at Airports Located Within Class B Airspace

The FAA did not propose to amend § 61.95; however, the FAA is amending this section to exclude a student pilot seeking a sport pilot certificate or a recreational pilot certificate. New § 61.94 is added that contains requirements for a student pilot seeking a sport pilot certificate or a recreational pilot certificate wishing to obtain privileges to operate in Class B airspace or at an airport located in Class B airspace. See discussion under "V.5.A.v. Changes to Airspace Restrictions."

Changes

Paragraph (c) is added to § 61.95 to provide that the section does not apply to a student pilot seeking a sport pilot certificate or a recreational pilot certificate.

Section 61.99 Aeronautical Experience

The FAA did not receive any comments on this section.

Changes

The proposed amendment is adopted without change.

Section 61.101 Recreational Pilot Privileges and Limits

There were several comments requesting that the FAA expand the privileges for holders of a recreational pilot certificate. Most of these comments suggested expanding the distance recreational pilots may fly without meeting the requirement of § 61.101 (c) and allowing recreational pilots to meet the same medical certification requirements as sport pilots.

Several commenters favored extending proposed sport pilot medical provisions to holders of higher-level

pilot certificates. These commenters contended that the same reasoning and justification proposed for sport pilots should apply to other pilots. They noted that recreational pilots are subject to many of the same operating limitations as sport pilots. These include limits on carrying passengers, use of other than fixed-gear aircraft, and prohibitions on flight between sunrise and sunset, and when flight or surface visibility is less than 3 statue miles. Therefore, the commenters believe recreational pilots should not be subject to current medical requirements that are more stringent than those for sport pilots. They suggested that the FAA review sport pilot data over time and consider allowing recreational pilots to meet the sport pilot medical requirements that are adopted under this rule.

The FAA did not consider expanding the applicability of the proposed sport pilot medical requirements in this rulemaking action, nor would it be within the scope of this action to do so. The FAA agrees with commenters that the agency must gain experience with sport pilot medical requirements, but the FAA will not consider extending these provisions beyond sport pilots and will not grant any petitions for exemption or rulemaking requesting that it do so at this time.

The FAA notes that it is not within the scope of this rulemaking to make substantive changes to the privileges of a recreational pilot, except where such changes are necessary to maintain consistency with the privileges for sport pilots provided under the final rule. The FAA also notes that, because recreational pilots are permitted to operate larger aircraft, the training requirements for recreational pilots are more extensive than for sport pilots.

Specifically, commenters suggested allowing recreational pilots to demonstrate aircraft to prospective buyers, as is allowed for sport pilots who are not aircraft salespersons. The FAA agrees and is adding a provision permitting holders of a recreational pilot certificate to demonstrate aircraft to prospective buyers, provided the recreational pilot is not an aircraft salesperson. For a discussion of the privilege of demonstrating aircraft to prospective buyers, please refer to "V.5.A.viii. Demonstration of Aircraft to Prospective Buyers." In addition, several commenters suggested that recreational pilots be allowed to conduct towing operations. The FAA still maintains that only a pilot with at least a private pilot certificate should be authorized to conduct towing operations. For a discussion of comments suggesting that the privilege of conducting towing operations be added to recreational pilot certificate, see the discussion of § 61.69.

Finally, many commenters suggested that recreational pilot be allowed to exercise the privileges of sport pilots. The FAA is revising the final rule under § 61.303 to allow a recreational pilot to exercise sport pilot privileges if he or she has received the cross-country training required in § 61.101(c) and holds any other endorsements required by subpart J of part 61. The cross-country training required in § 61.101(c) will provide a recreational pilot with at least the same minimum cross-country training that a sport pilot must meet to be eligible for this certificate. For a discussion of the changes related to this, see § 61.303.

When drafting the NPRM, the FAA did not establish aeronautical knowledge, flight proficiency, and aeronautical experience requirements for recreational pilots to obtain category and class ratings in powered parachutes and weight-shift-control aircraft. The proposal, however, did not revise § 61.101(d)(2) to prohibit recreational pilots from acting as pilot in command of these aircraft. As the FAA will not issue ratings for recreational pilots to operate these aircraft, the FAA is adding a limitation to § 61.101(d)(2) to specifically prohibit recreational pilots from acting as pilot in command of a powered parachute or a weight-shift-control aircraft.

In drafting the NPRM, the FAA did not consider the fact that operational control towers may, on occasion, be located in Class G or E airspace. To address this omission and therefore require a recreational pilot to receive appropriate training prior to conducting operations at an airport that has an operational control tower in Class G or E airspace, the FAA is revising paragraphs (d) and (e)(7) to add the words "to, from, through, or at an airport having an operational control tower." For a discussion of the changes related to operations in Class B, C, and D airspace, see "V.5.A.v. Changes to Airspace Restrictions."

Changes

In the final rule, paragraph (e)(2) is revised to prohibit recreational pilots from operating powered parachutes and weight-shift-control aircraft.

In addition, paragraph (e)(12) is added to permit holders of a recreational pilot certificate to demonstrate aircraft to prospective buyers, provided the recreational pilot is not an aircraft salesperson.

Finally, the FAA is revising paragraphs (d) and (e)(7) to add the words "to, from, through, or at an airport having an operational control tower."

Section 61.107 Flight Proficiency

As discussed in § 61.5 above, based on several comments, the FAA is adding a powered parachute—sea rating. Therefore, the FAA is changing § 61.107 to establish the appropriate flight proficiency training necessary for seaplane base operations.

In addition, the FAA is removing proposed paragraph (b)(9)(viii), which would have required a person to receive and log ground and flight training in slow flight and stalls for a powered parachute rating. See discussion under "V.5.A.iii. Flight Training and Proficiency Requirements."

Changes

In the final rule, paragraph (b)(9)(iii) is changed to require flight proficiency training in seaplane base operations for a powered parachute—sea rating. In addition, proposed paragraph (b)(9)(viii) is not adopted, and paragraphs (ix) through (xi) are redesignated as (viii) through (x) respectively.

Section 61.109 Aeronautical Experience

Several commenters noted that powered parachutes are not properly equipped to engage in operations at night. These commenters suggested that the requirement for night flight training be eliminated. The FAA agreed with these commenters and although the FAA will not remove the requirement for this training, the final rule will provide for a new exception to this training requirement in § 61.110. This exception will permit a person who does not receive the required night training to be issued a certificate with a night flying limitation. See § 61.110 for a discussion of night flying exceptions.

A few commenters also suggested that, given the slow speeds at which powered parachutes travel, the cross-country training distances required under the proposed rule would be excessive. The commenters also suggested that the flight proficiency requirements should more closely parallel glider and balloon training. The FAA agrees and therefore is making changes in the final rule to address these comments. For a complete discussion on specific changes to training and proficiency requirements refer to "V.5.A.iii. Flight Training and Proficiency Requirements."

The FAA notes that in the NPRM, in proposed paragraph (i), in the aeronautical experience table describing the training necessary for a weight-shift-

control rating, a paragraph was incorrectly formatted, therefore making the table misleading. Under the list of items included under "(iv) Ten hours solo flight time in a weight-shift-control aircraft consisting of at least—," the requirement for three takeoffs and landings (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower should have been designated as "(C)" in the list, rather than as a separate paragraph "(v)." In the final rule, the FAA is correctly designating that list to indicate that the requirement for three takeoffs and landings in a weight-shift-control aircraft at an airport with an operating control tower must be accomplished as solo flight.

Changes

The FAA is reformatting proposed paragraph (i) and adopting it with the following changes for a powered parachute rating:

The total flight time requirement is reduced from 40 hours to 25 hours in a powered parachute.

The requirement for total flight training with an authorized instructor is reduced from 20 to 10 hours, and an additional requirement for 30 takeoffs and landings with an authorized instructor is being added.

The requirement for 10 hours of solo flight training is not being changed, but the solo takeoff and landing requirement is increased from 10 to 20.

A reference to the night flying exceptions specified in § 61.110 is included in the night flight training requirements, and the requirement to conduct one night cross-country flight over 25 NM total distance is removed.

The 3-hour solo cross-country requirement is reduced to 1 hour, and the solo cross-country flight distance requirement is reduced from 50 NM to 25 NM.

In addition, requirements for a weight-shift-control rating are moved to new paragraph (j).

In paragraph (j), for weight-shift-control aircraft, the FAA is reducing the night cross-country flight requirement for a private pilot certificate from 100 NM to a required distance of at least 75 nautical miles, and the requirement for a solo cross-country flight from 150 nautical miles to 100 NM. Additionally, the FAA is revising the proposal to clarify that the requirement for three takeoffs and landings in a weight-shift-control aircraft at an airport with an operating control tower must be accomplished as solo flight.

Section 61.110 Night Flying Exceptions

The FAA did not propose to amend § 61.110, however, the FAA received many comments suggesting that a private pilot who wants to obtain a weight-shift-control, powered parachute, or gyroplane rating should not be required to fly at night if the aircraft is not equipped for that operation, or the pilot chooses not to seek those privileges. Most aircraft in those three categories are not equipped with the aircraft instruments or lighting required under part 91 for night operations. Those aircraft are primarily suited for daytime operations under visual flight rules.

The FAA is modifying § 61.110 to permit a person seeking a private pilot certificate with a gyroplane, powered parachute, or weight-shift-control aircraft rating to obtain that rating without complying with the night flying requirements specified in § 61.109(d)(2), (i)(2), or (j)(2). A private pilot who does not complete these requirements for night operations will have a limitation placed on his or her pilot certificate stating "night flying prohibited." This limitation can be removed at any time by a designated examiner or an FAA inspector when the pilot completes the night flying requirements established under the appropriate section of part 61.

Changes

The FAA is adding paragraph (c) to § 61.110 to permit a person who does not meet the night flying requirements in § 61.109(d)(2), (i)(2), or (j)(2) to be issued a private pilot certificate with the limit "Night flying prohibited." This limitation may be removed by an examiner if the holder complies with the requirements of § 61.109(d)(2), (i)(2), or (j)(2), as appropriate.

Section 61.113 Private Pilot Privileges and Limitations: Pilot in Command

The FAA is revising § 61.113(g) to allow a private pilot to act as pilot in command while towing an unpowered ultralight vehicle for compensation or hire. This change conforms to the revisions made to § 61.69. For a discussion of those changes, see § 61.69 above.

Changes

Paragraph (g) is revised.

Section 61.165 Additional Aircraft Category and Class Ratings

The FAA is adding a new paragraph (f) to § 61.165 to assist airline transport pilots currently operating under § 61.31(k)(2)(iii) without a category and class rating to comply with the new provisions of that paragraph. The revision to § 61.31 (k)(2)(iii) requires a category and class rating for the holder of a pilot certificate when that pilot operates an aircraft with an experimental certificate and carries a passenger. To receive a category and class rating to operate these aircraft, a person must log at least 5 hours of flight time while acting as pilot in command in the same category, class, make, and model of experimental aircraft and receive an appropriate endorsement. Other aeronautical knowledge, flight proficiency, and aeronautical experience requirements for the issuance of the rating do not apply. This flight time must be logged between September 1, 2004 and August 31, 2005. Similar provisions are enacted in § 61.63(k) for persons holding other pilot certificates. An airline transport pilot who meets these requirements will be issued an appropriate category and class rating limited to a specific make and model of experimental aircraft. See the discussion of § 61.31.

Changes

A new paragraph (f), Category class ratings for the operation of aircraft with experimental certificates, is added for airline transport pilots who do not have a category and class rating to operate the experimental aircraft. They may apply for a category and class rating limited to a specific make and model of experimental aircraft.

Subpart H—Flight Instructors Other Than Flight Instructors With a Sport Pilot Rating

The FAA is revising the heading of subpart H to include the words "other than flight instructors with a sport pilot rating." Because of the unique requirements that apply to flight instructors with a sport pilot rating, the FAA is placing those requirements into a new subpart K, rather than into existing subpart H.

Changes

The heading for subpart H is revised.

Section 61.181 Applicability

In the final rule, the FAA is revising § 61.181 to make the applicability of the section consistent with the newly revised subpart H heading (discussed above).

Changes

Section 61.181 is revised to add the words "except for flight instructor certificates with a sport pilot rating."

Section 61.213 Eligibility Requirements (Proposed as SFAR No. 89 Sections 211 and 213)

The FAA did not receive any comments on sections 211 and 213 of proposed SFAR No. 89. The provisions are therefore transferred to § 61.213 without substantive change.

Changes

Paragraphs (a)(4)(i) and (a)(4)(ii) are revised to include the requirements of sections 211 and 213 of proposed SFAR No. 89.

Section 61.215 Ground Instructor Privileges (Proposed as SFAR No. 89 Section 215)

The FAA did not receive any comments on sections 215 of proposed SFAR No. 89. The provisions are therefore transferred to § 61.215 without substantive change.

Changes

Paragraph (a) is revised to include the requirements of section 215 of proposed SFAR No. 89.

Subpart J—Sport Pilots

The FAA concluded that the certification rules pertaining to sport pilots merited their own subpart in part 61. The rules originally proposed in SFAR No. 89 pertaining to sport pilots are moved into subpart J. A table cross-referencing those sections of proposed SFAR No. 89 with corresponding sections of part 61 appears at the beginning of this section-by-section analysis for part 61.

Section 61.301 What Is the Purpose of This Subpart? (Proposed as SFAR No. 89 Section 1)

The FAA did not receive any comments on section 1 of proposed SFAR No. 89. The provisions applicable to sport pilots and persons seeking to exercise sport pilot privileges are therefore transferred to § 61.301 without substantive change. Section 61.301 provides the user with an overview of the requirements prescribed in this subpart.

Changes

The provisions of section 1 of proposed SFAR No. 89 applicable to sport pilots and persons seeking to exercise sport pilot privileges are transferred to § 61.301 without substantive change.

Section 61.303 What Operating Limits and Endorsement Requirements of This Subpart Apply to My Operation of a Light-Sport Aircraft for the Certificates and Ratings I Hold? (Proposed as SFAR No. 89 Section 91)

The FAA is adding § 61.303 to clarify which operating limits and endorsement requirements apply to the operation of a light-sport aircraft, depending on the type of certificate or rating a pilot holds and the medical eligibility requirements the pilot meets.

Many comments expressed confusion about the ability to exercise sport privileges while holding a higher-level pilot certificate. Many commenters also were not certain what privileges they could exercise based on their medical eligibility or what privileges they could exercise when operating a light-sport aircraft. To clarify the operating limits and endorsement requirements for pilots exercising sport pilot privileges, the FAA has included a table in § 61.303.

The FAA has revised the final rule to allow a recreational pilot who does not have an airman medical certificate to exercise sport pilot privileges if that person has received the cross-country training required in § 61.101(c). Proposed SFAR No. 89 section 91 excluded recreational pilots from exercising sport pilot privileges because they did not have the cross-country training required for a sport pilot. The cross-country training required in § 61.101(c) is equivalent to the cross-country requirements for sport pilots. See the discussion in § 61.101 for more information.

The FAA is not requiring a pilot who holds a recreational pilot certificate or higher who wants to exercise sport pilot privileges to have make and model training and a corresponding endorsement. See the discussion under "V.5.A.iv. Make And Model Logbook Endorsements, and Sets of Aircraft."

In addition, the FAA is requiring persons who hold a recreational pilot certificate or higher but not a rating for the category and class of light-sport aircraft they seek to operate to comply with the limitations in § 61.315, except paragraph (c)(14), and, if a private pilot or higher, paragraph (c)(7). Paragraph (c)(14) addresses aircraft that have a VH in excess of 87 knots CAS, and paragraph (c)(7) addresses requirements for training to operate in Class B, C, and D airspace, at an airport located in Class B, C, or D airspace, and to, from, through, or at an airport having an operational control tower. As these pilots have been trained to operate these aircraft and in these types of airspace, the FAA sees no need to require additional endorsements.

Paragraph (b) is added to require that persons using a current and valid U.S. driver's license meet certain requirements. A person using a U.S. driver's license must comply with each restriction and limitation imposed by that license and any judicial or administrative order for the operation of a motor vehicle. Also, if a person has applied for an airman medical certificate, that person must have been found eligible for the issuance of at least a third-class airman medical certificate at the time of his or her most recent application. If a person has been issued an airman medical certificate, his or her most recently issued airman medical certificate must not have been suspended or revoked. If a person has been granted an Authorization, his or her most recent Authorization must not have been withdrawn. Further, a person must not know or have reason to know of any medical condition that would make him or her unable to operate a light-sport aircraft in a safe manner. See discussion under "V.5.A.ii. Medical Provisions."

Changes

Section 61.303 is added to set forth operating limitations and endorsement requirements for persons seeking to operate light-sport aircraft. This new section is derived from the proposed provisions of SFAR No. 89 section 91. It provides a more detailed description, in a table, of the privileges a person may exercise based upon his or her medical eligibility and the certificates and endorsements he or she holds.

In the final rule, the introductory text of paragraph (a) prohibits a recreational pilot from exercising sport pilot privileges unless that person has complied with the cross-country training requirements in § 61.101(c).

In addition, the proposed requirement in SFAR No. 89 section 91 paragraph 2 for a person holding at least a private pilot's certificate and seeking to exercise sport pilot privileges is deleted. That provision would have required that person to receive specific training for any make and model of light-sport aircraft in which the person has not acted as pilot in command is deleted.

The requirements in paragraphs (a)(1)(iii) and (a)(2)(iii) of the final rule reflect the exceptions to the endorsement requirements discussed above.

In addition, paragraph (b) is added to indicate that a person using a current and valid U.S. driver's license must meet the applicable requirements specified in § 61.23(c)(2).

Section 61.305 What Are the Age and Language Requirements for a Sport Pilot Certificate? (Proposed as SFAR No. 89 Section 3)

Several commenters suggested lowering the age requirement for powered parachute pilots to be equivalent with the age requirements for the operation of gliders and balloons because of the simplicity of the aircraft. Other commenters suggested lowering the age to solo in all categories of light-sport aircraft. These commenters suggested that the minimum age requirement to solo in a light-sport aircraft be the same as the minimum age requirement to solo in a glider or a balloon. The commenters believed that the simple nature of light-sport aircraft justified such a change.

The FAA disagrees with this suggestion. Balloon and glider pilots typically operate as part of an organized activity requiring other participants; therefore younger pilots are rarely operate these aircraft without some level of supervision. Pilots of powered parachutes and other categories of light-sport aircraft may frequently operate these aircraft without any support personnel or supervision by other more experienced pilots. The FAA contends that capabilities of these aircraft and the fact that they are frequently operated by a single pilot without direct supervision precludes the agency from lowering the age limit for solo operations in these aircraft.

Changes

The provisions of section 3 of proposed SFAR No. 89 addressing the eligibility requirements for a sport pilot certificate are transferred to § 61.305 without substantive change.

Section 61.307 What Tests Do I Have To Take To Obtain a Sport Pilot Certificate? (Proposed as SFAR No. 89 Section 57)

The FAA received a few comments on the proposed provisions of this section. The commenters recommended that the practical tests be conducted in accordance with the procedures specified in current §§ 61.43, 61.45, 61.47, and 61.49. By incorporating the provisions of proposed SFAR No. 89 into part 61, the procedures specified in those sections apply to practical and knowledge tests administered to sport pilot applicants.

The commenters also recommended that the testing be conducted in accordance with FAA Order 8710.3, Pilot Examiner's Handbook. The FAA notes that all testing should be done in accordance with applicable FAA orders. Such a provisions would be inappropriate for inclusion in this rule.

One commenter recommended that a student pilot be required to pass the knowledge test prior to being issued a student pilot certificate. This action was not proposed, and the FAA considers such an action to be outside the scope of this rulemaking.

Another commenter recommended that the holder of a private pilot certificate or higher be exempt from taking a knowledge test addressing the subjects specified in proposed SFAR No. 89 section 51. The FAA notes that the holder of a private pilot certificate or higher is not required to take a test on the aeronautical knowledge areas specified in § 61.309 to exercise the privileges of a sport pilot certificate.

Two commenters recommended that applicants be permitted to take the practical test in a single-seat aircraft with the examiner observing the test from the ground. This comment is addressed in the discussion of § 61.45.

Changes

The provisions of section 57 of proposed SFAR No. 89 are transferred to § 61.307 without substantive change.

Section 61.309 What Aeronautical Knowledge Must I Have To Apply for a Sport Pilot Certificate? (Proposed as SFAR No. 89 Section 51)

The FAA received a few comments on the proposed provisions of this section.

One commenter objected to requiring extensive training for pilots who will be permitted to fly "fat" ultralights. This comment, the removal of tumble entry and tumble avoidance technique training, and additional training in risk management are discussed under "V.5.A.iii. Flight Training and Proficiency Requirements."

Another commenter suggested that training not be required in electronic navigation, while an additional commenter suggested that, if the FAA wishes to specifically mandate training in electronic navigation systems, the reference to navigation systems should refer to electronic navigation systems. The prevalence of electronic navigation systems in light-sport aircraft necessitates the aeronautical knowledge training be required in these systems. Although most navigation systems are electronic, the FAA has retained the generic reference to "navigation system." to conform to other requirements in part 61.

Changes

The provisions of section 51 of proposed SFAR No. 89 are transferred to § 61.309 with the following modifications.

The words "as appropriate" are added to paragraph (d) regarding the use of aeronautical charts for VFR navigation using pilotage, dead reckoning, and navigation systems.

In paragraph (j), the term "if applicable" is changed "applicable to airplanes and gliders" to clarify that this requirement is only applicable to persons seeking privileges to operate those aircraft.

The requirement in paragraph (k) of proposed SFAR No. 89 section 51 for tumble entry and tumble avoidance technique training for weight-shift-control aircraft category privileges is removed.

The word "judgment" is replaced with the words "risk management" in new paragraph (k).

Section 61.311 What Flight Proficiency Requirements Must I Meet To Apply for a Sport Pilot Certificate? (Proposed as SFAR No. 89 Section 53)

Upon further consideration of the proposal, the FAA is revising ground and flight training requirements pertaining to slow flight and stalls. See discussion under "V.5.A.iii. Flight Training and Proficiency Requirements."

In addition, the incorporation of proposed SFAR No. 89 into part 61 necessitates the inclusion of an exception to the flight proficiency requirements of this section for registered pilots with FAA-recognized ultralight organizations. References to land and sea classes are also included for those categories of aircraft for which those classes exist.

Changes

The provisions of section 53 of proposed SFAR No. 89 are transferred to § 61.311, with changes.

In the final rule, the section is revised to include an exception for persons who are registered pilots with an FAA-recognized ultralight organization and to refer to both land and sea classes for airplane, weight-shift-control, and powered parachute categories of light-sport aircraft.

Proposed paragraph (i) is changed to no longer require applicants for sport pilot privileges in lighter-than-air aircraft and powered parachutes to receive and log slow flight training. It has also been changed to no longer require applicants for sport pilot privileges in powered parachutes to receive and log stall training. In addition, in the final rule, the training requirement for slow flight and stalls is split into separate paragraphs (i) and (j),

specifying those aircraft for which the training is not required.

Section 61.313 What Aeronautical Experience Must I Have To Apply for a Sport Pilot Certificate? (Proposed as SFAR No. 89 Section 55)

See discussion under "V.5.A.iii. Flight Training and Proficiency Requirements."

Changes

The provisions of section 55 of proposed SFAR No. 89 are transferred to § 61.313, with the following changes.

References to land and sea classes of aircraft are added to paragraphs (a), (g), and (f).

References to a "full-stop landing" are revised to read "full-stop landing at a minimum of two points" in paragraphs (a)(1)(iii). (d)(1)(iii), and (h)(1)(iii).

In paragraph (b), the term "solo flight time" is changed to "solo flight training."

In paragraph (f), the aeronautical experience requirements for lighter-than-air category and balloon class privileges, are changed by deleting the requirement for one solo cross-country flight of at least 25 NM.

In paragraph (g), the aeronautical experience requirements for powered parachute category privileges, are changed as follows:

The requirement for 20 hours total flight time is reduced to 12 hours.

The requirement for 15 hours of flight training is reduced to 10 hours, which must include 20 takeoffs and landings to a full stop in a powered parachute with each landing involving flight in the traffic pattern at an airport.

The requirement for 2 hours of cross-country flight training is reduced to 1 hour.

The requirement for 5 hours of solo flight training is reduced to 2 hours and must include 10 solo takeoffs and landings, and one solo flight with a 10-NM leg with a landing at a different airport in lieu of the requirement for one solo flight of 25 NM with one 15–NM leg.

In paragraph (h), the aeronautical experience requirements for weight-shift-control aircraft category privileges, is changed by reducing the 75 NM solo cross-country requirement to 50 NM.

Section 61.315 What Are the Privileges and Limitations of My Sport Pilot Certificate? (Proposed as SFAR No. 89 Sections 73, 75, 77 and 79)

A few commenters noted that, in many states, a U.S. driver's license may be revoked for failure to pay certain taxes, failure to pay child support, or other circumstances that do not pertain to flying ability. These commenters believed that a person's ability to obtain a driver's license may not be related to poor health. The FAA, however, maintains the position it took in the proposed rule, that all limitations imposed on a driver's license apply to the use of that license to establish medical eligibility for a sport pilot certificate.

To further clarify its position on this issue, the FAA is adding the language in § 61.315(c)(17) stating: "* * * or any limit imposed by judicial or administrative order when using your driver's license to satisfy a requirement of this part." As stated in the proposed rule, it is the FAA's intent that, if an individual's driving privileges have been suspended, revoked, or restricted for any reason by an administrative or judicial body, those same limitations apply to the use of that individual's driver's license to establish medical eligibility for a sport pilot certificate, regardless of whether the terms of those limitations are printed on the individual's driver's license or other document, and regardless of whether the restrictions imposed were the result of an infraction unrelated to an individual's driving or flying ability. If an individual's driving privileges have been suspended, revoked, or in any way limited by a court or administrative order, the license holder may no longer use his or her driver's license to establish medical eligibility for a sport pilot certificate.

A commenter proposed that sport pilots be limited to single-place aircraft, and a private pilot certificate be required to fly a two-place aircraft. The FAA disagrees. The FAA believes that the training provided to a sport pilot is sufficient to permit that person to safely operate a simple, non-complex aircraft. The FAA believes that carrying a passenger does not increase the complexity of the aircraft to warrant the additional training required for a higher level certificate. One of the stated objectives of the sport pilot certificate is to permit, for personal use, the holder of such a certificate to operate a light-sport aircraft that has the capability of carrying only two occupants—the pilot and one passenger.

The FAA is also adding language to § 61.315(b)(7) to require additional training to operate in Class B, C, and D airspace. For a complete discussion of all issues related to operations in class B, C, and D airspace, refer to "V.5.A.v. Changes to Airspace Restrictions."

Several commenters suggested that the FAA allow a sport pilot to conduct search and rescue operations and said that the aircraft now being certificated as light-sport aircraft would be well suited for that activity. Although the FAA agrees that these aircraft are well suited for the activity, it still believes that this activity should be conducted by at least a private pilot who has accomplished the additional training and testing requirements at that certificate level.

For a discussion of demonstrating aircraft to prospective buyers, please refer to "V.5.A.viii. Demonstration of Aircraft to Prospective Buyers."

For a discussion of comments received requesting towing privileges for sport and recreational pilots, see the discussion of § 61.69 above.

Section 73 of proposed SFAR No. 89 stated that a sport pilot would be limited to sport and recreational flying only. Sport and recreational flying, however, was not specifically defined in the NPRM. That limitation is removed in the final rule and replaced with prohibitions against acting as pilot in command of a light-sport aircraft when carrying a passenger or property for compensation or hire, for compensation or hire, or in the furtherance of business. This change better describes those types of operations it intended to restrict when it proposed that a sport pilot would be limited to sport and recreational flying only.

The authority to operate up to 2,000 AGL when above 10,000 feet MSL is removed. For further information on this change, see "V.5.A.vi. Changes to Altitude Limitations."

Additionally, since light-sport aircraft operated by sport pilots are intended to be simple and non-complex, the FAA is adding a provision in paragraph (c)(19) to specifically prohibit a sport pilot from acting as a pilot flight crewmember on any aircraft for which more than one pilot is required by the type certificate of the aircraft or the regulations under which the flight is conducted. A similar provision currently exists in § 61.101(e) for recreational pilots. The two exceptions contained in that paragraph, however, are not included in § 61.315.

Changes

The provisions of sections 73, 75, 77, and 79 of proposed SFAR No. 89 are transferred to § 61.315, with the following changes.

In paragraph (c)(1), (c)(2), and (c)(3), prohibitions that a person may not act as pilot in command of a light-sport aircraft when carrying a passenger or property for compensation or hire, for compensation or hire, or in the furtherance of business are added. These provisions are added because the FAA is not including in the final rule the limitation on sport and recreational

flying proposed in SFAR No. 89 section 73 paragraph (a).

In paragraph (c)(7), the words "or to, from, through, or at an airport having an operational control tower" are added.

In paragraph (c)(11), the authority to operate up to 2,000 AGL when above 10,000 feet MSL is removed.

In paragraph (c)(17), a provision is added to require a sport pilot to comply with any limit imposed by judicial or administrative order when using his or her U.S. driver's license to satisfy a requirement of part 61.

Paragraph (c)(19) is added to prohibit a sport pilot from acting as a pilot flight crewmember on any aircraft for which more than one pilot is required by the type certificate of the aircraft or the regulations under which the flight is conducted.

Section 61.317 Is My Sport Pilot Certificate Issued With Aircraft Category and Class Ratings? (Proposed as SFAR No. 89 Section 59)

The FAA did not receive any comments on section 59 of proposed SFAR No. 89.

Changes

The provisions of section 59 of proposed SFAR No. 89 are transferred to § 61.317 without substantive change.

Section 61.319 Can I Operate a Make and Model of Aircraft Other Than the Make and Model Aircraft for Which I Have Received an Endorsement? (Proposed as SFAR No. 89 Section 61)

The FAA made changes to this section to incorporate the concept of make and model endorsements providing privileges to operate any aircraft within a set of aircraft. For a discussion of the comments and more information on this issue, see "V.5.A.iv. Make and Model Logbook Endorsements, and Sets of Aircraft."

Changes

The provisions of section 61 of proposed SFAR No. 89 are transferred to § 61.319 and revised to allow the holder of a sport pilot certificate with an endorsement to operate a specific make and model of light-sport aircraft to operate any other aircraft belonging to the same set of aircraft.

Section 61.321 How Do I Obtain Privileges To Operate an Additional Category or Class of Light-Sport Aircraft? (Proposed as SFAR No. 89 Section 63)

Generally, for a discussion of the comments and changes made to this section, see "V.5.A.iv. Make and Model Logbook Endorsements, and Sets of Aircraft."

For a discussion of the comments and the changes to the requirements in § 61.321 (c) for an applicant to complete an application and present this application to the authorized instructor, see "V.5.A.ix. Category and Class Discussion: FAA Form 8710–11 Submission."

Changes

The provisions of section 63 of proposed SFAR No. 89 are transferred to § 61.321 with an additional requirement in paragraph (c) for sport pilot seeking to operate an additional category or class of light-sport aircraft to complete an application for those privileges on a form and in a manner acceptable to the FAA. The person must present this application to the authorized instructor who conducted the proficiency check specified in paragraph (b) of the section.

Section 61.323 How Do I Obtain Privileges To Operate a Make and Model of Light-Sport Aircraft in the Same Category and Class Within a Different Set of Aircraft? (Proposed as SFAR No. 89 Section 65)

The FAA made changes to this section to incorporate the concept of make and model endorsements providing privileges to operate any aircraft within a set of aircraft. For a discussion of the comments and changes made to this section, see "V.5.A.iv. Make and Model Logbook Endorsements, and Sets of Aircraft."

Changes

The provisions of section 65 of proposed SFAR No. 89 are transferred to § 61.323 with changes. The FAA is revising this section to allow the holder of a sport pilot certificate with an endorsement for a specific make and model light-sport aircraft to operate any other aircraft within the same set of aircraft.

Section 61.325 How Do I Obtain Privileges To Operate a Light-Sport Aircraft at an Airport Within, or in Airspace Within, Class B, C, and D Airspace, or in Other Airspace With an Airport Having an Operational Control Tower? (Proposed as SFAR No. 89 Section 81)

For a discussion of comments and changes to this section, see "V.5.A.v. Changes to Airspace Restrictions."

Changes

The provisions of section 81 of proposed SFAR No. 89 are transferred to § 61.325 with the following change. The FAA is adding the words "at an airport located in Class B, C, or D airspace, or to, from, through, or at an airport having an operational control tower."

Section 61.327 How Do I Obtain Privileges To Operate a Light-Sport Aircraft That Has a VH Greater Than 87 Knots CAS? (Proposed as SFAR No. 89 Section 83)

The FAA received a few comments on proposed section 83 of SFAR No. 89. The commenters recommended that the FAA eliminate the proposed requirement that sport pilots seeking to operate an aircraft with a V_H greater than 87 knots CAS receive an endorsement from an authorized instructor. For the reasons stated in the proposed rule, and also because the FAA is eliminating the proposed requirement for a specific make and model endorsement for each aircraft a sport pilot operates, the FAA has retained this requirement in the final rule.

Changes

The provisions of section 83 of proposed SFAR No. 89 are transferred to § 61.327 without substantive change.

Section 61.329 Are There Special Provisions for Obtaining a Sport Pilot Certificate for Persons Who Are Registered Ultralight Pilots With an FAA-Recognized Ultralight Organization? (Proposed as SFAR No. 89 Section 93)

The FAA received comments suggesting that other organizations not mentioned specifically in the preamble of the proposal should be considered for crediting of ultralight experience. At the time of the NPRM, the FAA stated that it considered only ASC, EAA, and USUA to be FAA-recognized ultralight organizations. One commenter specifically requested that USHGA be considered an FAA-recognized ultralight organization. Some commenters also thought that State associations that have required that ultralight pilots meet their requirements should have been addressed. Both the final rule and the NPRM do not limit those organizations that can be considered as FAA-recognized ultralight organizations. The FAA agrees that USHGA should be considered an FAA-recognized ultralight organization and recognizes it as such. The FAA also recognizes that many State associations have now affiliated themselves with FAA-recognized ultralight organizations. Ultralight pilots in these State associations will be able to become sport pilots using the transition provisions of § 61.329, provided they are recognized pilots with one of the

four current FAA-recognized ultralight organizations.

The FAA originally proposed that any registered ultralight pilot with an FAA-recognized ultralight organization would have up to 24 months after the effective date of the final rule to apply for a sport pilot certificate and receive credit for experience and training successfully completed with that ultralight organization. Although there were no comments on this proposal, the FAA concluded that it would be in the interest of safety, fairness, and ease of administration to revise the provisions of the proposal in the final rule. The final rule permits an ultralight pilot registered with an FAA-recognized ultralight organization on or before September 1, 2004 to obtain a sport pilot certificate without meeting the aeronautical knowledge and flight proficiency requirements of §§ 61.309 and 61. 311 provided that person obtains the sport pilot certificate no later than January 31, 2007. Ultralight pilots registered with these organizations after September 1, 2004 will be required to meet these aeronautical knowledge and flight proficiency requirements but may credit experience obtained while a member of an FAA-recognized ultralight organization in accordance with § 61.52.

The purpose of § 61.329 is to provide a means of transition for those pilots who receive training with FAA-recognized ultralight organizations to obtain sport pilot certificates. Under current ultralight training programs, it is possible for an ultralight pilot to be eligible for a sport pilot certificate with as little as 10 hours of flight time. These ultralight pilots need not meet the aeronautical experience requirements specified in § 61.313. The FAA has determined that this is acceptable for ultralight pilots registered with an FAA-recognized organization on or before September 1, 2004 who pass both a knowledge and practical test before January 31, 2007. But after September 1, 2004, all pilot applicants must meet the aeronautical experience requirements of § 61.313. Registered pilots with FAA-recognized ultralight organizations, however, may credit ultralight aeronautical experience toward meeting these requirements in accordance with § 61.52. These requirements will ensure that all applicants meet the same standards and receive adequate training. They will also provide a single measure for assessing an applicant's qualifications, as all applicants must demonstrate proficiency and satisfactorily complete both FAA knowledge and practical tests.

An ultralight pilot registered with an FAA-recognized ultralight organization before September 1, 2004, who completes a practical test no later than January 31, 2007, will be issued a sport pilot certificate with a logbook endorsement permitting that person to exercise sport pilot privileges in each category, class, make, and model for which the FAA-recognized ultralight organization has found him or her proficient to operate. Registered ultralight pilots with an FAA-recognized ultralight organization who were not registered on or before September 1, 2004 and successfully complete the practical test for the sport pilot certificate will receive a logbook endorsement permitting them to exercise sport pilot privileges in the category, class, make and model of aircraft in which the practical test was taken; however, they will not receive a logbook endorsement for each category, class, make, and model of aircraft they were recognized by an the organization to operate.

The FAA received many comments regarding the requirement for notarized documentation of experience from the FAA-recognized ultralight organization. The commenters were concerned about the added cost and burden this will present. The ultralight organizations indicated that they would have to put notaries on their staffs or take the documents to a notary, adding cost and burden to the process.

The FAA agrees with the comments and has replaced the requirement for a notarized document with a requirement that an applicant provide the FAA with a certified copy of his or her ultralight pilot records from the FAA-recognized ultralight organization. The FAA has historically allowed other organizations to certify graduation certificates and similar documents and the FAA concluded that is sufficient for this regulatory requirement.

Many commenters suggested that the FAA allow an applicant who is concurrently seeking both a sport pilot certificate and a flight instructor certificate with a sport pilot rating to take only one knowledge test to meet both aeronautical knowledge requirements. The FAA agrees with these commenters and will permit a person seeking a sport pilot certificate under paragraph (a)(1) to take either the knowledge test for a sport pilot certificate or the flight instructor certificate with a sport pilot rating to satisfy the requirements of this section. The FAA believes that the applicant will demonstrate a higher level of knowledge by taking the knowledge test for a flight instructor certificate for a sport pilot rating.

Proposed paragraphs (a)(3)(ii), which would have required documents from an FAA-recognized ultralight organization to list each category and class of ultralight vehicle that the organization recognizes a person as being qualified to operate, is changed in paragraph (a)(1) of the final rule to require that the documents indicate that person is recognized to operate the category and class of aircraft for which sport pilot privileges are sought. As a result of this change, the documentation provided by an applicant under paragraph (a)(1) of the rule need not show all categories and classes that the organization considers the applicant qualified to operate, only the category and class of aircraft for which sport pilot privileges are sought. Documentation submitted by an applicant under paragraph (a)(2), however, must show each aircraft a person is recognized to operate. This requirement enables the FAA to provide the applicant with a logbook endorsement permitting operation of each category, class, make and model listed without further testing.

The FAA has also revised the final rule by adding paragraph (b). This paragraph clarifies that the FAA will provide a person who meets the provisions of paragraph (a)(1) of this section with a logbook endorsement for each category, class, make, and model of aircraft listed on the ultralight pilot's records provided to the FAA, regardless of the aircraft in which the practical test is taken.

Changes

The provisions of section 93 of proposed SFAR No. 89 are transferred to § 61.329 with minor reformatting. Also, the following changes are made.

In paragraph (a)(1) (proposed as paragraph (a)), the words "not later than 24 months after the effective date of the final rule" are changed to "on or before September 1, 2004."

In paragraph (a)(1)(i)(B), the FAA is adding a provision that permits a registered ultralight pilot seeking a sport pilot certificate to pass either the knowledge test for a sport pilot certificate (as set forth in the proposal), or the knowledge test for a flight instructor certificate with a sport pilot rating.

In paragraphs (a)(1)(i)(D) and (a)(2)(iv), the word "notarized" is changed to "certified."

Proposed paragraph (b)(4)(ii) is changed in paragraph (a)(2)(iv)(B) of the final rule to require that a person who is a registered ultralight pilot on or after

September 1, 2004 and is seeking a sport pilot certificate to provide documents provided by an applicant for a sport pilot certificate indicate that the person is recognized to operate only the category and class of aircraft for which sport pilot privileges are sought.

Proposed paragraph (c) is removed.

New paragraph (b) is added as discussed above.

Subpart K—Flight Instructors With a Sport Pilot Rating

The FAA concluded that the certification rules pertaining to flight instructors with a sport pilot rating merited their own subpart in part 61. Most of the rules originally proposed in SFAR No. 89 pertaining to flight instructors were moved into subpart K without change. A table with cross-references to the proposed SFAR No. 89 appears at the beginning of this section-by-section analysis for part 61.

Section 61.401 What Is the Purpose of This Subpart? (Proposed as SFAR No. 89 Section 1)

The FAA did not receive any comments on section 1 of proposed SFAR No. 89. The provisions applicable to flight instructors with a sport pilot rating are therefore transferred to § 61.401 without substantive change. Section 61.401 provides the user with an overview of the requirements prescribed in this subpart.

Changes

The provisions of section 1 of proposed SFAR No. 89 applicable to flight instructors with a sport pilot rating are transferred to § 61.401 without substantive change.

Section 61.403 What Are the Age, Language, and Pilot Certificate Requirements for a Flight Instructor Certificate With a Sport Pilot Rating? (Proposed as SFAR No. 89 Section 3)

The FAA created this section to incorporate the eligibility requirements originally contained in SFAR No. 89 section 3. Section 3 would have required that a flight instructor with a sport pilot rating hold a sport or private pilot certificate. Although a number of commenters agreed with the FAA's proposal to permit flight instructors with a sport pilot rating to possess only a sport pilot certificate, the FAA received several comments expressing concern that persons holding no more than a sport pilot certificate could serve as flight instructors. Commenters noted that the FAA traditionally requires a flight instructor to hold a commercial pilot certificate. These commenters were specifically concerned that the FAA would be certificating flight instructors with an inappropriately low level of experience and training, thereby decreasing safety. The FAA believes that the training and experience required for a flight instructor certificate with a sport pilot rating is appropriate for the types of instruction that these flight instructors will provide. The FAA notes that these persons will be providing instruction in simple, non-complex aircraft with limited operational characteristics. The FAA also notes that it has established minimum aeronautical experience requirements in § 61.411 for flight instructors with a sport pilot rating that exceeds that specified for a sport pilot certificate.

In the final rule, the FAA revised the language requiring a person to "hold a current and valid sport pilot certificate or a current and valid private pilot certificate" to "hold a current and valid pilot certificate." This change permits persons holding recreational, commercial, and airline transport pilot certificates to obtain a flight instructor certificate with a sport pilot rating. Since the FAA intends to permit a person with a sport pilot certificate to obtain a flight instructor certificate with a sport pilot rating, the FAA believes that persons with higher-level pilot certificates should not be precluded from obtaining a flight instructor certificate with a sport pilot rating.

Changes

The provisions of section 3 of proposed SFAR No. 89 addressing the eligibility requirements for flight instructors with a sport pilot rating are transferred to § 61.403 with the following change. In paragraph (c) of the final rule, the language requiring a person to "hold a current and valid sport pilot certificate or a current and valid private pilot certificate" is changed to "hold a current and valid pilot certificate."

Section 61.405 What Tests Do I Have To Take To Obtain a Flight Instructor Certificate With a Sport Pilot Rating? (Proposed as SFAR No. 89 Section 119)

The FAA created this section to incorporate the testing requirements originally contained SFAR No. 89 section 119. The FAA received a comment from a national organization representing flight instructors recommending changes regarding spin training instructional competency and proficiency in weight-shift-control aircraft. In addition, several commenters noted, while it is crucial that pilots of weight-shift-control aircraft be capable of recognizing and avoiding spins, it is not safe for pilots to learn these techniques by actually performing them. The FAA supports these recommendations and is removing the proposed requirement that a person seeking to provide instruction in a weight-shift-control aircraft possess both competency and instructional proficiency in stall awareness, spin entry, spins, and spin recovery procedures. These requirements are still applicable to persons seeking to provide instruction in airplanes and gliders. For more information, see "V.5.A.iii. Flight Training and Proficiency Requirements."

Changes

The provisions of section 119 of proposed SFAR No. 89 are transferred to § 61.405 with the following changes.

The section is reworded and reorganized for clarity.

In paragraph (b)(1)(ii) of the final rule (proposed as paragraph (b)(3)), the requirement for a person to receive a logbook endorsement indicating competency and instructional proficiency in stall awareness, spin entry, spins, and spin recovery procedures has been deleted for persons seeking privileges to provide instruction in weight-shift-control aircraft.

In paragraph (b)(2)(iii) of the final rule (proposed as paragraph (b)(4)) is modified as follows.

A person seeking privileges to provide instruction in a weight-shift-control aircraft is not required to demonstrate an ability to teach stall awareness, spin entry, spins, and spin recovery procedures.

The term "practical" is added before the word "test."

The term "instructional procedures" is replaced with "instructional competency and proficiency."

The term "applicable light-sport aircraft" is replaced with "applicable category and class of aircraft."

Section 61.407 What Aeronautical Knowledge Must I Have To Obtain a Flight Instructor Certificate With a Sport Pilot Rating? (Proposed SFAR No. 89 Section 113)

The FAA did not receive any comments on this section and is adopting the section as proposed except for minor revisions to improve clarity.

Changes

The provisions of section 113 of proposed SFAR No. 89 are transferred to § 61.407 with the following changes. Proposed paragraphs (b) and (c) are adopted as paragraphs (c) and (b) respectively, and in paragraph (c) of the final rule, the words "for the aircraft category and class in which you seek

flight instructor privileges" are added after "applicable to a sport pilot certificate."

Section 61.409 What Flight Proficiency Requirements Must I Meet To Apply for a Flight Instructor Certificate With a Sport Pilot Rating? (Proposed as SFAR No. 89 Section 115)

For a discussion on this section, see "V.5.A.iii. Flight Training and Proficiency Requirements."

Changes

The provisions of section 115 of proposed SFAR No. 89 are transferred to § 61.409 with the following changes.

In the introductory text of the section, the words "for airplane single-engine, glider, gyroplane, airship, balloon, powered parachute, and weight-shift-control privileges" are replaced with the words "for the aircraft category and class in which you seek flight instructor privileges" are added.

Paragraph (k) (proposed as paragraph (a)(11)) is changed to no longer require applicants for a flight instructor certificate seeking instructional privileges in lighter-than-air aircraft and powered parachutes to receive and log slow flight training. It is also changed to no longer require applicants seeking instructional privileges in powered parachutes to receive and log stall training. In addition, in the final rule, the training requirement for slow flight and stalls is split into separate paragraphs (k) and (l), specifying those aircraft for which the training is not required.

Paragraph (m) (proposed as paragraph (a)(12)) is changed to remove the requirement for spin training in a weight-shift-control aircraft, requiring it for airplanes and gliders only.

Paragraph (o) is added to require "tumble entry and avoidance techniques" maneuvers for weight-shift-control aircraft only.

Section 61.411 What Aeronautical Experience Must I Have To Apply for a Flight Instructor Certificate With a Sport Pilot Rating? (Proposed as SFAR No. 89 Section 117)

The FAA received several comments to this section. One commenter stated that the FAA should decrease the aeronautical experience requirements for flight instructors seeking instructional privileges in powered parachutes to 50 hours. Other commenters questioned the need for flight instructors to obtain 15 hours of cross-country flight time in powered parachutes. Another commenter questioned the need for flight instructors to have 15 hours of pilot-in-command time in a weight-shift-control aircraft. A number of commenters recommended that the FAA decrease the requirements for flight instructors seeking instructional privileges in airplanes, weight-shift-control aircraft, and powered parachutes to 55 hours. One commenter stated that until 2 years ago, all three national ultralight organizations required only 55 hours of flight time to qualify as an ultralight flight instructor. The commenter further noted that two of these three organizations now require flight instructors to possess a minimum of 100 hours of flight time. A number of commenters stated that the proposed requirements for flight instructors should mirror the requirements of these two organizations. However, another commenter recommended that all flight instructors have at least 250 hours of flight experience. This commenter was concerned that sport pilots would be trained by instructors who have very little experience themselves.

The FAA has considered the commenters' concerns and notes that there may be legitimate reasons to either increase or decrease the aeronautical experience requirements set forth in the NPRM. The FAA believes that the aeronautical experience requirements set forth in the NPRM establish a reasonable level of minimum aeronautical experience for the issuance of flight instructor certificates with a sport pilot rating. As the sport pilot rating is a new rating to be added to the flight instructor certificate, the FAA will monitor the implementation of the rule and may revise aeronautical experience requirements for the rating, if the FAA deems such action appropriate.

Changes

The provisions of section 117 of proposed SFAR No. 89 are transferred to § 61.411 with no substantive change.

Section 61.413 What Are the Privileges of My Flight Instructor Certificate With a Sport Pilot Rating? (Proposed as SFAR No. 89 Section 133)

The FAA identified several privileges that a flight instructor with a sport pilot rating would be permitted to exercise that were omitted in SFAR No. 89 section 133 of the proposed rule. This omission is being corrected in the final rule.

In addition to the privileges listed in the NPRM, under the final rule, the holder of a flight instructor certificate with a sport pilot rating is authorized, within the limits of his or her certificate and rating, to provide training and logbook endorsements for the following:

(1) A flight instructor certificate with a sport pilot rating;

(2) A powered parachute or weight-shift-control aircraft rating;

(3) An operating privilege for a sport pilot;

(4) A practical test and knowledge test for a private pilot certificate with a powered parachute or weight-shift-control aircraft rating or a flight instructor certificate with a sport pilot rating.

Although the FAA received a few comments on this section that addressed towing and the ability to demonstrate light-sport aircraft for sale, these privileges are not based upon an individual's flight instructor certificate, but rather on that individual's underlying pilot certificate. Comments on towing and the demonstration of aircraft for sale are discussed in those sections that address the privileges of a person's underlying pilot certificate.

Changes

The provisions of section 133 of proposed SFAR No. 89 are transferred to § 61.413 and reorganized for clarity. Also, the following changes are made.

In paragraph (a), the words "a student pilot certificate to operate light-sport aircraft" are changed to "a student pilot seeking a sport pilot certificate".

Paragraph (c) is added to include training and logbook endorsements for a flight instructor certificate with a sport pilot rating.

Paragraph (d) is added to include training and logbook endorsements for a powered parachute or weight-shift-control aircraft rating.

Paragraph (f) is changed by including training and logbook endorsements for an operating privilege.

Paragraphs (g) and (h) (proposed as paragraphs (e) and (f)) are amended by adding, after "for a sport pilot," the words "certificate, a private pilot certificate with a powered parachute or weight-shift-control aircraft rating or a flight instructor certificate with a sport pilot rating."

Section 61.415 What Are the Limits of a Flight Instructor Certificate With a Sport Pilot Rating? (Proposed as SFAR No. 89 Section 135)

Several commenters questioned the need for make and model endorsements for flight instructors. Many commenters believed that this requirement is unnecessary because of the simple nature of the aircraft in which instructors will be providing training. Additionally, many commenters questioned the need for flight instructors to obtain 5 hours of pilot-in-command time in a specific make and

model of aircraft prior to providing flight instruction in that aircraft. The FAA recognizes that under current § 61.195(f), a flight instructor may not provide training required for the issuance of a certificate or rating in a multi-engine airplane, helicopter, or powered lift unless that instructor has at least 5 hours of pilot-in-command time in that specific make and model of aircraft. This requirement is therefore not applicable to the majority of aircraft in which flight instruction is conducted. The FAA notes however that the final rule permits a person to serve as a flight instructor if that person holds only a sport pilot certificate. In view of the limited experience of these certificate holders, the FAA deems it prudent that flight instructors with a sport pilot rating obtain at least 5 hours pilot-in-command time before conducting flight instruction in a make and model of light-sport aircraft within the same set of aircraft as that in which the training is provided. For additional discussion, see "V.5.A.iv. Make and Model Logbook Endorsements, and Sets of Aircraft."

Commenters stated that the FAA should allow training to be conducted in single-place aircraft. The FAA does not agree that all training provided by flight instructors with a sport pilot rating be permitted in single-place aircraft. Under current § 61.195(g)(2), the FAA requires pre-solo flight training for single-place aircraft to be provided in an aircraft that has two pilot stations and is of the same category and class applicable to the certificate and rating sought. The FAA believes that the commenters did not provide sufficient justification to remove this long-standing requirement. The final rule requires that pre-solo flight training must be given in an aircraft that has two pilot stations and is of the same category and class applicable to the certificate, rating, or privilege sought. Section 61.195(g) ensures that pre-solo fight training is provided by an authorized instructor in an aircraft with two pilot stations. Section 61.415 will apply a similar requirement to persons receiving flight instruction from flight instructors with a sport pilot rating. Similar to § 61.195(g), pilots being trained by flight instructors with a sport pilot rating will have the latitude under § 61.415 to meet all other experience and solo training requirements in a single-place aircraft.

As the provisions of proposed SFAR No. 89 have been included in new subpart K of part 61, and the applicability of subpart H has been revised to exclude flight instructors with a sport pilot rating, the limitations that previously applied to all flight instructors in subpart H must be included in subpart K for them to apply to flight instructors with a sport pilot rating. Therefore, the FAA is now including in § 61.415 specific regulatory language to address the limits referred to § 61.195(a), (d)(1) through (d)(3), and (d)(5).

Changes

The FAA is transferring the provisions of proposed SFAR No. 89 section 135 to § 61.415 and reorganizing them with the following revisions.

In paragraph (a), the description of the limits for providing ground or flight training is clarified by addressing training provided by a person holding a pilot certificate other than a sport pilot certificate.

Paragraph (e) is revised to incorporate the concept of "set of aircraft," and the requirement to obtain aeronautical experience as a registered pilot with an FAA-recognized ultralight organization is removed. The concept of "set of aircraft" is discussed under "V.5.A.iv. Make and Model Logbook Endorsements, and Sets of Aircraft." The use of aeronautical experience obtained in ultralight vehicles is addressed in § 61.52 of the final rule.

Paragraph (f) is revised to incorporate operations to, from, through, or at an airport having an operational control tower. (See "V.5.A.v. Changes to Airspace Restrictions.")

Paragraph (h) is added to require that all training be performed in an aircraft that complies with the requirements of § 91.109. This corrects an inadvertent omission of a reference to § 61.195(g) in the NPRM.

Paragraph (i) is added to require that flight training must be provided in an aircraft that has at least two pilot stations and is of the same category and class appropriate to the certificate rating or privilege sought. Pre-solo flight training for single-place aircraft needs to be provided in an aircraft that has two pilot stations and is of the same category and class appropriate to the certificate rating or privilege sought.

Section 61.417 Will My Flight Instructor Certificate With a Sport Pilot Rating List Aircraft Category and Class Ratings? (Proposed as SFAR No. 89 Section 123)

The FAA did not receive any comments on this section. Although it was proposed that a person receiving a flight instructor certificate with a sport pilot rating receive logbook endorsements for the category, class, and make and model aircraft in which the person is authorized to provide training, the FAA is removing provisions specifying that a person would receive a make and model endorsement. The FAA is removing these provisions because the authority to operate any make and model of aircraft within a specific set of aircraft is a privilege of the person's underlying pilot certificate and not the flight instructor certificate. See the discussion "V.5.A.iv. Make and Model Logbook Endorsements, and Sets of Aircraft."

Changes

The provisions of section 123 of proposed SFAR No. 89 are transferred to § 61.417 with the following change. The words "make and model" are removed.

Section 61.419 How Do I Obtain Privileges To Provide Training in an Additional Category or Class of Light-Sport Aircraft? (Proposed as SFAR No. 89 Section 127)

The FAA received a few comments on this section. One commenter was concerned that there will not be enough instructors to provide endorsements for instructors seeking to provide training in additional categories and classes of aircraft. Another commenter proposed that instructors certificated under subpart H of part 61 should not be required to complete the proposed proficiency check. The FAA believes that the "grandfathering" provisions of the final rule will result in sufficient numbers of instructors being able to provide the required endorsements. The FAA notes that the proficiency check required by § 61.419(b) will only apply to flight instructors exercising the privileges of a sport pilot rating. The FAA also notes that instructors certificated under subpart H are not subject to this requirement.

For information on changes related to filing applications and endorsements, refer to the discussion under "V.5.A.ix. Category and Class Discussion: FAA Form 8710–11 Submission." For discussion of make and model endorsements, refer to the discussion under "V.5.A.iv. Make and Model Endorsements, and Sets of Aircraft."

In addition, the FAA made a minor editorial change to the title and the introductory text by deleting the word "flight" to be more accurate. This change reflects that flight instructors provide both ground and flight training.

Changes

The provisions of section 127 of proposed SFAR No. 89 are transferred to § 61.419 with the following changes.

The title of this section is changed by removing the word "flight." The word "flight" is also removed from the introductory text.

In paragraph (a), the term "aeronautical and knowledge experience requirements" is changed to "aeronautical knowledge and flight proficiency requirements." This change properly refers to the requirements an applicant must meet in §§ 61.407 and 61.409.

Proposed paragraph (b) is split into paragraphs (b) and (d) in the final rule for clarity. The logbook endorsement requirement is now in paragraph (d) of the final rule. The term "light-sport aircraft privilege" is changed to "category and class flight instructor privilege" in paragraphs (b) and (d) of the final rule.

Paragraph (c) in the final rule is added to require a person to complete and present an application to obtain the privileges sought.

Section 61.421 May I Give Myself an Endorsement? (Proposed as SFAR No. 89 Section 139)

The FAA received comments noting an error made in the proposed rule omitting the word "not." The FAA is correcting the error.

Changes

The provisions of section 139 of proposed SFAR No. 89 are transferred to § 61.421 with the following changes.

The phrase "you may give yourself an endorsement" is changed to "you may *not* give yourself an endorsement," as was originally intended.

The FAA is also adding the word "rating" to the list of endorsements a flight instructor with a sport pilot rating is not permitted to give him or herself. This conforms to the list of prohibitions specified in § 61.195(i).

Section 61.423 What Are the Recordkeeping Requirements for a Flight Instructor With a Sport Pilot Rating? (Proposed as SFAR No. 89 Section 121)

The FAA received no comments on this section.

The FAA notes that the NPRM only referred to the endorsement of a person's logbook. Under current rules, a flight instructor is required to sign the logbook of any person to whom he or she provides training. To clarify that flight instructors with a sport pilot rating must sign the logbook of each person to whom they have given flight or ground training, the FAA is revising paragraph (a)(1) accordingly.

The NPRM did not specifically require a flight instructor to retain a record of the type of endorsement provided to a person who received training. The final rule corrects this omission in paragraph (a)(2).

The FAA is revising paragraph (a)(2)(iii) to include the words "to, from, through, or at an airport having an operational control tower." This change is discussed under "V.5.A.v. Changes to Airspace Restrictions."

The FAA is adding (b) to include a requirement for an instructor to complete, sign, and submit to the FAA the application presented to him or her by a person seeking to operate or provide training in an additional category and class of light-sport aircraft. This application must be submitted within 10 days of providing the endorsement. For a discussion of this provision, see "V.5.A.ix. Category and Class Discussion: FAA Form 8710–11 Submission."

Changes

The provisions of section 121 of proposed SFAR No. 89 are transferred to § 61.423 with the following changes.

The section heading is revised, and the text of the section is reorganized for improved readability.

In paragraph (a)(1) the FAA is clarifying that a flight instructor with a sport pilot rating must sign the logbook of each person to whom he or she has given training.

In paragraph (a)(2), a requirement to retain a record of the type of endorsement is added.

Paragraph (a)(2)(iii) is revised to include the words "to, from, through, or at an airport having an operational control tower."

Paragraph (b) is added to include a requirement for an instructor to complete, sign, and submit to the FAA the application presented to him or her by a person seeking to obtain additional category and class privileges.

Section 61.425 How Do I Renew My Flight Instructor Certificate? (Proposed as SFAR No. 89 Section 195)

The FAA received no comments requesting changes to this section. However a few commenters expressed concerns that current Flight Instructor Refresher Clinics (Courses) (FIRCs) may not be a suitable means for flight instructors with a sport pilot rating to renew their flight instructor certificates. The commenters asked if persons providing FIRCs would be given latitude to develop courses specifically designed for flight instructors with a sport pilot rating. The FAA notes that persons providing FIRCs may specifically tailor those courses to the needs of flight instructors with sport pilot ratings. Further guidance will be available to FIRC sponsors at a later date.

Changes

The provisions of section 195 of proposed SFAR No. 89 are transferred to § 61.425 without substantive change.

Section 61.427 What Must I Do if My Flight Instructor Certificate With a Sport Pilot Rating Expires? (Proposed as SFAR No. 89 Section 197)

The FAA received no comments on this section.

Changes

The provisions of section 197 of proposed SFAR No. 89 are transferred to § 61.427. The section is modified to note that a person may pass a practical test as prescribed in § 61.405(b) or § 61.183(h). This change reflects the separation of flight instructor requirements into subparts H and K of part 61.

Section 61.429 May I Exercise the Privileges of a Flight Instructor Certificate With a Sport Pilot Rating if I Hold a Flight Instructor Certificate With Another Rating? (Proposed as SFAR No. 89 Section 151)

The FAA received several comments on this section. The majority of the commenters recommended that the FAA delete or reduce the proposed requirement for a person exercising the privileges of a flight instructor with a sport pilot rating to have at least 5 hours of pilot-in-command time in a specific make and model of light-sport aircraft in which that person provides training. Other commenters recommended that the FAA delete the proposed requirement that a flight instructor receive specific training in any make and model of light-sport aircraft in which that person has not acted as pilot in command prior to providing training. The FAA is retaining the proposed requirement that a person exercising the privileges of a flight instructor certificate with a sport pilot rating have at least 5 hours of pilot-in-command time in a specific make and model of light-sport aircraft prior to providing flight training. However, the rule will permit a person with this experience to provide flight training in any aircraft within the same set of light-sport aircraft as the make and model of aircraft in which that person has 5 hours of pilot-in-command time.

The FAA found that section 151 of proposed SFAR No. 89 did not reference commercial pilots with an airship or a balloon rating. As these pilots may provide flight instruction under current rules, and therefore may be considered authorized instructors, the FAA believes it is appropriate to permit these persons to exercise the privileges of a flight

instructor certificate with a sport pilot rating in the classes of aircraft in which they are currently authorized to provide training. This omission is corrected in the final rule.

Proposed paragraphs (a)(2) and (a)(3) would have established requirements for a person transitioning to a flight instructor certificate with a sport pilot rating to receive specific training or have 5 hours of pilot-in-command time in any make and model of light-sport aircraft prior to providing training in that aircraft. This requirement to have 5 hours of pilot-in-command time is now set forth in § 61.415(e). Training requirements for the operation of makes and models of light-sport aircraft are addressed in those sections that apply to a person's underlying pilot certificate.

Paragraph (b) is added in the final rule. This paragraph clarifies that the requirements of §§ 61.415 and 61.423 also apply to flight instructors with other than a sport pilot rating, commercial pilots with an airship rating, or commercial pilots with a balloon rating, when those persons exercise the privileges of a flight instructor certificate with a sport pilot rating.

Paragraph (c) (proposed as paragraph (b)) is changed to state that, to exercise privileges of a flight instructor certificate in a category, class, or make and model of light-sport aircraft for which one is not currently rated, a person must meet all applicable requirements specified in § 61.419 to provide training in an additional category or class of light-sport aircraft. In the NPRM, SFAR No. 89 section 151(b) referenced sections 127 and 129; however, section 129 is not being adopted and therefore paragraph (c) only pertains to § 61.419, which corresponds to SFAR No. 89 section 127.

Changes

The provisions of section 151 of proposed SFAR No. 89 are transferred to § 61.429 with changes.

In the introductory text of the section, the words "a commercial pilot certificate with an airship rating, or a commercial pilot certificate with a balloon rating issued under this part" are added.

In paragraph (a) (proposed as paragraph (a)(1)), the words "* * *on your existing pilot certificate and flight instructor certificate when exercising your flight instructor privileges" are changed to read, "* * *on your flight instructor certificate, commercial pilot certificate with an airship rating, or commercial pilot certificate with a balloon rating, as appropriate, when exercising your flight instructor privileges and the privileges specified in § 61.413."

Paragraph (b) is added in the final rule to require persons subject to this section to comply with the limits specified in § 61.415 and the recordkeeping requirements of § 61.423.

Paragraph (c) (proposed as paragraph (b)) is changed to state that persons subject to this section must meet all applicable requirements specified in § 61.419 to provide training in an additional category or class of light-sport aircraft.

Section 61.431 Are There Special Provisions for Obtaining a Flight Instructor Certificate With a Sport Pilot Rating for Persons Who Are Registered Ultralight Flight Instructors With an FAA Recognized Ultralight Organization? (Proposed as SFAR No. 89 Section 153)

The provisions of this section were intended to encourage and assist ultralight instructors registered with FAA-recognized ultralight organizations to obtain flight instructor certificates with a sport pilot rating. The final rule will allow an ultralight flight instructor who is registered with an FAA-recognized ultralight organization before September 1, 2004 to apply for a flight instructor certificate with a sport pilot rating and receive credit for experience and training successfully completed with the ultralight organization. The FAA believes that the provisions of this section respond to commenters' requests to make the transition from basic and advanced ultralight flight instructors to flight instructors with a sport pilot rating simple and reasonable.

One commenter stated that the FAA should not require ultralight instructors who have thousands of flight hours of ultralight flight time to obtain additional training. The FAA believes that this section addresses the commenter's concern, as it provides registered ultralight instructors with FAA-recognized ultralight organizations a means to obtain flight instructor certificates with a sport pilot rating without meeting the requirements specified for other applicants.

A number of commenters recommended that ultralight instructors not take knowledge tests for both the sport pilot certificate and a flight instructor certificate with a sport pilot rating. Other commenters recommended that transitioning ultralight flight instructors not be required to take any knowledge test. To ensure standardization, the FAA requires all applicants for an underlying pilot certificate to take the specific knowledge test applicable to that certificate, and is therefore requiring that an applicant pass a knowledge test for both his or her underlying pilot certificate and a flight instructor certificate with a sport pilot rating.

Some commenters recommended that ultralight flight instructors transitioning to flight instructors with a sport pilot rating not be required to pass an "initial flight check." In the interest of safety and standardization, the FAA will not issue an initial flight instructor certificate without the applicant passing a practical test.

A number of commenters recommended that the FAA permit ultralight instructors to become flight instructors without first obtaining a sport pilot certificate. As the privilege to operate an aircraft is based upon a person's underlying pilot certificate and not his or her flight instructor certificate, the FAA is not adopting the commenter's recommendation.

One commenter recommended that current ultralight instructors with specific make and model experience be permitted to provide themselves with an endorsement certifying their own proficiency in a particular make and model of light-sport aircraft. As this recommendation goes against the FAA's long-standing policy against self-endorsements, the FAA is also not adopting this commenter's recommendation.

Other commenters questioned the ability of the FAA to effectuate a transition from operations conducted under training exemptions to operations conducted in accordance with subpart K. In the final rule, the FAA is establishing an effective date for compliance, which will permit current ultralight flight instructors to become flight instructors with a sport pilot rating and exercise the privileges of that certificate in appropriately certificated aircraft without disrupting current training programs.

The FAA originally proposed that any registered ultralight instructor with an FAA-recognized ultralight organization would have up to 36 months after the effective date of the final rule to apply for a flight instructor certificate with a sport pilot rating and receive credit for experience and training successfully completed with the ultralight organization. Upon further consideration, the FAA concluded that it would be in the interest of safety, fairness, and ease of administration to limit this provision to ultralight instructors registered with those organizations on or before September 1, 2004, but provide them with a period of 36 months to avail themselves of the

provisions of this section. Once the rule is effective, the minimum requirements established in § 61.411 must be met by all applicants for a flight instructor certificate with a sport pilot rating who were not registered ultralight instructors on or before September 1, 2004. The FAA believes it is both unnecessary and not in the interest of safety to permit these ultralight instructors to meet the provisions of this section in lieu of the more stringent requirements of other sections in subpart K.

As proposed, ultralight flight instructors who are registered with an FAA-recognized ultralight organization on the effective date of the rule would have had 36 months after the effective date of the final rule to apply for a flight instructor certificate with a sport pilot rating and receive credit for meeting the aeronautical knowledge, flight proficiency, and aeronautical experience requirements of subpart K. The final rule continues to extend this privilege to ultralight flight instructors registered with an FAA-recognized ultralight organization on or before September 1, 2004, but not to those registered after that date. All applicants must satisfactorily complete both FAA knowledge tests and practical tests.

Consistent with the change in § 61.303, the words "a current recreational pilot certificate and meet the requirements of § 61.101 (c)" are added to paragraph (a). As recreational pilots who meet the requirements of § 61.101(c) have met aeronautical knowledge, flight proficiency, and aeronautical experience requirements equal to or greater than those required of sport pilots, the FAA contends it would be inappropriate to preclude these pilots from obtaining a flight instructor certificate with a sport pilot rating.

In the final rule, the FAA is clarifying the reference to "experience requirements" in paragraph (b). The revision specifies that an applicant need not meet the aeronautical experience requirement specified in § 61.407, the flight proficiency requirements specified in § 61.409, and the aeronautical experience requirements specified in § 61.411. The FAA notes that an applicant is still required to meet the minimum flight time requirements in the category and class of light-sport aircraft for which privileges are sought. This revision is consistent with terminology used in part 61.

As discussed in § 61.329, the FAA received many comments regarding the requirement for notarized documentation of experience from the FAA-recognized ultralight organization. Many commenters were concerned about the added cost and burden this requirement would present. The FAA again agrees with the comments and is replacing the requirement for a notarized document with a requirement that an applicant provide the FAA with a certified copy of his or her ultralight pilot records from the FAA-recognized ultralight organization.

Proposed paragraph (e)(2) is changed in paragraph (d)(2) of the final rule to require that documents provided by an applicant for a flight instructor certificate with a sport pilot rating indicate that the person is recognized to operate and provide training in the category and class of aircraft for which instructional privileges are sought. This change corresponds to a similar change made in § 61.329.

Changes

The provisions of section 153 of proposed SFAR No. 89 are transferred to § 61.431. The section is reorganized for clarity, and the following changes are made.

In the introductory text, the words "not later than [Date 36 months after the effective date of the final rule], and you want to apply for a flight instructor certificate with a sport pilot rating" are changed to "on or before September 1, 2004, and you want to apply for a flight instructor certificate with a sport pilot rating, not later than January 31, 2008."

In paragraph (a) of the final rule, the words "a current recreational pilot certificate and meet the requirements of § 61.101(c)" are added.

In paragraph (b), the reference to "experience requirements" is changed in the final rule to include "the aeronautical knowledge requirements specified in § 61.407, the flight proficiency requirements specified in § 61.409, and the aeronautical experience requirements specified in § 61.411."

In paragraph (d) (proposed as paragraph (e)), the requirement to "obtain and present upon application a notarized copy" is changed to "submit a certified copy."

Proposed paragraph (e)(2) is changed in paragraph (d)(2) of the final rule to require that documents provided by an applicant for a flight instructor certificate with a sport pilot rating indicate that the person is recognized to operate and provide training in the category and class of aircraft for which flight instructor privileges are sought.

V.6. Part 65—Certification: Airmen Other Than Flight Crew Members

Section 65.85 Airframe Rating; Additional Privileges; and Section 65.87 Powerplant Rating; Additional Privileges

The FAA did not propose to amend §§ 65.85 and 65.87. They are amended in the final rule to allow appropriately certificated mechanics with an airframe or powerplant rating the additional privilege of performing and inspecting major repairs and major alterations to light-sport aircraft issued a special airworthiness certificate in the light-sport category and approving them for return to service. This privilege to perform and inspect major repairs and major alterations and approve a product or part for return to service on a light-sport aircraft is limited to products and parts that are not produced under an FAA approval, such as those built under a light-sport aircraft manufacturer's consensus standard. This rule change gives the airframe- or powerplant-rated mechanic the same privilege to perform and inspect major repairs and major alterations on special light-sport aircraft that this rule grants a repairman (light-sport aircraft) with a maintenance rating.

This privilege is not extended to major repairs and major alterations performed on products produced under an FAA approval. A mechanic with an airframe or powerplant rating cannot approve a product or part for return to service after performing and inspecting a major repair or major alteration on a product produced under an FAA approval. This work must be performed in accordance with part 43 and other applicable provisions of part 65.

The rule also requires that any major repair or major alteration performed on a product or part not produced under an FAA approval installed on a special light-sport aircraft be performed in accordance with the manufacturer's instructions or instructions developed by a person acceptable to the FAA.

Changes

Sections 65.85 and 65.87 are each amended by designating the existing text as paragraph (a), inserting the words, "Except as provided in paragraph (b) of this section" at the beginning of paragraph (a), and adding new paragraph (b) to permit appropriately certificated mechanics to perform and inspect major repairs and major alterations on products not produced under an FAA approval installed on a special light-sport aircraft, as discussed above.

Section 65.101 Eligibility Requirements: General

The FAA did not receive any comments on this section.

Changes

The proposed rule is adopted without substantive change.

Section 65.103 Repairman Certificate: Privileges and Limitations

The FAA did not propose any amendments to this section. The NPRM, however, included a proposed exception to this section in § 65.107(d). It provides that § 65.103 does not apply to the holder of a repairman certificate (light-sport aircraft) while that repairman is performing work under that certificate. The more appropriate location for this exception is in a new paragraph (c) of § 65.103. Placing this exception as new paragraph (c) of § 65.103 parallels the structure of paragraph (b) in § 65.101, which includes a provision stating that the section does not apply to the issuance of repairman certificates (experimental aircraft builder) under § 65.104. The FAA is making this editorial revision in this final rule.

Changes

The provisions of proposed § 65.107(d) are added as new paragraph (c) of § 65.103 in the final rule.

Section 65.107 Repairman Certificate (Light-Sport Aircraft): Eligibility, Privileges and Limits

Under § 65.107, the FAA proposed requirements for acquiring a repairman (light-sport aircraft) certificate. The FAA received numerous comments on this proposed section.

A few commenters felt that the lack of clear guidelines for this section made it difficult to comment on its viability. One organization reserved opinion on this section, stating that it could not properly comment until reviewing the consensus standards that would control implementation of this rule. The FAA addresses this comment in the discussion of the definition of "consensus standard" under § 1.1.

Several commenters expressed concern that the FAA has been allowing repairman standards to steadily decline over the years, and that the proposed rule would only further compromise safety. The FAA disagrees and points out that the privileges and limitations for repairmen found in part 65 have not changed since 1980.

Some commenters felt that the maintenance training course hour requirements were excessive and would inhibit owners of light-sport aircraft from performing preventive maintenance on their aircraft. This rule establishes a repairman certificate (light-sport aircraft) with two ratings—inspection and maintenance. The rule sets the training required to qualify for a repairman certificate (light-sport aircraft) with an inspection rating at 16 hours. The training required for a repairman (light-sport aircraft) certificate with a maintenance rating, as adopted in this final rule, depends on the class of aircraft the individual repairman wants to maintain. The FAA had to establish a training requirement for light sport aircraft repairman certificates because, unlike a builder of an amateur-built aircraft, the light-sport aircraft owner cannot show that he or she manufactured the major portion of the aircraft, and therefore cannot show that he or she would have the skills necessary to inspect and maintain the light-sport aircraft.

The FAA notes that this rule will not prohibit owners from performing maintenance on experimental light-sport aircraft. Owner-performed maintenance is allowed. However, all experimental light-sport aircraft operating limitations will require that an annual condition inspection be performed. The rule allows an owner of an experimental light-sport aircraft to perform this inspection only if he or she has obtained a repairman certificate (light-sport aircraft) with an inspection rating. To obtain the certificate, an applicant must complete an FAA-accepted 16-hour course on inspecting the same class of light sport aircraft for which the person intends to exercise the privileges of the certificate and rating. The repairman certificate with an inspection rating will authorize the owner to sign off the annual condition inspection for his or her own light-sport aircraft issued an experimental certificate under § 21.191(i). If an individual wants to maintain other light-sport aircraft as well, he or she must earn a repairman (light-sport aircraft) certificate with a maintenance rating. That person must take an FAA-accepted course that addresses maintenance of the particular class of aircraft that he or she desires to work on.

The NTSB commented that, although the FAA referred to minimum training and testing requirements in the NPRM, no test requirement was specified. The NTSB stated that applicants for a repairman certificate should be required to pass a written examination before being awarded a maintenance rating, and that that test should include the general knowledge section of the mechanic certificate written test. The FAA agrees. The final rule includes a requirement that an applicant must take a training course. This training course should contain a written test that the applicant should pass with a minimum score of 80%. This is discussed in further detail later in this section. The test will include the areas of the general knowledge section of the mechanic certificate written test that are applicable to light-sport aircraft that have been issued a special airworthiness certificate for either experimental or special light-sport aircraft.

As adopted in this final rule, the required hours of training for a repairman (light-sport aircraft) certificate with a maintenance rating will depend on the class of light-sport aircraft the applicant intends to work on. This rating will allow the repairman to perform annual condition inspections on both experimental and special light-sport aircraft, 100-hour inspections on special light-sport aircraft used for flight training and towing, and maintenance on special light-sport aircraft. Since the aircraft a repairman with a maintenance rating will work on may be used for flight training or towing, and are typically operated for compensation or hire, the FAA believes that more training should be required for these repairmen than for repairmen with an inspection rating.

A couple of commenters suggested that the requirements might force existing ultralight repairmen to work outside the rules or go out of business. The FAA disagrees. The rule will standardize maintenance only within the special and experimental light-sport aircraft community and does not impact those individuals who perform work on ultralight vehicles operated under part 103.

A few commenters expressed concern over the impracticality of requiring repairmen to be certificated on each make and model of aircraft they intend to maintain. The FAA agrees. The FAA believes that the differences between makes and models of aircraft within a specific class of aircraft are not extensive enough to require an applicant for a repairman certificate with an inspection rating to successfully complete a training course for each specific make and model of aircraft on which that person intends to perform work. Rather than requiring applicants for a repairman certificate (light-sport aircraft) with an inspection rating to complete training on each make and model of aircraft on which they intend to perform work, the FAA is requiring training to be completed for each class of aircraft. Although the FAA proposed that persons seeking repairman

certificate (light-sport aircraft) with a maintenance rating complete a course on the requirements of a particular category of light-sport aircraft, the FAA recognizes that, when applied to aircraft certification, the use of the term "class" is more appropriate and consistent with the change made for persons seeking a repairman certificate (light-sport aircraft) with an inspection rating.

Commenters were divided on whether or not the 16-hour training course requirement for a repairman (light-sport aircraft) with an inspection rating should be limited to providing privileges for a specific make and model of experimental light-sport aircraft. Some thought it was too long; others thought it was too short. The 16-hour inspection training course is designed to train an individual owner with no background in aviation maintenance or inspection to perform a satisfactory annual condition inspection on his or her experimental light-sport aircraft and, on the basis of that inspection, make a determination if that aircraft is safe to fly. The FAA understands that some individuals may have more aviation maintenance experience than others, and part of the 16-hour course they would take may be a review, and that other individuals taking the training would be receiving new information. While some individuals will be covering previously learned material, the FAA believes that to perform an annual condition inspection on an experimental light-sport aircraft, 16 hours is the minimum amount of training required to properly train a person with no prior aviation maintenance experience.

Several commenters thought that the maintenance training course hour requirements proposed in NPRM were too low to ensure safety. The FAA agrees that the required number of hours to obtain a repairman (light-sport aircraft) certificate, as proposed, would now be insufficient for some classes of aircraft because the changes adopted in this final rule will increase the use of FAA-approved products on special light-sport aircraft. To exercise the privileges of a repairman certificate with a maintenance rating on aircraft having a special airworthiness certificate in the light-sport category, airplane class, the FAA is requiring 120 hours of FAA-accepted maintenance training, and 104 hours of FAA-accepted maintenance training for weight-shift-control and powered parachute classes. These additional hours are needed to:

- Address part 39 and part 43 requirements for FAA-approved products.
- Include additional training elements, to address items such as type-certificated engines, floats, and composite structures.
- Provide more in-depth training on items such as two- and four-cycle engines, and electrical systems.

On the other hand, the FAA believes that 80 hours of training is adequate to perform the annual condition inspection and routine maintenance, as defined in the manufacturer's maintenance and inspections procedures for gliders and lighter-than-air aircraft.

While even these increases in training hours will not satisfy all commenters, the FAA took into consideration that it takes fewer skills generally to maintain light-sport aircraft than other more complex aircraft. For example, it takes less than 2 hours to remove and replace the fabric, or sails, on the wings of many light-sport aircraft. In comparison, replacing the fabric on the wings of an aircraft type-certificated under CAR 3 takes a week or more because of the number of steps involved. The additional training time required for airplane, weight-shift-control aircraft, and powered parachute classes will ensure that FAA-approved products, such as type-certificated engines and propellers, will be properly maintained and inspected to an FAA performance standard and properly recorded in the aircraft records.

Commenters pointed out that the proposed 80-hour training requirement for a repairman (light-sport aircraft) with a maintenance rating compares poorly with the 1,900 hours of required training for an airframe and powerplant rating at a part 147 aviation maintenance technician school. The FAA notes that the required airframe and powerplant curriculum subjects in appendix B of part 147 includes many technical subjects that are not relevant to light-sport aircraft (for example, turbine and radial engine maintenance, engine overhauls, autopilots, ice protection, cabin pressurization systems, helicopter maintenance, constant speed propellers, propeller governors, turbo chargers, superchargers, and turbine driven auxiliary power units). In addition, while a mechanic with an airframe and powerplant rating is trained on all aircraft types a repairman (light-sport rating) with a maintenance rating is trained in one class of aircraft such as powered parachutes, weight-shift-control aircraft, or airplanes, so the number of training hours can be significantly reduced to address only that class of aircraft. If the repairman with a maintenance rating wants to become rated in another light-sport class of aircraft, he or she will have to take another FAA-acceptable course for that specific class of aircraft.

Furthermore, this rule does not allow a repairman (light-sport aircraft) to perform major repairs, such as welding of tubing and exhaust systems unless that repairman has received additional training acceptable to the FAA, such as training from a manufacturer or other industry-accepted training providers prior to performing the work.

The FAA will look at five areas in deciding whether to accept a training course design. They are:

- The recommended passing grade for the written test in a training course is 80 percent.
- All training should be taught to a level 3 standard. Level 3 training is training in which the student actually performs a task with supervision or additional instruction.
- All courses should meet the training guidance in FAA advisory material or its educational equivalent, and each course must be accepted by the FAA.
- The course outline should include training on multiple aircraft within the same class of light-sport aircraft. Maintenance subjects such as engine theory, inspection, repair, troubleshooting, servicing, propeller, weight and balance, rigging, fuel and lubricating systems, flight controls, landing gear, electrical system, ballistic parachutes, and structural repairs for several makes and model aircraft will be covered. Applicable Federal aviation regulations will also be taught.
- The student will have to pass a final written test on all subjects covered before a certificate of training will be issued by the training facility.

While the FAA considers the number of training hours adequate at this point in time, FAA may amend the regulation if the number of training hours or subjects taught are found insufficient to ensure aviation safety.

Several commenters wanted the FAA to extend repairman (light-sport aircraft) privileges to experimental, amateur built or older type-certificated aircraft. It is not within the scope of this rulemaking to extend repairman (light-sport aircraft) privileges to those performing work on aircraft other than experimental or special light-sport aircraft.

Since the FAA revised part 43 to make it applicable to special light-sport aircraft, in paragraph (c) of the final rule, the FAA must revise the privileges of a person holding a repairman certificate (light-sport aircraft) with a maintenance rating to recognize that the person will be performing maintenance

on special light-sport aircraft in accordance with part 43. The FAA has therefore included the term "approve and return to service" when addressing maintenance, preventive, and alterations performed by a repairman certificate (light-sport aircraft) with a maintenance rating. The FAA is also revising the rule to clarify that the holder of a repairman certificate (light-sport aircraft) with a maintenance rating may perform both the annual condition inspection and the 100-hour inspection required by § 91.327. In addition, the FAA is revising the privileges of this repairman to include performing major repairs and major alterations on products not produced under an FAA approval that have been installed on special light-sport aircraft. This privilege is also discussed under part 43 above.

The FAA is also added new paragraph (d) to prohibit a repairman (light-sport aircraft) with a maintenance rating from approving for return to service any aircraft or part thereof unless that person has previously performed the work concerned satisfactorily. This paragraph is added as a result of revisions making part 43 applicable to special light-sport aircraft and contains language similar to that contained in current § 65.81, which addresses the general privileges and limitations of mechanics. It differs from that language to the extent that it does not permit a repairman (light-sport aircraft) with a maintenance rating to supervise work performed by other persons. Similarly, a person who has not previously performed that work may show the ability to do the work by performing it to the satisfaction of the FAA or certain specified certificate holders.

The rule is also revised in paragraph (d) of the final rule to require that a repairman (light-sport aircraft) with a maintenance rating understand the current instructions of the manufacturer and the maintenance manuals for the specific operation concerned prior to exercising certificate privileges. This provision is identical to language found in current § 65.81(b), which sets forth the privileges and limitations of a person holding a mechanic certificate and is similar to provisions contained in § 65.103(b) for repairmen. The new provision is included because a repairman (light-sport aircraft) with a maintenance rating may perform work and approve special light-sport aircraft for return to service under part 43.

Changes

In paragraph (a)(2)(ii), the words "make and model of experimental light-sport aircraft" are changed to "class of experimental light-sport aircraft."

In paragraph (a)(3)(ii), the term "category of light-sport aircraft" is changed to "class of light-sport aircraft." In addition, the requirement to complete "an 80-hour training course" is changed to a requirement to complete a 120-hour training course for airplane class privileges, a 104-hour training course for weight-shift-control aircraft and powered parachute class privileges.

In paragraph (b), the words "may perform a condition inspection on an aircraft" are changed to "may perform an annual condition inspection on a light-sport aircraft." In addition, the reference to make and model in proposed paragraph (b) is changed to class in paragraph (b)(3) of the final rule.

Proposed paragraph (c) is divided into paragraphs (c)(1) through (c)(3) in the final rule. In addition, the words "perform maintenance on a light-sport aircraft that has a special airworthiness certificate issued under § 21.186 or § 21.191(i) of this chapter" are changed in paragraph (c)(1) to "approve and return to service an aircraft that has been issued a special airworthiness certificate in the light-sport category under § 21.190 of this chapter, or any part thereof, after performing or inspecting maintenance (to include the annual condition inspection and the 100-hour inspection required by § 91.327 of this chapter), preventive maintenance, or an alteration (excluding a major repair or a major alteration on a product produced under an FAA approval)."

In paragraph (c)(2), the words "perform the annual condition inspection on a light-sport aircraft that has been issued an experimental certificate for operating a light-sport aircraft under § 21.191(i) of this chapter" are added.

In paragraph (c)(3) of the final rule, the provisions proposed paragraph (c) regarding training requirements are revised to read "only perform maintenance, preventive maintenance, and an alteration on a light-sport aircraft that is in the same class of light-sport aircraft for which the holder has completed the training specified in paragraph (a)(3)(ii) of this section. Before performing a major repair, the holder must complete additional training acceptable to the FAA and appropriate to the repair performed."

Proposed paragraph (d) is adopted as paragraph (c) of § 65.103.

A new paragraph (d) is added in the final rule to prohibit a repairman (light-sport aircraft) with a maintenance rating from approving for return to service any aircraft or part thereof unless that person has previously performed the work concerned satisfactorily. That paragraph also permits a person who has not previously performed that work to show the ability to do the work by performing it to the satisfaction of the FAA or certain specified certificate holders. It also requires the repairman to understand the current instructions of the manufacturer and the maintenance manuals for the specific operation concerned prior to exercising certificate privileges.

V.7. Part 91—General Operating and Flight Rules

V.7.A. Part 91—General Issues

Some commenters expressed concern that a light-sport aircraft with operating limitations permitting flights into Class B, C, and D airspace would not have the same equipment and inspection requirements as standard category aircraft. It was not the FAA's intent to except light-sport aircraft from part 91 requirements with regard to required equipment to operate in Class B, C, or D airspace. The FAA notes that the provisions of §§ 91.129, 91.130, and 91.131 will continue to apply to light-sport aircraft operated in Class B, C, and D airspace. However, the provisions of § 91.205 will not apply to experimental or special light-sport aircraft. That section only applies to powered civil aircraft with a standard category U.S. airworthiness certificate. To ensure that special light-sport aircraft are appropriately equipped for the various types of operations for which they may be used, the FAA has revised the definition of "consensus standard" in § 1.1 to include a requirement that the standard address minimum equipment requirements. Any aircraft built under a consensus standard will therefore have to meet the minimum equipment requirements prescribed by that standard to be certificated as a special light-sport aircraft. The equipment requirements for experimental light-sport aircraft remain identical to current part 91 requirements.

Light-sport aircraft issued an experimental light-sport or special light-sport airworthiness certificate that are authorized to operate in Class B, C, and D airspace must have the equipment for VFR or IFR operations specified in the applicable consensus standards and any other equipment specified by the operating requirements contained in subpart C of part 91. In addition, aircraft that operate under IFR must comply with the altimeter tests and inspections required by § 91.411. Aircraft required to have a transponder must comply with

the tests and inspections required by § 91.413. These inspections and tests must be performed and approved in accordance with appendixes E and F of part 43.

The FAA received comments suggesting that light-sport aircraft should not be required to have emergency locator transmitters (ELTs). ELT equipment requirements are specified in § 91.207 and apply to certain U.S.-registered civil airplanes and operations. The regulatory requirements for ELTs are mandated by 49 United States Code section 44712. The FAA cannot modify § 91.207 to contradict provisions contained in the U.S. Code.

Section 91.207 applies to U.S.-registered civil airplanes, and not to all aircraft; therefore, some light sport aircraft will not be required to comply with that section. Section 91.207 also contains several provisions excepting some airplanes and operations from its coverage. An example particularly relevant to light-sport aircraft is the exception for aircraft equipped to carry not more than one person. The final rule does not modify ELT requirements, as those requirements are mandated by statute. Owners and operators should consult § 91.207 to determine if their aircraft or operation is covered by the requirement.

Several commenters wanted the FAA to amend § 91.215, ATC transponder and altitude reporting equipment and use, so that transponders would not be required for light-sport aircraft. The FAA does not agree with the commenters. Section 91.215 applies to all aircraft when flying in certain airspace, unless a specified exception applies. Those who wish to operate light-sport aircraft must meet the provisions of § 91.215. The manner in which an aircraft is certificated, its operational parameters, and the training received by the pilot operating that aircraft does not change the FAA's underlying rationale for the implementation of § 91.215.

Two commenters suggested that paragraph (a) of § 91.109, Simulated instrument flight instruction, be revised to add a specific definition of dual controls for powered parachutes, given the unique method of controlling those aircraft. They requested that "in the case of a powered parachute, full dual controls are defined as a configuration that allows, while in flight, for the instructor and student to manipulate throttle, engine kill switch, and steering lines." The FAA does not believe a change to the rule is necessary. The FAA believes that a prudent flight instructor would not provide flight instruction without access to the throttle, engine kill switch, and steering lines by both the instructor and student pilot.

V.7.B. Part 91—Section-by-Section Discussion

Section 91.1 Applicability

The FAA did not receive any comments on this section.

Changes

The proposed rule is adopted without change.

Section 91.113 Right-of-Way Rules: Except Water Operations

One commenter asked what rights the new light-sport aircraft category will have under the right-of-way rules. The right-of-way rules for light-sport aircraft will depend upon the category and class of aircraft operated. No distinction will be made for light-sport aircraft, other than that based upon category and class. See the discussion of § 91.113 in the NPRM.

Changes

The proposed rule is adopted without change.

Section 91.126 Operating on or in the Vicinity of an Airport in Class G Airspace

One commenter suggested that it is unsafe to allow the operation of light-sport aircraft in a traffic pattern with general aviation aircraft traveling at higher speeds. The FAA does not agree. The FAA currently allows these operations by powered parachutes, weight-shift-control aircraft and other light-sport aircraft. This practice has not proven unsafe, although it does require good operating procedures and practices. It requires that pilots have adequate training on operations at towered and non-towered airports where the mix of traffic can range from a slow J–3 Cub or Flightstar to a Citation jet. The FAA is reviewing Advisory Circulars and the Aeronautical Information Manual to ensure that they adequately address procedures for weight-shift-control, powered parachutes and other light-sport aircraft.

Another commenter suggested that it is unsafe to allow the operation of powered parachutes in a traffic pattern with general aviation aircraft traveling at higher speeds. The FAA notes that both the proposed and final rule require powered parachutes to avoid the flow of fixed-wing aircraft.

Changes

The proposed rule is adopted without change.

Section 91.131 Operations in Class B Airspace

There were several comments expressing concern about the operation of light-sport aircraft in Class B, C, and D airspace. Commenters stated that the operation of slower light-sport aircraft in close proximity to faster general aviation and commercial aircraft could pose difficulty for air traffic controllers. In response to these comments, the FAA is changing the final rule to provide that, like a student pilot, a sport or a recreational pilot will not be authorized to fly in Class B airspace associated with those airports listed in part 91, appendix D, section 4. As discussed under "V.5.A.v. Changes to Airspace Restrictions," the FAA is also amending part 61 to provide that sport pilots operating in airspace having operational control towers must receive appropriate training to operate in that airspace.

Some commenters noted that recreational pilots should be extended the same privileges under this section as sport pilots, given that recreational pilots are required to meet more extensive training and proficiency requirements. The FAA agrees and is revising this section to extend the same privileges to recreational pilots, provided the recreational pilot has met either the requirements of § 61.101(d) or § 61.94. Current § 91.131(b) addresses pilot requirements for operations at an airport within Class B airspace or within Class B airspace. Paragraph (1)(ii) addresses two types of pilots—student pilots, and recreational pilots seeking private pilot certification who have met the requirements of § 61.95. In this final rule, provisions for persons with at least a private pilot certificate remain in (b)(1)(i). Recreational pilots are addressed in (b)(1)(ii) and, in response to comments, the FAA is expanding their privileges to match those for sport pilots, provided they receive the training specified in § 61.101(d) or § 61.94. A new paragraph (b)(1)(iii) contains the proposed provision for sport pilots and also includes a provision to permit the person to operate at an airport in Class B airspace or within Class B airspace if that person has met either the requirements of § 61.325 or the requirements for a student pilot seeking a recreational pilot certificate under § 61.94. New paragraph (b)(1)(iv) provides similar privileges to a student pilot who has met either the requirements of § 61.94 or § 61.95, as applicable.

Proposed paragraph (b)(2) is revised to remove the proposal to permit a sport pilot to operate an aircraft at those airports listed in part 91, appendix D,

section 4. This change is discussed in "V.5.A.v. Changes to Airspace Restrictions."

Changes

Paragraph (b)(1)(i) of current § 91.131 is revised by deleting the word "or."

Current paragraph (b)(1)(ii) is changed in the final rule to include requirements for holders of a recreational pilot certificate. The current requirements for student pilots are removed and placed in new paragraph (b)(1)(iv).

Proposed paragraph (b)(1)(ii) is reformatted and redesignated as (b)(1)(iii) in the final rule, now containing subparagraphs (b)(1)(iii)(A) and (B). In final rule paragraph (b)(1)(iii)(A), the proposed reference to "section 81 of SFAR 89" is changed to "§ 61.325 of this chapter." In addition, in final rule paragraph (b)(1)(iii)(B), the words "the requirements for a student pilot seeking a recreational pilot certificate in § 61.94 of this chapter" are added.

Paragraph (b)(1)(iv), based partially on current (b)(1)(2), is added to address the requirements for student pilots to operate at an airport in Class B airspace or within Class B airspace.

Paragraph (b)(2) is changed by revising the proposed reference "paragraph (b)(1)(iii) of this section" to read "paragraphs (b)(1)(ii), (b)(1)(iii) and (b)(1)(iv) of this section." In addition, the proposed words "or a sport pilot certificate and has met the requirements of section 81 of SFAR 89" are removed.

Section 91.155 Basic VFR Weather Minimums

One commenter expressed concern that VFR operations would be permitted at night and without lights. The commenter suggested the rule be amended to prohibit VFR operation of light-sport aircraft between sunrise and sunset, unless the aircraft were equipped with anti-collision lights visible for at least 3 statute miles. If an aircraft were equipped with such lights, the commenter suggested, the FAA should allow VFR operations 30 minutes before sunrise and 30 minutes after sunset. The FAA notes that the provisions of current § 91.209 apply to all aircraft, to include light-sport aircraft.

Other commenters said that powered parachutes and weight-shift-control aircraft are generally not safe for night operations without altitude instruments, even under VFR conditions, and recommended they be eliminated from § 91.155.

The FAA agrees with comments that night operations are unsafe for any aircraft without proper equipment installed. To be operated between sunset and sunrise, aircraft must have the aircraft lights required by § 91.209, and pilots must be authorized to conduct night operations. Additionally, special light-sport aircraft consensus standards will be required to address minimum equipment requirements for VFR night operations. Experimental light-sport aircraft minimum equipment requirements for these operations will be specified in their operating limitations. A sport pilot is not authorized to operate at night, and a recreational pilot is not authorized to operate between sunset and sunrise. A private pilot who does not have a night flying prohibition on his or her pilot certificate may operate a light-sport aircraft at night if the aircraft is properly equipped. The FAA notes that § 61.110 is revised to permit a person to be issued a private pilot certificate with a rating in weight-shift-control aircraft, powered parachutes, or gyroplanes, even if that person has not completed the night flight training requirements for the issuance of the certificate and rating. The certificate will, however, carry the limitation "Night flying prohibited." See § 61.110 for further discussion.

Changes

In paragraph (b)(2), the words "between 1 and 3 statute miles" are changed to "less than 3 statute miles but not less than 1 statute mile."

Section 91.213 Inoperative Instruments and Equipment

The FAA received two comments on this section. One commenter asked if light-sport aircraft must meet the instrument requirements of § 91.213. Yes, light-sport aircraft must meet the provisions of § 91.213.

Another commenter believed that all light-sport aircraft, except powered parachutes and weight-shift-control aircraft, are already included in current § 91.213(d)(1)(i), and, therefore, paragraph (d) should be amended to change the words "or light-sport aircraft" to say "powered parachute or weight-shift-control aircraft." The FAA agrees that the current § 91.213(d) does not specifically address powered parachutes or weight-shift-control aircraft. As stated in the notice, the FAA intends that the provisions of § 91.213(d) apply to all the kinds of light-sport aircraft to include powered parachutes and weight-shift-control aircraft. However, to ensure that the provisions of this section apply to powered parachutes and weight-shift-control aircraft that may exceed the parameters of the light-sport aircraft, the FAA is revising the proposed rule language to change the words "or light-sport aircraft" to "powered parachute or weight-shift-control aircraft."

Changes

The proposed rule is adopted without change.

Section 91.309 Towing: Gliders and Unpowered Ultralight Vehicles

The FAA received numerous comments on eliminating towing exemptions from §§ 91.309 and 103.1(b) and incorporating the provisions of the exemptions in the final rule. Although not proposed, the FAA is amending § 91.309 to establish operational requirements for towing an unpowered ultralight vehicle by a civil aircraft. Current section § 91.309 only addresses requirements for the towing of gliders by civil aircraft. Since § 61.69 is amended to establish specific experience and training requirements for pilots towing unpowered ultralight vehicles, the FAA believes it is also appropriate to establish specific requirements to operate a civil aircraft towing an unpowered ultralight vehicle. These new operational requirements for towing unpowered ultralight vehicles are identical to current operational requirements for towing gliders. Prior to this rule, both § 61.69 and § 91.309 only contained requirements addressing the towing of gliders. See discussion of § 61.69 above.

Changes

In § 91.309, the section heading, and paragraphs (a) introductory text, (a)(3), (a)(5), and (b) are amended by adding the words, "or unpowered ultralight vehicle" after the word "glider."

Section 91.319 Aircraft Having Experimental Certificates: Operating Limitations

Section 91.319(a)(2) of the NPRM proposed an exception to the limitation on the use of aircraft with an experimental certificate issued under § 21.191(i)(1) for carrying persons or property for compensation or hire. The exception would have allowed flight training in these aircraft for compensation or hire for an indefinite period.

As discussed more fully under § 91.327, the FAA is modifying how operations for compensation or hire are addressed in the final rule. As a result, the FAA is not adopting (a)(2) as proposed, but instead is adopting a provision in new paragraph (e) that addresses operations conducted for compensation or hire and is not limited to the carriage of persons or property for compensation or hire. Section 91.319(e)

reflects the FAA's intent that light-sport aircraft issued an experimental certificate under § 21.191(i) should not generally be used for compensation or hire. Section 91.319(e) allows exceptions to the general rule only for light-sport aircraft issued an experimental certificate under § 21.191(i)(1) when used to tow a glider or an unpowered ultralight vehicle in accordance with § 91.309 or to conduct flight training in an aircraft that the person conducting flight training provides for up to 5 years after the rule becomes effective.

Additionally, § 91.319(f) is modified to clarify the FAA's intent that light-sport aircraft issued an experimental certificate under § 21.191(i) should not generally be used for lease or rental. These experimental aircraft are for personal use, and do not meet a design standard, nor are they manufactured, or maintained at the same level as special light-sport aircraft, primary, or standard category aircraft. Therefore, they should not be made available to general public for lease or rental, except when used to tow a glider that is a light-sport aircraft or unpowered ultralight vehicle. Paragraph (f) prohibits a person who owns an aircraft issued an experimental certificate under § 21.191(i) from leasing that aircraft, except when the aircraft is used to tow a glider that is a light-sport aircraft or unpowered ultralight vehicle. The FAA notes that other regulations may also impose additional limitations on the use of experimental light-sport aircraft for compensation or hire, such as those that specify the privileges of a person's airman certificate and those that relate to commercial operators.

The FAA stated in the proposed rule that aircraft operating limitations would address the maintenance requirements for these experimental aircraft. Comments requested that the FAA require increased inspections of these aircraft if they are used for compensation or hire such as when they are being used for flight training. The FAA agrees. Paragraph (g) is added to specify that experimental light-sport aircraft that are used for flight training or towing must be inspected by an appropriately rated mechanic, repairman (light-sport aircraft) with a maintenance rating, or a repair station within the preceding 100 hours of time in service. The FAA is adopting this requirement to ensure a higher degree of safety when these aircraft are used for compensation or hire. Further, the added stress that an aircraft may be subjected to when used in towing operations supports additional inspection requirements.

Paragraph (h) of the final rule (proposed as paragraph (f)) also is revised to require that a request for deviation authority contain a justification that establishes a level of safety equivalent to that provided under the regulations for the deviation requested. The FAA has determined that the specific regulatory language must require an equivalent level of safety to remain consistent with requirements for an exemption. This is necessary because this deviation authority process is intended to supplement the exemption process for this rule and establish a way within the regulatory structure to approve flight training for compensation or hire without the need for a person to submit a petition for exemption.

The FAA received numerous comments expressing concern about curtailing exemptions permitting the carrying of passengers in two-seat ultralight vehicles for compensation or hire. Many of these commenters specifically directed their remarks to the prohibition of carrying passengers in aircraft issued experimental certificates under § 21.191 and the ending of the two-seat ultralight training exemptions from part 103. Numerous commenters stated that completely eliminating the operation of two-seat ultralight-like aircraft for compensation or hire after 36 months appears arbitrary. The FAA notes, however, that the training exemptions do not provide authority to conduct operations other than flight training in two-seat ultralight-like aircraft for compensation or hire.

Some commenters asked about the continuation of existing training exemptions for two-place training vehicles. After the rule becomes effective, the FAA intends to continue the existing flight training exemptions to provide ultralight flight instructors with adequate time to transition to the new system of certificates and ratings and continue current operations. During this time, these ultralight flight instructors should take action to obtain the newly required airman certificates and those certificates necessary to operate their aircraft under the new rules. The FAA does not anticipate allowing instructors, other than those afforded relief under the current training exemptions, to avail themselves of the benefits of these exemptions. New instructors will have to meet the provision of the new rules. The FAA has reissued these part 103 training exemptions with an expiration date of January 31, 2008.

Based on the comments, the FAA has also decided to extend the period during which aircraft certificated under § 21.191(i) and currently operated under part 103 training exemptions may be used to conduct flight training for compensation or hire. The final rule extends this period from 36 months to 60 months. After this time, these aircraft will no longer be permitted to be used for flight training for compensation or hire.

The additional time provided under paragraph (e)(2) for instructors to provide flight training in these aircraft for compensation or hire will ease some financial difficulties for those ultralight instructors transitioning to FAA-certificated flight instructors with sport pilot ratings.

The FAA believes that extending the period during which a person may conduct flight training for compensation or hire in light-sport aircraft issued an airworthiness certificate under § 21.191(i) will help to decrease the financial burden for persons providing flight instruction in these kinds of aircraft. This action will provide these instructors with additional time in which to purchase special light-sport aircraft to provide flight instruction under the rule, thereby delaying replacement costs. In addition, this action should further expand the growth of the industry as a whole. The FAA believes this rule may open new markets, provide more investment capital, and expand the availability of insurance coverage. These effects will allow instructors providing flight training in these aircraft to take advantage of the same opportunities as other general aviation instructors, such as those gained from being affiliated with flying clubs or flight schools. For more information, see the economic regulatory evaluation, which is in the public docket for this rulemaking.

Changes

Paragraph (e) (proposed as (a)(2)) is added with the following changes. The words "carrying persons or property" are removed. In addition, provisions to permit towing a glider that is a light-sport aircraft or an unpowered vehicle in accordance with § 91.309 and to permit a person to conduct flight training in an aircraft which that person provides prior to January 31, 2010.

New paragraph (f) is added to prohibit a person who owns an aircraft issued an experimental certificate under § 21.191(i) from leasing that aircraft unless the aircraft is operated in accordance with new paragraph (e)(1).

New paragraph (g) is added provide 100-hour inspection requirements for aircraft issued an experimental certificate under § 21.191(i)(1) when used to tow gliders that are light-sport aircraft or unpowered ultralight vehicles

or to conduct flight training for compensation or hire.

New paragraph (h) (proposed as paragraph (f)) is changed to also require that the justification for the request for deviation authority must establish a level of safety equivalent to that provided under the regulations for the deviation requested.

Section 91.327 Aircraft Having a Special Airworthiness Certificate in the Light-Sport Category: Operating Limitations

Purpose (now § 91.327(a)): As discussed earlier in § 21.190, the reference to the use of these aircraft for "sport and recreation" has been removed. Proposed § 91.327(a)(1) specified that special light-sport aircraft could only be operated for the purpose for which the certificate was issued. The term "sport and recreation," however, was not defined in the NPRM, and its removal from § 21.190 makes it necessary to specify the operating limitations for these aircraft in this paragraph. In revising this paragraph, the FAA has more clearly specified the operating limitations that were implied by the use of the term "sport and recreation."

Section 91.327(a) is modified to clarify the FAA's intent that special light-sport aircraft should not generally be used for compensation or hire. Section 91.327(a)(1) and (a)(2) allow exceptions to the general rule only for towing a glider or an unpowered vehicle and for flight training. The use of special light-sport aircraft to engage in towing operations is discussed under § 61.69.

The FAA is also removing the term "rental" because the term "compensation or hire" provides a more accurate description under existing interpretations, decisions, and cases of those operations the FAA intends to restrict. This revision does not limit the ability of a person to rent a special light-sport aircraft; however, it does limit those operations that a person may conduct when operating the aircraft.

Maintenance (now § 91.327(b)(1)): Proposed paragraph (a)(3) addressed maintenance of light-sport aircraft. In the final rule, it is revised and moved to paragraph (b)(1). The proposal prohibited operation of a special light-sport aircraft unless the aircraft was maintained in accordance with the manufacturer's maintenance and inspection procedures by a certificated repairman with a light-sport aircraft maintenance rating, an appropriately rated mechanic, or an appropriately rated repair station.

The FAA received several comments requesting that part 43 be used as a standard for maintenance and inspections performed on light-sport aircraft. As described in the part 43 discussion earlier in this preamble, the final rule adopts this recommendation. Section 91.327(b)(1) now requires that the aircraft be maintained in accordance with the applicable provisions of part 43 and maintenance and inspection procedures developed by the manufacturer or a person acceptable to the FAA. For the purpose of this section, "a person acceptable to the FAA" includes the following:

- The manufacturer that issued the statement of compliance.
- Any person who has assumed, and is properly exercising, the original manufacturer's responsibility for carrying out the continued airworthiness procedures described in the consensus standard.
- The holder of an FAA-approved technical standard order (TSO) authorization, parts manufacturer approval (PMA), type certificate (TC), or supplemental type certificate (STC) for a product or part installed on the aircraft.
- Any person authorized by the manufacturer to produce modification or replacement parts in accordance with the applicable consensus standard addressing "qualification of third-party modification or replacement parts."

The term "person acceptable to the FAA" is not intended to include FAA designees. Under the terms of their delegation, individual FAA designees are not authorized to make design changes or other modifications to aircraft having a special airworthiness certificate in the light-sport category.

Condition inspections (now § 91.327(b)(2)): In the NPRM, paragraph (a)(4) would have required a condition inspection once every 12 calendar months, in accordance with the aircraft manufacturer's maintenance and inspection procedures, by a certificated repairman with a light-sport aircraft maintenance rating, an appropriately rated mechanic, or an appropriately rated repair station. The FAA, upon further review, is taking out the words "in accordance with the aircraft manufacturer's maintenance and inspection procedures" and replacing them with "in accordance with inspection procedures developed by the aircraft manufacturer or a person acceptable to the FAA."

This change is being made for two reasons. First, the FAA wants to clarify that only inspection actions, and not other maintenance tasks, are performed during an annual condition inspection. The condition inspection required by this part is a visual inspection to determine if the aircraft is in a condition for safe operation. If the FAA retained the word "maintenance" in the paragraph, it would imply that maintenance other than an inspection could be performed during the course of an annual condition inspection. All of these additional maintenance functions such as overhaul, repair, preservation and replacement of parts are not part of an annual condition inspection.

Second, the words "person acceptable to the FAA" are included to allow an individual acceptable to the FAA to assume the continued airworthiness responsibilities for an aircraft design from a manufacturer who is no longer in business or can no longer support the aircraft. This change will permit a person acceptable to the FAA to develop inspection procedures for special light-sport aircraft that meet the requirements of the consensus standards for that category of aircraft.

Two commenters expressed concern over the requirement for a condition inspection once every 12 calendar months for individuals living in Alaska. They stated that requiring an annual condition inspection would pose a unique hardship given the difficulty and expense of finding a qualified inspector in Alaska. The FAA has considered the unique circumstances of persons living in Alaska, but believes this requirement is necessary to provide an adequate level of safety. In addition, the requirement for an annual inspection is the same requirement that is imposed on type-certificated and amateur-built aircraft. The FAA points out that more persons will be eligible to perform the annual condition inspection of special light-sport aircraft than can perform the annual inspection on other aircraft. Under the rule, a repairman (light-sport aircraft) with a maintenance rating, as well as a mechanic with an airframe and powerplant rating and a certificated repair station can conduct this annual condition inspection.

Safety-of-flight issues (Airworthiness Directives and Safety Directives) (now § 91.327(b)(3) and (b)(4)): Proposed paragraph (a)(5) would have required the owner or operator to comply with a program for monitoring and correcting safety-of-flight issues specified by the manufacturer (in the statement of compliance for the aircraft), or by a person acceptable to the FAA. The FAA expected that any such program would meet a consensus standard, as defined in § 1.1. This provision has been revised and addressed in paragraphs (b)(3) and (b)(4). The reasons for this are as follows.

As proposed, § 91.327 would not have specified compliance with ADs on special light-sport aircraft. At the time of the NPRM, it was not expected that light-sport aircraft would contain type-certificated products or other parts produced under an FAA-approval. Safety issues would have been addressed in safety-of-flight bulletins issued under the consensus standard. The FAA stated in the proposed rule that, in lieu of issuing ADs on light-sport aircraft, it would rely on certificate action if public safety required. See the discussion of "continued airworthiness" under "Definition of Consensus Standards" in § 1.1. The FAA did not entirely, however, preclude the possibility of issuing ADs against special light-sport aircraft. In the NPRM, the FAA said it would issue ADs for special light-sport aircraft if public safety required, or as a consequence of a serious breakdown in the fulfillment of a manufacturer's responsibility to support its aircraft.

The FAA issues ADs to correct an existing unsafe condition in a product when the condition is likely to exist or develop in other products of the same type design. They are issued for engines, propellers, and other products approved under a TC or an STC, or that are manufactured under a production certificate, a PMA, or a TSO authorization.

As the result of comments on the NPRM, the maximum takeoff weight for light-sport aircraft is increased so that products, such as more reliable type-certificated engines and propellers, can be installed on these aircraft. Installation of type certificated engines, propellers and other products described in the preceding paragraph means that the FAA must address maintenance performance and recording procedures for complying with ADs issued for such products if they are installed on special light-sport aircraft. This is necessary because such products will have continued airworthiness instructions provided as a part of their FAA approval. As a result, paragraph (b)(3) adds a requirement that the owner or operator comply with all applicable ADs for FAA-approved products installed on special light-sport aircraft.

The FAA notes that an owner or operator may request an alternate means of compliance with an AD. An owner or operator can contact the FAA person whose name is given in the applicable AD and ask for approval to correct the unsafe condition in a manner different than required by the AD.

The FAA is adding a requirement in paragraph (b)(4) that owners or operators of special light-sport aircraft comply with safety directives that correct unsafe conditions. The definition of "consensus standard," as specified in § 1.1, requires that the standard include provisions for maintaining the continued airworthiness of these aircraft. Under this process, a manufacturer, or successor to the manufacturer who is responsible for continued airworthiness, must, under § 21.190, monitor and correct safety-of-flight issues through the issuance of safety directives. Accordingly, under § 91.327(b)(4), the FAA is adopting operating limitations that require compliance with these Safety Directives. This prohibits the operation of a special light-sport aircraft with a known unsafe condition. The final rule also requires compliance with applicable Safety Directives. These safety directives may be issued by persons other than the manufacturer who are acceptable to the FAA, such as licensees authorized by the manufacturer or successors.

Safety Directives may be issued only to correct unsafe conditions that are likely to occur in other aircraft of the same make and model. Safety Directives should not address problems unique to a single aircraft, nor should they be used for product improvements or enhancements. Safety-of-flight determinations are made, and Safety Directives issued, in accordance with the consensus standard for continued airworthiness. Section 91.327(b)(4) permits, and consensus standard will include, procedures for an owner or operator to request approval for other means of correcting unsafe conditions that differ from the means described in a Safety Directive.

A special light-sport aircraft will be considered ineligible for a special light-sport category airworthiness certificate if an applicable Safety Directive or an AD has not been complied with. If an owner or operator decides not to comply with a Safety Directive, his or her aircraft may be re-certificated as an experimental aircraft under § 21.191(i)(3). Owners and operators of experimental light-sport aircraft are not required to comply with Safety Directives.

If an operator would like to maintain the special light-sport aircraft airworthiness certificate without following a Safety Directive, there are two ways to do this.

(1) The owner or operator may approach the person that issued the Safety Directive and request permission to use a different method to correct the unsafe condition, as specified under § 91.327(b)(3)(i). The person issuing the safety directive must concur that the method specified is satisfactory.

(2) If the first method is not satisfactory, and the owner or operator has evidence that the Safety Directive was issued for reasons not related to safety, the owner or operator may provide this evidence to the FAA and request a waiver to operate the aircraft without complying with the Safety Directive, as specified in § 91.327(b)(3)(ii). The FAA will establish a procedure for FAA Aircraft Certification Service review of waiver requests. This review will examine whether the manufacturer followed the criteria in the consensus standard and issued the Safety Directive to correct an unsafe condition. This waiver request procedure will be described in the guidance material for the rule.

Alterations (now § 91.327(b)(5)): Paragraph (b)(5) adds a prohibition against operating a special light-sport aircraft unless each alteration made after its date of manufacture meets the applicable consensus standard and has been authorized by either the manufacturer or a person acceptable to the FAA. If an aircraft has been improperly altered, contains unauthorized parts, or has been repaired outside the limits specified in the manufacturer's maintenance and inspection procedures manual, the aircraft will no longer meet the consensus standard and is not considered safe to fly. This determination is similar to that made for type-certificated aircraft. A type-certificated aircraft that has been improperly altered, or has unapproved parts installed, no longer meets its type design and is considered unairworthy. This operating limitation is consistent with the change to the definition of "consensus standard" in § 1.1, which includes a requirement that the consensus standard address the identification and recording of major repairs and major alterations. See discussion of "consensus standard" in § 1.1 above. This change to § 91.327 also supports the requirement in § 21.181(a)(3)(ii) that a special airworthiness certificate in the light-sport category is effective as long as the aircraft conforms to its original configuration, except for those properly authorized alterations performed in accordance with an applicable consensus standard.

Major repairs and major alterations (now § 91.327(b)(6)): The FAA is changing the definition of "consensus standard" in § 1.1 to include a requirement that a consensus standard address the identification of major repairs and major alterations applicable

to special light-sport aircraft and how those major repairs and major alterations are recorded. The aircraft consensus standard should allow for the identification of major repairs and major alterations by the manufacturer, or person acceptable to the FAA, on parts produced under a consensus standard. In addition, the consensus standard should identify how major alterations will be authorized by the manufacturer and how major repairs and alterations will be recorded.

The reason the FAA is now requiring that manufacturers identify major repairs and major alterations and how those repairs and alterations will be recorded is that design data that meets the aircraft consensus standard is only FAA-accepted data, not FAA-approved data. Therefore, the FAA is not requiring the use of approved data for repairs or alterations on products produced without an FAA approval, or the use of a form that requires the listing of approved data for a major repair or major alteration on products produced without an FAA approval and installed on special light-sport aircraft.

The final rule does not require persons performing work on special light-sport aircraft to use FAA Form 337 for major repairs and major alterations on products produced without an FAA approval, as required by §§ 43.5(b) and 43.9(d). They do not have to use the list of major repairs and major alterations in part 43 appendix A sections (a) and (b) for products produced without an FAA approval. They also are not required to record major repairs and major alterations in accordance with part 43 appendix B for those parts and products produced without an FAA approval, such as those manufactured under a consensus standard. For additional discussion, see part 43 above.

Recordkeeping requirements for major repairs and major alterations performed on type-certificated products (now § 91.327(b)(7)): Several commenters requested a higher weight limit for special light-sport category aircraft for the purpose of installing type-certificated engines and propellers. As discussed in § 91.327(b)(1) and in part 43, the FAA determined that it is necessary that the performance and recording of maintenance work on these aircraft generally meet the requirements of part 43. This paragraph of the rule specifically requires the owner or operator to comply with the recordkeeping requirements for the recording of major repairs and major alterations performed on type-certificated products in accordance with § 43.9(d), and with the retention requirements in § 91.417.

Additional Maintenance Requirements for Aircraft Used for Flight Training and Towing (now § 91.327(c)): Proposed paragraph (b)(2) would have addressed special inspection requirements for special light-sport aircraft used for flight training. These special requirements were proposed to insure a higher degree of safety when these aircraft are used for this type of operation. As discussed above, § 91.327(a) has been changed to allow both flight training and towing gliders and unpowered ultralight vehicles as exceptions to the general prohibition against use of these aircraft for compensation or hire. To ensure a higher level of safety for aircraft used in operations in which compensation may be provided, the FAA will require 100-hour inspections for aircraft used for towing a glider or unpowered ultralight vehicle for compensation. This new requirement is in addition to the originally proposed requirement for a 100-hour inspection when the aircraft is used for flight training. Further, the FAA believes that added aircraft stress placed on these aircraft as a result of their use in towing operations necessitates this additional inspection requirement.

As originally proposed, paragraph (b)(2) would have required one type of inspection within 100 hours of time in service. That inspection requirement is contained in paragraph (c)(1) of the final rule. Paragraph (c)(2) is added in the final rule to allow a second type of inspection to satisfy the 100-hour requirement for aircraft that are used in towing or flight training. An inspection for the issuance of an airworthiness certificate in accordance with part 21 is acceptable as a replacement for the 100-hour inspection. This change is added to the rule because, before an airworthiness certificate is issued for an aircraft, it must be inspected and determined to be safe to fly. The inspection for the issuance of a special airworthiness certificate in the light-sport category is similar in scope and detail to 100-hour inspection. Therefore the FAA has determined that requiring two similar inspections within the first 100-hour time period after an aircraft is issued its airworthiness certificate is not necessary.

Operating instructions (now § 91.327(d)): New paragraph (d) requires the operator of a special light-sport aircraft to operate the aircraft in accordance with the aircraft manufacturer's operating instructions. It also requires the operator to have the necessary equipment on board the aircraft for the type of operation conducted, as specified in the aircraft's equipment list. As proposed in § 21.186, the FAA would have required a person seeking a special light-sport category airworthiness certificate to submit a pilot operating handbook (renamed "operating instructions" in the final rule). That handbook, however, would not have required FAA approval. Therefore, current § 91.9, which requires compliance with the operating limitations specified in the approved flight manual, would not have applied. This provision corrects that oversight and requires a pilot to operate the aircraft in accordance with its operating instructions. Additionally, the FAA notes that these operating instructions will specify equipment necessary for particular types of flight operations. This new requirement is necessary because § 91.205, which specifies instrument and equipment requirements for particular flight operations, does not apply to aircraft that are not issued standard airworthiness certificates.

Passenger warnings (now § 91.327(e)): New paragraph (e) of the final rule requires that the operator of a special light-sport aircraft advise each person of the nature of the aircraft, and that it does not meet the airworthiness requirements for an aircraft issued a standard airworthiness certificate. The requirement for passenger warning is consistent with the warning requirements for other non-type-certificated aircraft, but was inadvertently omitted from the proposed rule. The final rule corrects this oversight. Some commenters, noting and recommending correction of the FAA's oversight, asked whether placards could be used to provide this warning. Placards are acceptable if displayed so that a passenger can readily see and take note of the warning.

Additional limitations (now § 91.327(f)): This paragraph was originally proposed as paragraph (c). It states that the FAA may impose additional limitations on special light-sport aircraft that the FAA considers necessary. The proposed paragraph is adopted with minor wording changes. Note that under this provision, the FAA may consider limiting the passengers that can be carried on these aircraft if operational experience demonstrates such a need.

Changes

Proposed § 91.327 is revised and reorganized in the final rule, as follows.

Paragraph (a) is revised to more clearly specify the operating limitations for a special light-sport aircraft, and to indicate that these aircraft may not be used for compensation or hire except to tow a glider or unpowered ultralight

vehicle in accordance with § 91.309, or to conduct flight training.

Proposed paragraph (a)(1) is not adopted.

In proposed paragraph (a)(2), the compensation or hire provisions are retained in paragraph (a) of the final rule; however, the words "carrying persons or property" and "or for rental" are removed. The paragraph is further revised to permit special light-sport aircraft to be used for compensation or hire while towing a glider or an unpowered ultralight vehicle in accordance with § 91.309.

Proposed paragraphs (a)(3) through (a)(5), which addressed maintenance, condition inspections, and safety-of-flight issues, are revised and moved to paragraph (b) of the final rule, as described below.

Proposed paragraph (b) provisions are moved to paragraph (c) in the final rule, as described below.

Paragraph (b)(1) (proposed as paragraph (a)(3)) is modified in the final rule to reflect that special light-sport aircraft must be maintained in accordance with the applicable provisions of part 43. In addition, the words "aircraft manufacturer's maintenance and inspection procedures" are changed to "maintenance and inspection procedures developed by the aircraft manufacturer or a person acceptable to the FAA."

Paragraph (b)(2) (proposed as paragraph (a)(4)) is modified in the final rule by changing the words "aircraft manufacturer's maintenance and inspection procedures" to "inspection procedures developed by the aircraft manufacturer or a person acceptable to the FAA." In addition, the term "repairman with a light-sport aircraft maintenance rating" is changed to "repairman (light-sport aircraft) with a maintenance rating."

Paragraph (b)(3) is added to the final rule to require an owner or operator to comply with all applicable airworthiness directives.

Paragraph (b)(4) (proposed as paragraph (a)(5)) is modified in the final rule to require compliance with safety directives. The paragraph also describes procedures for alternative compliance with safety directives.

Paragraph (b)(5) is added to the final rule to require that each alteration done after an aircraft's date of manufacture meets the applicable and current consensus standard and has been authorized by either the manufacturer or a person acceptable to the FAA.

Paragraph (b)(6) is added in the final rule. The paragraph requires that each major alteration to an aircraft product produced under a consensus standard is authorized, performed and inspected in accordance with maintenance and inspection procedures developed by the manufacturer or a person acceptable to the FAA.

Paragraph (b)(7) is added in the final rule. The paragraph requires an owner or operator to comply with the requirements for the recording and retention of records for major repairs and major alterations performed on type-certificated products.

Proposed paragraph (c) is moved to paragraph (f) in the final rule, as discussed below.

Paragraph (c) (proposed as paragraph (b)) is expanded in the final rule. The proposal addressed aircraft used to provide flight instruction. In the final rule, the paragraph addresses aircraft used for compensation or hire to tow gliders or unpowered ultralight vehicles or to conduct flight training. To be operated for this flight instruction or towing, an aircraft must be inspected in accordance with inspection procedures developed by the aircraft manufacturer or person acceptable to the FAA and approved for return to service in accordance with part 43 within the last 100 hours of time in service. Alternatively, to meet this requirement, an aircraft can be inspected for the issuance of an airworthiness certificate. The original proposal only would have permitted a condition inspection to be performed and only addressed flight training.

Paragraph (d) is added in the final rule. It requires the operator of a special light-sport aircraft to operate the aircraft in accordance with its operating instructions, including the equipment requirements specified in the aircraft's equipment list.

Paragraph (e) is added in the final rule. It contains a requirement that the operator of a special light-sport aircraft advise each person carried of the special nature of the aircraft and that it does not meet the airworthiness requirements for a standard category aircraft.

Paragraph (f) (proposed as paragraph (c)) is adopted with minor wording changes.

Section 91.409 Inspections

This section is revised to correct the proposed language. The NPRM stated that paragraphs (a) and (b) would not apply to "an aircraft that carries the following special airworthiness certificates: special flight permit, light-sport aircraft, current experimental, or provisional." In the final rule, the FAA is eliminating the unnecessary reference to special airworthiness certificates. Additionally, the FAA is changing the proposed term "light-sport aircraft" to "light-sport." This change conforms with the terminology adopted in part 21.

Proposed paragraph (c)(1) of this section would have required that inspections mandated by paragraphs (a) and (b) not apply to aircraft that carry special flight permits, current experimental, light-sport or provisional airworthiness certificates. The FAA received one comment requesting that the FAA differentiate between the [special] light-sport category and the light-sport experimental category because experimental aircraft have always had specific limitations to control inspection, repair, and alteration. The FAA notes that experimental aircraft, such as amateur-built aircraft, are not subject to the inspection requirements of paragraphs (a) and (b) and only require an annual condition inspection. Special light-sport aircraft are also not subject to the inspection requirements of paragraphs (a) and (b); however, the operating limitations set forth in § 91.327 impose requirements for a condition inspection every 12 calendar months and an inspection within the preceding 100 hours of time in service if the aircraft has been used for certain operations.

Changes

Paragraph (c)(1) is adopted with no substantive change.

Appendix D to Part 91

The introductory text of Section 4 is revised to prohibit sport and recreational pilot operations at those 12 airports specified in the section. Section 91.131(b)(2) states that no person may take off or land a civil aircraft at those airports listed in that section unless the pilot in command holds at least a private pilot certificate. Section 4 is revised to be consistent with the provisions of § 91.131(b)(2).

Changes

The section heading and the introductory text of Section 4 are revised as discussed above.

VI. Plain Language

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. In the NPRM, the FAA used Plain Language techniques, such as question-and-answer format, use of pronouns, short sentences, and clear outlining of the preamble discussion. One of the questions the FAA asked for the On-Line Forum was whether readers found the document clear and easy to understand. Approximately 70 people responded.

About a dozen commenters said they did not find the NPRM easier to read, but most did not go into detail.

About 30 others said that they thought the format of the NPRM was a great improvement over other regulations, but that the complexity of the subject and the length of the document made it still somewhat difficult to follow. Some said they did not like having to read references to other regulations elsewhere in 14 CFR that were not reproduced in the NPRM, or that they thought those regulations should have been rewritten to match the plain language style of the new regulations. Some said that they had concerns that some provisions could be misinterpreted, or that the NPRM did not answer all of the questions they had. The FAA agrees that it would be best to revise all of the related sections in 14 CFR in plain language format and reproduce them in one document for the reader's convenience; however, such a large task would have caused a considerable delay and resulted in a much longer document. The FAA is clarifying and simplifying other regulations throughout 14 CFR as opportunities arise; that is, when the FAA revises any sections of 14 CFR in other rulemaking actions, it is using clearer language.

The remaining commenters (approximately 30) said that they did find the NPRM clear and easy to read, and they appreciated the FAA's efforts to write it in plain language.

VII. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the information collection requirements(s) in this final rule to the Office of Management and Budget (OMB) for its review. An agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. Persons are not required to respond to a collection of information unless it displays a currently valid OMB control number.

This rule contains information collections that are subject to review by OMB under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). OMB approved the collection of this information and assigned OMB Control Number 2120–0690. This rule was proposed in the **Federal Register** of February 5, 2002. At that time, the FAA requested public comments on the proposed information collection requirements. Some commenters stated that it would be an unnecessary expense for ultralight pilots seeking a sport pilot certificate to provide notarized copies of ultralight association records. The FAA agrees with the commenters and is removing the requirement that the copies be notarized. See the discussion of § 61.329 above.

The description of the annual burden is shown below.

Description of Respondents: Manufacturers, aircraft owners, pilots, flight instructors with a sport pilot rating, and maintenance personnel.

Estimated Burden: The FAA expects that this rule will affect those dealing with the certification, operation, maintenance, and manufacture of light-sport aircraft, as well as flight instructors with a sport pilot rating.

The final rule, which imposes additional reporting and recordkeeping requirements, will have the following impacts, by CFR part number:

Part	Time (in hours)	Cost
21	53,849.80	$2,965,211
47	6,134.75	202,194
61 (Pilots)	10,676.67	1,185,993
61 (Instructors)	376.99	54,039
43, 65, 91 (Maintenance)	1,316	2,147,791
183	233.1717	17,841
Total	72,582.38	6,573,069

The regulation will increase paperwork for the Federal government, as shown in the following table:

Category	Time (in hours)	Cost
Aircraft certification	5,429	$397,027
Pilot and instructor qualifications	795	41,537
Maintenance	803	45,479
Miscellaneous	928.39	39,690
Total	7,955.39	523,733

VIII. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that correspond to this regulation.

IX. Economic Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S.

standards, this Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

In conducting these analyses, FAA has determined this rule (1) has benefits that justify its costs, is a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 and is "significant" as defined in DOT's Regulatory Policies and Procedures; (2) will not have a significant economic impact on a substantial number of small entities; (3) will not result in an international trade disadvantage; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses, available in the docket, are summarized below.

Total Costs and Benefits of This Rulemaking

The estimated cost of this final rule is $221.0 million ($158.4 million, discounted). The estimated potential benefits fall within the range of $85.3 million (the set of preventable NTSB accidents) and $325.4 million (the set of preventable NTSB accidents and the preventable association accidents). The discount benefits range between $57.7 million and $220.3 million.

Who Is Potentially Affected by This Rulemaking?

Private Sector

- All 14,000 pilots of unregistered ultralight-like aircraft must obtain sport pilot certifications, must have their aircraft inspected and certified, and must have their aircraft maintained by appropriately trained repairmen.
- Existing uncertified vehicles that fit the definition of light-sport aircraft will not be issued experimental certificates after August 31, 2007.
- Manufacturers of aircraft will produce special light sport aircraft certificated under § 21.190 that adhere to manufacturer's consensus standards.
- New kit-built light-sport aircraft that are produced under consensus standards will have to be certified as experimental light-sport aircraft, under § 21.191(i)(2).
- New factory built light-sport aircraft produced under consensus standards may be certified as special light-sport aircraft or as experimental light-sport aircraft.
- Current ultralight instructors operating under the part 103 training exemption that receive a flight instructor certificate with a sport pilot rating and plan to continue flight instructing will have to replace their existing training aircraft within five years after the rule is enacted with a certificated special light-sport aircraft (§ 21.190) in order to continue to offer training for compensation.
- Sport pilot organizations or some for-profit organizations will develop training courses for instructors with a sport pilot rating to purchase.
- Some existing aircraft will fit the definition of light-sport aircraft and anyone with a sport pilot certificate will be allowed to fly them provided they are only exercising sport pilot privileges. Under the current rules a private or recreational pilot certificate would be required to operate these aircraft.
- New sport pilot Designated Airworthiness Representatives (DARs) for light-sport aircraft will need to take a three-day training course in order to issue airworthiness certificates for light sport aircraft.
- New Designated Pilot Examiners (DPEs) for sport pilots will have to take a five-day training course in order to prepare them to examine sport pilots and sport pilot instructors.
- The FAA will work with industry in developing and overseeing the consensus standards.
- The FAA will develop Advisory Circulars, orders, and articles for the light sport repairman course requirements.
- The FAA will develop and provide training programs for Designated Airworthiness Representatives, and Designated Pilot Examiners.
- The FAA will appoint, supervise and renew light-sport DARs, and sport pilot DPEs.
- The FAA will develop practical test standards and knowledge test standards for prospective sport pilots and flight instructors with a sport pilot rating applying for certification.
- Each light-sport aircraft issued an experimental certificate or a special light-sport airworthiness certificate will be registered in the FAA Civil Aviation Registry.
- The NTSB will investigate accidents involving light-sport aircraft.

The FAA's Cost Assumptions and Sources of Information

- Discount rate—7%.
- Period of analysis—2004 through 2013.
- All monetary values are expressed in 2002 dollars.
- Number of existing aircraft and pilots/instructors affected—15,300.
- The number of new sport pilots is estimated to be 400 for each of the first two years. The number of new sport pilots will increase by 400 every two years, so by 2012 and 2013 there will be 2,000 new sport pilots each year for a total of 12,000 new sport pilots over ten years. The number of new sport pilot instructors is estimated to be 70 for each of the first two years (2004–2005). The number of new sport pilot instructors will increase by 20 every two years, so by 2012 and 2013 there will be 150 new sport pilot instructors each year for a total of 1,100 new sport pilot instructors over ten years. The new instructors will come from the existing sport pilots or new sport pilots from prior years.
- From 2006 to 2013 the affected population of pilots and instructors will grow at 6.82 percent a year. This rate was used in projecting future accidents.
- Value of fatality avoided—$3.0 million.
- Value of serious injury avoided—$580,700.
- Value of avoiding destroyed aircraft—$18,083.
- Value of avoiding substantially damaged aircraft—$9,041.

Alternatives the FAA Considered

Alternative One—Status Quo: The status quo represents a situation in which the FAA would issue training exemptions from part 103 indefinitely. This would perpetuate "rulemaking by exemption," which the FAA wants to avoid.

Alternative Two—Strictly Enforce Current Regulations: The second alternative is to strictly enforce the current rules that could apply to sports pilots. The problem with this is that the existing rules on these types of operations and aircraft were developed long before sports pilots became a large and growing part of aviation. The current rules, if strictly enforced, would result in very costly requirement requirements. From 2004 to 2013, the total cost of this alternative will be approximately $478 million ($368 million discounted).

Benefits of This Rulemaking

The FAA has performed an analysis of potential safety benefits of this rule. Safety benefits are the number of accidents that may be avoided because of the rule, with their attendant fatalities, injuries and property damage.

This analysis estimated accidents prevented from two sets of data. One set of data was U.S. Government data—the

NTSB and NASDAC databases that included accidents involving certificated and uncertificated aircraft that meet the definition of light-sport aircraft. The second set was from three of the FAA recognized ultralight organizations that contained records of accidents of aircraft meeting the definition of light-sport aircraft, but were not FAA certificated.

Accidents from the government databases included 19 between 1995 and 2002 that would likely be prevented by this rule. The projected total estimated benefits from avoiding those accidents that were in the U.S. Government databases are $85.3 million ($57.7 million, discounted) over the next ten years.

A review of the information from the trade organizations revealed that there were 57 accidents between 1995 and 2002 that involved light-sport type aircraft. The estimated potential benefits fall within the range of $85.3 million (the set of preventable NTSB accidents) and $325.4 million (the set of preventable NTSB accidents and the preventable association accidents). The discounted benefits range between $57.7 million and $220.3 million.

Costs of This Rulemaking

From 2004 to 2013, the total cost of the rule will be approximately $221.0 million ($158.4 million, discounted). The total cost of the rule consists of private sector costs and government costs. Private sector costs will be approximately $202.0 million ($144.5 million, discounted), of which $139.5 million ($98.9 million, discounted) represent the out-of-pocket costs. Government costs will be approximately $18.9 million ($13.9 million, discounted).

Differences in the NPRM Economic Evaluation and the Final Rule Economic Evaluation

Estimated costs and benefits have changed significantly in the final rule, regulatory evaluation from the NPRM regulatory evaluation. The NPRM estimated costs of $40.3 million ($33.9 million, discounted) in 1999 dollars, while the final rule cost estimates are $221.0 million ($158.4 million, discounted) in 2002 dollars. The NPRM estimated benefits of $221.4 million ($153.3 million, discounted) and the final rule estimates the potential benefits to fall within the range of $85.3 million and $325.4 million (between $57.7 million and $220.3 million, discounted).

X. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) directs the FAA to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to the regulation. The FAA is required to determine whether a proposed or final action will have a "significant economic impact on a substantial number of small entities" as they are defined in the Act. If the FAA finds that the action will have a significant impact, the FAA must do a "regulatory flexibility analysis."

Most of the individual sport pilots impacted by this rulemaking are people who are flying as a hobby. The Regulatory Flexibility Act does not apply to them. However, some of the sport pilot instructors are providing instruction as a business endeavor, and in these cases the Regulatory Flexibility Act does apply. Costs imposed on instructors are between $6,000 and $7,000 over a ten-year period. This cost does not include any cost for the maintenance repair class. The rule allows a sport pilot with an instructor rating to take this class; the rule does not mandate it. For this reason, the cost of this class is not considered in this regulatory flexibility determination. On an annualized basis, these imposed costs are between $630 and $820, which the FAA does not consider as significant costs. Some existing instructors will have to acquire a new light sport aircraft within five years if they plan to continue instructing student sport pilots. A little over a quarter of the new and existing sport pilot instructors would be impacted by this provision of the rule. For these instructors, if they are not able to sell their old light sport aircraft, the ten year imposed cost of this rule could be as high as $11,700 or $1,220 annualized (in most cases the cost would be less). For some weekend instructors these costs may be more than what they may wish to incur, and they would stop being instructors. The FAA does not believe this will occur, because the FAA believes that most, possibly all, of these instructors will be able to sell their old light sport aircraft that this rule requires them to replace. By selling their old light sport aircraft, these impacted instructors could reduce the ten-year costs imposed by this provision to about $6,000, which could reduce their annualized costs to $630. The FAA does not consider this to be a significant cost. Consequently, the FAA certifies that the rule will not have a significant economic impact on a substantial number of sport pilot instructors.

XI. International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. This effort includes both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute, the FAA has assessed the potential effect of the proposal and has determined that it will not present a significant impediment to either U.S. firms doing business aboard or foreign firms doing business in the United States. The rule is expected to stimulate a great deal of growth for the light-sport aircraft aviation industry in the United States and abroad. The belief that no significant trade disadvantage will take place is based on the premise that the number of the requirements contained in the rule (namely, aircraft certification standards) essentially mirrors those that already exist internationally.

XII. Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million.

Since the compliance cost of the rule does not exceed $100 million in any of the years, the rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

XIII. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of

Executive Order 13132, Federalism. The FAA determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore does not have federalism implications.

XIV. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f. and involves no extraordinary circumstances.

XV. Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. The FAA has determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 1

Air transportation.

14 CFR Part 21

Aircraft, Aviation safety, Exports, Imports, Reporting and recordkeeping requirements.

14 CFR Part 43

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 45

Aircraft, Exports, Signs and symbols.

14 CFR Part 61

Aircraft, Airmen, Recreation and recreation areas, Reporting and recordkeeping requirements, Teachers.

14 CFR Part 65

Air traffic controllers, Aircraft, Airmen, Airports, Reporting and recordkeeping requirements.

14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation Safety, Noise control, Reporting and recordkeeping requirements.

The Amendments

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

PART 1—DEFINITIONS AND ABBREVIATIONS

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

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

■ 2. Amend § 1.1 by adding the following definitions in alphabetical order to read as follows:

§ 1.1 General definitions.

* * * * *

Consensus standard means, for the purpose of certificating light-sport aircraft, an industry-developed consensus standard that applies to aircraft design, production, and airworthiness. It includes, but is not limited to, standards for aircraft design and performance, required equipment, manufacturer quality assurance systems, production acceptance test procedures, operating instructions, maintenance and inspection procedures, identification and recording of major repairs and major alterations, and continued airworthiness.

* * * * *

Light-sport aircraft means an aircraft, other than a helicopter or powered-lift that, since its original certification, has continued to meet the following:

(1) A maximum takeoff weight of not more than—

(i) 660 pounds (300 kilograms) for lighter-than-air aircraft;

(ii) 1,320 pounds (600 kilograms) for aircraft not intended for operation on water; or

(iii) 1,430 pounds (650 kilograms) for an aircraft intended for operation on water.

(2) A maximum airspeed in level flight with maximum continuous power (V_H) of not more than 120 knots CAS under standard atmospheric conditions at sea level.

(3) A maximum never-exceed speed (V_{NE}) of not more than 120 knots CAS for a glider.

(4) A maximum stalling speed or minimum steady flight speed without the use of lift-enhancing devices (V_{S1}) of not more than 45 knots CAS at the aircraft's maximum certificated takeoff weight and most critical center of gravity.

(5) A maximum seating capacity of no more than two persons, including the pilot.

(6) A single, reciprocating engine, if powered.

(7) A fixed or ground-adjustable propeller if a powered aircraft other than a powered glider.

(8) A fixed or autofeathering propeller system if a powered glider.

(9) A fixed-pitch, semi-rigid, teetering, two-blade rotor system, if a gyroplane.

(10) A nonpressurized cabin, if equipped with a cabin.

(11) Fixed landing gear, except for an aircraft intended for operation on water or a glider.

(12) Fixed or repositionable landing gear, or a hull, for an aircraft intended for operation on water.

(13) Fixed or retractable landing gear for a glider.

* * * * *

Powered parachute means a powered aircraft comprised of a flexible or semi-rigid wing connected to a fuselage so that the wing is not in position for flight until the aircraft is in motion. The fuselage of a powered parachute contains the aircraft engine, a seat for each occupant and is attached to the aircraft's landing gear.

* * * * *

Weight-shift-control aircraft means a powered aircraft with a framed pivoting wing and a fuselage controllable only in pitch and roll by the pilot's ability to change the aircraft's center of gravity with respect to the wing. Flight control of the aircraft depends on the wing's ability to flexibly deform rather than the use of control surfaces.

* * * * *

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

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

Authority: 42 U.S.C. 7572; 49 U.S.C. 106(g), 40105, 40113, 44701–44702, 44707, 44709, 44711, 44713, 44715, 45303.

■ 4. Amend § 21.175 by revising paragraph (b) to read as follows:

§ 21.175 Airworthiness certificates: classification.

* * * * *

(b) Special airworthiness certificates are primary, restricted, limited, light-sport, and provisional airworthiness certificates, special flight permits, and experimental certificates.

■ 5. Amend § 21.181 by redesignating paragraph (a)(3) as paragraph (a)(4) and revising it to read as follows, and adding new paragraph (a)(3) to read as follows:

§ 21.181 Duration.

(a) * * *

(3) A special airworthiness certificate in the light-sport category is effective as long as—

(i) The aircraft meets the definition of a light-sport aircraft;

(ii) The aircraft conforms to its original configuration, except for those alterations performed in accordance with an applicable consensus standard and authorized by the aircraft's manufacturer or a person acceptable to the FAA;

(iii) The aircraft has no unsafe condition and is not likely to develop an unsafe condition; and

(iv) The aircraft is registered in the United States.

(4) An experimental certificate for research and development, showing compliance with regulations, crew training, or market surveys is effective for 1 year after the date of issue or renewal unless the FAA prescribes a shorter period. The duration of an experimental certificate issued for operating amateur-built aircraft, exhibition, air-racing, operating primary kit-built aircraft, or operating light-sport aircraft is unlimited, unless the FAA establishes a specific period for good cause.

* * * * *

■ 6. Amend § 21.182 by revising paragraph (b)(2) to read as follows:

§ 21.182 Aircraft identification.

* * * * *

(b) * * *

(2) An experimental certificate for an aircraft not issued for the purpose of operating amateur-built aircraft, operating primary kit-built aircraft, or operating light-sport aircraft.

* * * * *

■ 7. Add § 21.190 to read as follows:

§ 21.190 Issue of a special airworthiness certificate for a light-sport category aircraft.

(a) *Purpose.* The FAA issues a special airworthiness certificate in the light-sport category to operate a light-sport aircraft, other than a gyroplane.

(b) *Eligibility.* To be eligible for a special airworthiness certificate in the light-sport category:

(1) An applicant must provide the FAA with—

(i) The aircraft's operating instructions;

(ii) The aircraft's maintenance and inspection procedures;

(iii) The manufacturer's statement of compliance as described in paragraph (c) of this section; and

(iv) The aircraft's flight training supplement.

(2) The aircraft must not have been previously issued a standard, primary, restricted, limited, or provisional airworthiness certificate, or an equivalent airworthiness certificate issued by a foreign civil aviation authority.

(3) The aircraft must be inspected by the FAA and found to be in a condition for safe operation.

(c) *Manufacturer's statement of compliance for light-sport category aircraft.* The manufacturer's statement of compliance required in paragraph (b)(1)(iii) of this section must—

(1) Identify the aircraft by make and model, serial number, class, date of manufacture, and consensus standard used;

(2) State that the aircraft meets the provisions of the identified consensus standard;

(3) State that the aircraft conforms to the manufacturer's design data, using the manufacturer's quality assurance system that meets the identified consensus standard;

(4) State that the manufacturer will make available to any interested person the following documents that meet the identified consensus standard:

(i) The aircraft's operating instructions.

(ii) The aircraft's maintenance and inspection procedures.

(iii) The aircraft's flight training supplement.

(5) State that the manufacturer will monitor and correct safety-of-flight issues through the issuance of safety directives and a continued airworthiness system that meets the identified consensus standard;

(6) State that at the request of the FAA, the manufacturer will provide unrestricted access to its facilities; and

(7) State that the manufacturer, in accordance with a production acceptance test procedure that meets an applicable consensus standard has—

(i) Ground and flight tested the aircraft;

(ii) Found the aircraft performance acceptable; and

(iii) Determined that the aircraft is in a condition for safe operation.

(d) *Light-sport aircraft manufactured outside the United States.* For aircraft manufactured outside of the United States to be eligible for a special airworthiness certificate in the light-sport category, an applicant must meet the requirements of paragraph (b) of this section and provide to the FAA evidence that—

(1) The aircraft was manufactured in a country with which the United States has a Bilateral Airworthiness Agreement concerning airplanes or Bilateral Aviation Safety Agreement with associated Implementation Procedures for Airworthiness concerning airplanes, or an equivalent airworthiness agreement; and

(2) The aircraft is eligible for an airworthiness certificate, flight authorization, or other similar certification in its country of manufacture.

■ 8. Amend § 21.191 by revising the heading of paragraph (h) and adding paragraph (i) to read as follows:

§ 21.191 Experimental certificates.

* * * * *

(h) *Operating primary kit-built aircraft.* * * *

(i) *Operating light-sport aircraft.* Operating a light-sport aircraft that—

(1) Has not been issued a U.S. or foreign airworthiness certificate and does not meet the provisions of § 103.1 of this chapter. An experimental certificate will not be issued under this paragraph for these aircraft after August 31, 2007;

(2) Has been assembled—

(i) From an aircraft kit for which the applicant can provide the information required by § 21.193(e); and

(ii) In accordance with manufacturer's assembly instructions that meet an applicable consensus standard; or

(3) Has been previously issued a special airworthiness certificate in the light-sport category under § 21.190.

■ 9. Amend § 21.193 by adding paragraph (e) to read as follows:

§ 21.193 Experimental certificates: general.

* * * * *

(e) In the case of a light-sport aircraft assembled from a kit to be certificated in accordance with § 21.191(i)(2), an applicant must provide the following:

(1) Evidence that an aircraft of the same make and model was manufactured and assembled by the aircraft kit manufacturer and issued a special airworthiness certificate in the light-sport category.

(2) The aircraft's operating instructions.

(3) The aircraft's maintenance and inspection procedures.

(4) The manufacturer's statement of compliance for the aircraft kit used in the aircraft assembly that meets § 21.190(c), except that instead of meeting § 21.190(c)(7), the statement must identify assembly instructions for the aircraft that meet an applicable consensus standard.

(5) The aircraft's flight training supplement.

(6) In addition to paragraphs (e)(1) through (e)(5) of this section, for an aircraft kit manufactured outside of the United States, evidence that the aircraft kit was manufactured in a country with which the United States has a Bilateral Airworthiness Agreement concerning

airplanes or a Bilateral Aviation Safety Agreement with associated Implementation Procedures for Airworthiness concerning airplanes, or an equivalent airworthiness agreement.

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

■ 10. The authority citation for part 43 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44703, 44705, 44707, 44711, 44713, 44717, 44725.

■ 11. Amend § 43.1 by:
■ a. Revising the introductory text of paragraph (a);
■ b. Revising paragraph (b); and
■ c. Adding paragraph (d).

The revisions and additions read as follows:

§ 43.1 Applicability.

(a) Except as provided in paragraphs (b) and (d) of this section, this part prescribes rules governing the maintenance, preventive maintenance, rebuilding, and alteration of any—

* * * * *

(b) This part does not apply to any aircraft for which the FAA has issued an experimental certificate, unless the FAA has previously issued a different kind of airworthiness certificate for that aircraft.

* * * * *

(d) This part applies to any aircraft issued a special airworthiness certificate in the light-sport category except:

(1) The repair or alteration form specified in §§ 43.5(b) and 43.9(d) is not required to be completed for products not produced under an FAA approval;

(2) Major repairs and major alterations for products not produced under an FAA approval are not required to be recorded in accordance with appendix B of this part; and

(3) The listing of major alterations and major repairs specified in paragraphs (a) and (b) of appendix A of this part is not applicable to products not produced under an FAA approval.

■ 12. Amend § 43.3 by revising paragraphs (c) and (g) to read as follows:

§ 43.3 Persons authorized to perform maintenance, preventive maintenance, rebuilding, and alterations.

* * * * *

(c) The holder of a repairman certificate may perform maintenance, preventive maintenance, and alterations as provided in part 65 of this chapter.

* * * * *

(g) Except for holders of a sport pilot certificate, the holder of a pilot certificate issued under part 61 may perform preventive maintenance on any aircraft owned or operated by that pilot which is not used under part 121, 129, or 135 of this chapter. The holder of a sport pilot certificate may perform preventive maintenance on an aircraft owned or operated by that pilot and issued a special airworthiness certificate in the light-sport category.

* * * * *

■ 13. Amend § 43.7 by adding paragraphs (g) and (h) to read as follows:

§ 43.7 Persons authorized to approve aircraft, airframes, aircraft engines, propellers, appliances, or component parts for return to service after maintenance, preventive maintenance, rebuilding, or alteration.

* * * * *

(g) The holder of a repairman certificate (light-sport aircraft) with a maintenance rating may approve an aircraft issued a special airworthiness certificate in light-sport category for return to service, as provided in part 65 of this chapter.

(h) The holder of at least a sport pilot certificate may approve an aircraft owned or operated by that pilot and issued a special airworthiness certificate in the light-sport category for return to service after performing preventive maintenance under the provisions of § 43.3(g).

■ 14. Amend § 43.9 by:
■ a. Revising the section heading;
■ b. Redesignating the concluding text of paragraph (a) as paragraph (d);
■ c. Revising new paragraph (d); and
■ d. Removing the reference "123" from paragraph (c).

The revisions read as follows:

§ 43.9 Content, form, and disposition of maintenance, preventive maintenance, rebuilding, and alteration records (except inspections performed in accordance with part 91, part 125, § 135.411(a)(1), and § 135.419 of this chapter).

* * * * *

(d) In addition to the entry required by paragraph (a) of this section, major repairs and major alterations shall be entered on a form, and the form disposed of, in the manner prescribed in appendix B, by the person performing the work.

PART 45—IDENTIFICATION AND REGISTRATION MARKING

■ 15. The authority citation for part 45 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 44109, 40113–40114, 44101–44105, 44107–44108, 44110–44111, 44504, 44701, 44708–44709, 44711–44713, 44725, 45302–45303, 46104, 46304, 46306, 47122.

■ 16. Amend § 45.11 by:
■ a. Amending the third sentence of paragraph (a) to revise the words "paragraphs (c) and (d) of this section" to read "paragraphs (c), (d), and (e) of this section"; and
■ b. Adding paragraph (e) to read as follows.

§ 45.11 General.

* * * * *

(e) For powered parachutes and weight-shift-control aircraft, the identification plate prescribed in paragraph (a) of this section must be secured to the aircraft fuselage exterior so that it is legible to a person on the ground.

■ 17. Amend § 45.23 by revising paragraph (b) to read as follows:

§ 45.23 Display of marks; general.

* * * * *

(b) When marks include only the Roman capital letter "N" and the registration number is displayed on limited, restricted or light-sport category aircraft or experimental or provisionally certificated aircraft, the operator must also display on that aircraft near each entrance to the cabin, cockpit, or pilot station, in letters not less than 2 inches nor more than 6 inches high, the words "limited," "restricted," "light-sport," "experimental," or "provisional," as applicable.

■ 18. Amend § 45.27 by adding paragraph (e) to read as follows:

§ 45.27 Location of marks; non-fixed-wing aircraft.

* * * * *

(e) *Powered parachute and weight-shift-control aircraft.* Each operator of a powered parachute or a weight-shift-control aircraft must display the marks required by § 45.23. The marks must be displayed horizontally and in two diametrically opposite positions on any fuselage structural member.

■ 19. Amend § 45.29 by revising paragraphs (b)(1)(iii) and (b)(2) to read as follows:

§ 45.29 Size of marks.

* * * * *

(b) * * *

(1) * * *

(iii) Marks at least 3 inches high may be displayed on an aircraft for which the FAA has issued an experimental certificate under § 21.191 (d), § 21.191 (g), or § 21.191 (i) of this chapter to operate as an exhibition aircraft, an amateur-built aircraft, or a light-sport aircraft when the maximum cruising speed of the aircraft does not exceed 180 knots CAS; and

* * * * *

(2) Airships, spherical balloons, nonspherical balloons, powered parachutes, and weight-shift-control aircraft must be at least 3 inches high; and

* * * * *

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 20. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 21. Amend § 61.1 by:
■ a. Revising paragraphs (b)(3)(i) introductory text and (b)(3)(ii) introductory text;
■ b. Redesignating paragraphs (b)(3)(iii), (b)(3)(iv), (b)(3)(v), and (b)(15) as paragraphs (b)(3)(v), (b)(3)(vi), (b)(3)(vii), and (b)(16), respectively; and
■ c. Adding new paragraphs (b)(3)(iii), (b)(3)(iv), and (b)(15).

The additions and revisions read as follows:

§ 61.1 Applicability and definitions.

* * * * *

(b) * * *

(3) * * *

(i) Except as provided in paragraphs (b)(3)(ii) through (b)(3)(vi) of this section, time acquired during flight—

* * * * *

(ii) For the purpose of meeting the aeronautical experience requirements (except for a rotorcraft category rating), for a private pilot certificate (except for a powered parachute category rating), a commercial pilot certificate, or an instrument rating, or for the purpose of exercising recreational pilot privileges (except in a rotorcraft) under § 61.101 (c), time acquired during a flight—

* * * * *

(iii) For the purpose of meeting the aeronautical experience requirements for a sport pilot certificate (except for powered parachute privileges), time acquired during a flight conducted in an appropriate aircraft that—

(A) Includes a point of landing at least a straight line distance of more than 25 nautical miles from the original point of departure; and

(B) Involves, as applicable, the use of dead reckoning; pilotage; electronic navigation aids; radio aids; or other navigation systems to navigate to the landing point.

(iv) For the purpose of meeting the aeronautical experience requirements for a sport pilot certificate with powered parachute privileges or a private pilot certificate with a powered parachute category rating, time acquired during a flight conducted in an appropriate aircraft that—

(A) Includes a point of landing at least a straight line distance of more than 15 nautical miles from the original point of departure; and

(B) Involves, as applicable, the use of dead reckoning; pilotage; electronic navigation aids; radio aids; or other navigation systems to navigate to the landing point.

* * * * *

(15) *Student pilot seeking a sport pilot certificate* means a person who has received an endorsement—

(i) To exercise student pilot privileges from a certificated flight instructor with a sport pilot rating; or

(ii) That includes a limitation for the operation of a light-sport aircraft specified in § 61.89(c) issued by a certificated flight instructor with other than a sport pilot rating.

* * * * *

■ 22. Amend § 61.3 by:
■ a. Revising paragraph (c)(2)(i);
■ b. Redesignating paragraphs (c)(2)(ii) through (c)(2)(vii) as paragraphs (c)(2)(vi) through (c)(2)(xi) respectively;
■ c. Revising the reference to "paragraph (c)(2)(iii)" to read "paragraph (c)(2)(vii)" in newly redesignated paragraph (c)(2)(viii); and
■ d. Adding new paragraphs (c)(2)(ii) through (c)(2)(v).

The revisions and additions read as follows:

§ 61.3 Requirement for certificates, ratings, and authorizations.

* * * * *

(c) * * *

(2) * * *

(i) Is exercising the privileges of a student pilot certificate while seeking a pilot certificate with a glider category rating, a balloon class rating, or glider or balloon privileges;

(ii) Is exercising the privileges of a student pilot certificate while seeking a sport pilot certificate with other than glider or balloon privileges and holds a current and valid U.S. driver's license;

(iii) Is exercising the privileges of a student pilot certificate while seeking a pilot certificate with a weight-shift-control aircraft category rating or a powered parachute category rating and holds a current and valid U.S. driver's license;

(iv) Is exercising the privileges of a sport pilot certificate with glider or balloon privileges;

(v) Is exercising the privileges of a sport pilot certificate with other than glider or balloon privileges and holds a current and valid U.S. driver's license. A person who has applied for or held a medical certificate may exercise the privileges of a sport pilot certificate using a current and valid U.S. driver's license only if that person—

(A) Has been found eligible for the issuance of at least a third-class airman medical certificate at the time of his or her most recent application; and

(B) Has not had his or her most recently issued medical certificate suspended or revoked or most recent Authorization for a Special Issuance of a Medical Certificate withdrawn.

* * * * *

■ 23. Amend § 61.5 by:
■ a. Redesignating paragraphs (a)(1)(ii) through (a)(1)(v) as paragraphs (a)(1)(iii) through (a)(1)(vi), respectively;
■ b. Redesignating paragraphs (b)(5) and (b)(6) as paragraphs (b)(7) and (b)(8), respectively; and
■ c. Adding new paragraphs (a)(1)(ii), (b)(1)(vi), (b)(1)(vii), (b)(5), (b)(6), and (c)(5) to read as follows:

§ 61.5 Certificates and ratings issued under this part.

(a) * * *

(1) * * *

(ii) Sport pilot.

* * * * *

(b) * * *

(1) * * *

(vi) Powered parachute.

(vii) Weight-shift-control aircraft.

* * * * *

(5) Weight-shift-control aircraft class ratings—

(i) Weight-shift-control aircraft land.

(ii) Weight-shift-control aircraft sea.

(6) Powered parachute class ratings—

(i) Powered parachute land.

(ii) Powered parachute sea.

* * * * *

(c) * * *

(5) Sport pilot rating.

* * * * *

■ 24. Amend § 61.23 by:
■ a. Revising paragraphs (a) introductory text, (a)(3)(iii), (a)(3)(iv), (b) introductory text, and (b)(1) through (b)(4);
■ b. Redesignating paragraph (c) as paragraph (d); and
■ c. Adding new paragraph (c).

The additions and revisions read as follows:

§ 61.23 Medical certificates: Requirement and duration.

(a) *Operations requiring a medical certificate.* Except as provided in paragraphs (b) and (c) of this section, a person—

* * * * *

(3) * * *

(iii) When exercising the privileges of a student pilot certificate;

(iv) When exercising the privileges of a flight instructor certificate, except for a flight instructor certificate with a glider category rating or sport pilot rating, if the person is acting as pilot in command or is serving as a required flight crewmember; or

* * * * *

(b) *Operations not requiring a medical certificate.* A person is not required to hold a valid medical certificate—

(1) When exercising the privileges of a student pilot certificate while seeking—

(i) A sport pilot certificate with glider or balloon privileges; or

(ii) A pilot certificate with a glider category rating or balloon class rating;

(2) When exercising the privileges of a sport pilot certificate with privileges in a glider or balloon;

(3) When exercising the privileges of a pilot certificate with a glider category or balloon class rating;

(4) When exercising the privileges of a flight instructor certificate with—

(i) A sport pilot rating in a glider or balloon; or

(ii) A glider category rating;

* * * * *

(c) *Operations requiring either a medical certificate or U.S. driver's license.* (1) A person must hold and possess either a valid medical certificate issued under part 67 of this chapter or a current and valid U.S. driver's license when exercising the privileges of—

(i) A student pilot certificate while seeking sport pilot privileges in a light-sport aircraft other than a glider or balloon;

(ii) A sport pilot certificate in a light-sport aircraft other than a glider or balloon; or

(iii) A flight instructor certificate with a sport pilot rating while acting as pilot in command or serving as a required flight crewmember of a light-sport aircraft other than a glider or balloon.

(2) A person using a current and valid U.S. driver's license to meet the requirements of this paragraph must—

(i) Comply with each restriction and limitation imposed by that person's U.S. driver's license and any judicial or administrative order applying to the operation of a motor vehicle;

(ii) Have been found eligible for the issuance of at least a third-class airman medical certificate at the time of his or her most recent application (if the person has applied for a medical certificate);

(iii) Not have had his or her most recently issued medical certificate (if the person has held a medical certificate) suspended or revoked or most recent Authorization for a Special Issuance of a Medical Certificate withdrawn; and

(iv) Not know or have reason to know of any medical condition that would make that person unable to operate a light-sport aircraft in a safe manner.

* * * * *

■ 25. Amend § 61.31 by:

■ a. Revising paragraphs (k)(1) and (k)(2)(iii);

■ b. Removing the word "or;" from the end of paragraph (k)(2)(iv) and placing it at the end of paragraph (k)(2)(v); and

■ c. Adding paragraph (k)(2)(vi).

The addition and revisions read as follows:

§ 61.31 Type rating requirements, additional training, and authorization requirements.

* * * * *

(k) * * *

(1) This section does not require a category and class rating for aircraft not type-certificated as airplanes, rotorcraft, gliders, lighter-than-air aircraft, powered-lifts, powered parachutes, or weight-shift-control aircraft.

(2) * * *

(iii) The holder of a pilot certificate when operating an aircraft under the authority of—

(A) A provisional type certificate; or

(B) An experimental certificate, unless the operation involves carrying a passenger;

* * * * *

(vi) The holder of a sport pilot certificate when operating a light-sport aircraft.

■ 26. Amend § 61.45 by revising paragraphs (a)(1)(ii), (a)(2)(i), and (b)(1)(iii), and adding paragraph (f) to read as follows:

§ 61.45 Practical tests: Required aircraft and equipment.

(a) * * *

(1) * * *

(ii) Has a current standard airworthiness certificate or special airworthiness certificate in the limited, primary, or light-sport category.

(2) * * *

(i) An aircraft that has a current airworthiness certificate other than a standard airworthiness certificate or special airworthiness certificate in the limited, primary, or light-sport category, but that otherwise meets the requirements of paragraph (a)(1) of this section;

* * * * *

(b) * * *

(1) * * *

(iii) Except as provided in paragraphs (e) and (f) of this section, at least two pilot stations with adequate visibility for each person to operate the aircraft safely; and

* * * * *

(f) *Light-sport aircraft with a single seat.* A practical test for a sport pilot certificate may be conducted in a light-sport aircraft having a single seat provided that the—

(1) Examiner agrees to conduct the test;

(2) Examiner is in a position to observe the operation of the aircraft and evaluate the proficiency of the applicant; and

(3) Pilot certificate of an applicant successfully passing the test is issued a pilot certificate with a limitation "No passenger carriage and flight in a single-seat light-sport aircraft only."

■ 27. Amend § 61.51 by:

■ a. Revising paragraphs (c)(1), (e)(1) introductory text, and (e)(1)(i);

■ b. Redesignating paragraph (i)(3) as (i)(4); and

■ c. Adding new paragraphs (i)(3) and (i)(5).

The additions and revisions read as follows:

§ 61.51 Pilot logbooks.

* * * * *

(c) * * *

(1) Apply for a certificate or rating issued under this part or a privilege authorized under this part; or

* * * * *

(e) * * *

(1) A sport, recreational, private, or commercial pilot may log pilot-in-command time only for that flight time during which that person—

(i) Is the sole manipulator of the controls of an aircraft for which the pilot is rated or has privileges;

* * * * *

(i) * * *

(3) A sport pilot must carry his or her logbook or other evidence of required authorized instructor endorsements on all flights.

* * * * *

(5) A flight instructor with a sport pilot rating must carry his or her logbook or other evidence of required authorized instructor endorsements on all flights when providing flight training.

■ 28. Add § 61.52 to read as follows:

§ 61.52 Use of aeronautical experience obtained in ultralight vehicles.

(a) A person may use aeronautical experience obtained in an ultralight vehicle to meet the requirements for the following certificates and ratings issued under this part:

(1) A sport pilot certificate.

(2) A flight instructor certificate with a sport pilot rating;

(3) A private pilot certificate with a weight-shift-control or powered parachute category rating.

(b) A person may use aeronautical experience obtained in an ultralight vehicle to meet the provisions of §§ 61.69 and 61.415(e).

(c) A person using aeronautical experience obtained in an ultralight vehicle to meet the requirements for a certificate or rating specified in paragraph (a) of this section or the requirements of paragraph (b) of this section must—

(1) Have been a registered ultralight pilot with an FAA-recognized ultralight organization when that aeronautical experience was obtained;

(2) Document and log that aeronautical experience in accordance with the provisions for logging aeronautical experience specified by an FAA-recognized ultralight organization and in accordance with provisions for logging pilot time in aircraft as specified in § 61.51; and

(3) Obtain the experience in a category and class of vehicle corresponding to the rating or privileges sought.

■ 29. Amend § 61.53 by adding paragraph (c) to read as follows:

§ 61.53 Prohibition on operations during medical deficiency.

* * * * *

(c) *Operations requiring a medical certificate or a U.S. driver's license.* For operations provided for in § 61.23(c), a person must meet the provisions of—

(1) Paragraph (a) of this section if that person holds a valid medical certificate issued under part 67 of this chapter and does not hold a current and valid U.S. driver's license.

(2) Paragraph (b) of this section if that person holds a current and valid U.S. driver's license.

■ 30. Amend 61.63 by redesignating paragraph (k) as (l), and add new paragraph (k) to read as follows:

§ 61.63 Additional aircraft ratings (other than on an airplane transport pilot certificate).

* * * * *

(k) *Category class ratings for the operation of aircraft with experimental certificates:* Notwithstanding the provisions of paragraphs (b) and (c) of this section, a person holding at least a recreational pilot certificate may apply for a category and class rating limited to a specific make and model of experimental aircraft, provided—

(1) The person has logged at least 5 hours flight time while acting as pilot in command in the same category, class, make, and model of aircraft that has been issued an experimental certificate;

(2) The person has received a logbook endorsement from an authorized instructor who has determined that he or she is proficient to act as pilot in command of the same category, class, make, and model of aircraft for which application is made; and

(3) The flight time specified in paragraph (k)(1) of this section must be logged between September 1, 2004 and August 31, 2005.

* * * * *

■ 31. Revise § 61.69 to read as follows:

§ 61.69 Glider and unpowered ultralight vehicle towing: Experience and training requirements.

(a) No person may act as pilot in command for towing a glider or unpowered ultralight vehicle unless that person—

(1) Holds at least a private pilot certificate with a category rating for powered aircraft;

(2) Has logged at least 100 hours of pilot-in-command time in the aircraft category, class and type, if required, that the pilot is using to tow a glider or unpowered ultralight vehicle;

(3) Has a logbook endorsement from an authorized instructor who certifies that the person has received ground and flight training in gliders or unpowered ultralight vehicles and is proficient in—

(i) The techniques and procedures essential to the safe towing of gliders or unpowered ultralight vehicles, including airspeed limitations;

(ii) Emergency procedures;

(iii) Signals used; and

(iv) Maximum angles of bank.

(4) Except as provided in paragraph (b) of this section, has logged at least three flights as the sole manipulator of the controls of an aircraft towing a glider or unpowered ultralight vehicle simulating towing flight procedures while accompanied by a pilot who meets the requirements of paragraphs (c) and (d) of this section;

(5) Except as provided in paragraph (b) of this section, has received a logbook endorsement from the pilot, described in paragraph (a)(4) of this section, certifying that the person has accomplished at least 3 flights in an aircraft while towing a glider or unpowered ultralight vehicle, or while simulating towing flight procedures; and

(6) Within the preceding 12 months has—

(i) Made at least three actual or simulated tows of a glider or unpowered ultralight vehicle while accompanied by a qualified pilot who meets the requirements of this section; or

(ii) Made at least three flights as pilot in command of a glider or unpowered ultralight vehicle towed by an aircraft.

(b) Any person who, before May 17, 1967, has made and logged 10 or more flights as pilot in command of an aircraft towing a glider or unpowered ultralight vehicle in accordance with a certificate of waiver need not comply with paragraphs (a)(4) and (a)(5) of this section.

(c) The pilot, described in paragraph (a)(4) of this section, who endorses the logbook of a person seeking towing privileges must have—

(1) Met the requirements of this section prior to endorsing the logbook of the person seeking towing privileges; and

(2) Logged at least 10 flights as pilot in command of an aircraft while towing a glider or unpowered ultralight vehicle.

(d) If the pilot described in paragraph (a)(4) of this section holds only a private pilot certificate, then that pilot must have—

(1) Logged at least 100 hours of pilot-in-command time in airplanes, or 200 hours of pilot-in-command time in a combination of powered and other-than-powered aircraft; and

(2) Performed and logged at least three flights within the 12 calendar months preceding the month that pilot accompanies or endorses the logbook of a person seeking towing privileges—

(i) In an aircraft while towing a glider or unpowered ultralight vehicle accompanied by another pilot who meets the requirements of this section; or

(ii) As pilot in command of a glider or unpowered ultralight vehicle being towed by another aircraft.

■ 32. Amend § 61.87 by:

■ a. Adding the words "or privileges" after the word "rating" in the introductory text of paragraphs (d), (g), (i), (j), and (k);

■ b. Redesignating paragraphs (l), (m), and (n) as paragraphs (n), (o) and (p), respectively; and

■ c. Adding paragraphs (l) and (m) to read as follows:

§ 61.87 Solo requirements for student pilots.

* * * * *

(l) *Maneuvers and procedures for pre-solo flight training in a powered parachute.* A student pilot who is receiving training for a powered parachute rating or privileges must receive and log flight training for the following maneuvers and procedures:

(1) Proper flight preparation procedures, including preflight planning and preparation, preflight assembly and rigging, aircraft systems, and powerplant operations.

(2) Taxiing or surface operations, including run-ups.

(3) Takeoffs and landings, including normal and crosswind.,
(4) Straight and level flight, and turns in both directions.
(5) Climbs, and climbing turns in both directions.
(6) Airport traffic patterns, including entry and departure procedures.
(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance.
(8) Descents, and descending turns in both directions.
(9) Emergency procedures and equipment malfunctions.
(10) Ground reference maneuvers.
(11) Straight glides, and gliding turns in both directions.
(12) Go-arounds.
(13) Approaches to landing areas with a simulated engine malfunction.
(14) Procedures for canopy packing and aircraft disassembly.

(m) *Maneuvers and procedures for pre-solo flight training in a weight-shift-control aircraft.* A student pilot who is receiving training for a weight-shift-control aircraft rating or privileges must receive and log flight training for the following maneuvers and procedures:
(1) Proper flight preparation procedures, including preflight planning and preparation, preflight assembly and rigging, aircraft systems, and powerplant operations.
(2) Taxiing or surface operations, including run-ups.
(3) Takeoffs and landings, including normal and crosswind.
(4) Straight and level flight, and turns in both directions.
(5) Climbs, and climbing turns in both directions.
(6) Airport traffic patterns, including entry and departure procedures.
(7) Collision avoidance, windshear avoidance, and wake turbulence avoidance.
(8) Descents, and descending turns in both directions.
(9) Flight at various airspeeds from maximum cruise to slow flight.
(10) Emergency procedures and equipment malfunctions.
(11) Ground reference maneuvers.
(12) Stall entry, stall, and stall recovery.
(13) Straight glides, and gliding turns in both directions.
(14) Go-arounds.
(15) Approaches to landing areas with a simulated engine malfunction.
(16) Procedures for disassembly.

* * * * *

■ 33. Amend § 61.89 by adding paragraph (c) to read as follows:

§ 61.89 General limitations.

* * * * *

(c) A student pilot seeking a sport pilot certificate must comply with the provisions of paragraphs (a) and (b) of this section and may not act as pilot in command—
(1) Of an aircraft other than a light-sport aircraft;
(2) At night;
(3) At an altitude of more than 10,000 feet MSL; and
(4) In Class B, C, and D airspace, at an airport located in Class B, C, or D airspace, and to, from, through, or on an airport having an operational control tower without having received the ground and flight training specified in § 61.94 and an endorsement from an authorized instructor.

■ 34. Amend § 61.93 by adding paragraphs (l) and (m) to read as follows:

§ 61.93 Solo cross-country flight requirements.

* * * * *

(l) *Maneuvers and procedures for cross-country flight training in a powered parachute.* A student pilot who is receiving training for cross-country flight in a powered parachute must receive and log flight training in the following maneuvers and procedures:
(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass, as appropriate.
(2) Use of aircraft performance charts pertaining to cross-country flight.
(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognizing critical weather situations and estimating visibility while in flight.
(4) Emergency procedures.
(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach.
(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance.
(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown.
(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications.
(9) If equipped for flight with navigation radios, the use of radios for VFR navigation.
(10) Recognition of weather and upper air conditions favorable for the cross-country flight.
(11) Takeoff, approach and landing procedures.

(m) *Maneuvers and procedures for cross-country flight training in a weight-shift-control aircraft.* A student pilot who is receiving training for cross-country flight in a weight-shift-control aircraft must receive and log flight training for the following maneuvers and procedures:
(1) Use of aeronautical charts for VFR navigation using pilotage and dead reckoning with the aid of a magnetic compass, as appropriate.
(2) Use of aircraft performance charts pertaining to cross-country flight.
(3) Procurement and analysis of aeronautical weather reports and forecasts, including recognizing critical weather situations and estimating visibility while in flight.
(4) Emergency procedures.
(5) Traffic pattern procedures that include area departure, area arrival, entry into the traffic pattern, and approach.
(6) Procedures and operating practices for collision avoidance, wake turbulence precautions, and windshear avoidance.
(7) Recognition, avoidance, and operational restrictions of hazardous terrain features in the geographical area where the cross-country flight will be flown.
(8) Procedures for operating the instruments and equipment installed in the aircraft to be flown, including recognition and use of the proper operational procedures and indications.
(9) If equipped for flight using navigation radios, the use of radios for VFR navigation.
(10) Recognition of weather and upper air conditions favorable for the cross-country flight.
(11) Takeoff, approach and landing procedures, including crosswind approaches and landings.

■ 35. Add § 61.94 to read as follows:

§ 61.94 Student pilot seeking a sport pilot certificate or a recreational pilot certificate: Operations at airports within, and in airspace located within, Class B, C, and D airspace, or at airports with an operational control tower in other airspace.

(a) A student pilot seeking a sport pilot certificate or a recreational pilot certificate who wants to obtain privileges to operate in Class B, C, and D airspace, at an airport located in Class B, C, or D airspace, and to, from, through, or at an airport having an operational control tower, must receive and log ground and flight training from an authorized instructor in the following aeronautical knowledge areas and areas of operation:
(1) The use of radios, communications, navigation systems and facilities, and radar services.
(2) Operations at airports with an operating control tower, to include three

takeoffs and landings to a full stop, with each landing involving a flight in the traffic pattern, at an airport with an operating control tower.

(3) Applicable flight rules of part 91 of this chapter for operations in Class B, C, and D airspace and air traffic control clearances.

(4) Ground and flight training for the specific Class B, C, or D airspace for which the solo flight is authorized, if applicable, within the 90-day period preceding the date of the flight in that airspace. The flight training must be received in the specific airspace area for which solo flight is authorized.

(5) Ground and flight training for the specific airport located in Class B, C, or D airspace for which the solo flight is authorized, if applicable, within the 90-day period preceding the date of the flight at that airport. The flight and ground training must be received at the specific airport for which solo flight is authorized.

(b) The authorized instructor who provides the training specified in paragraph (a) of this section must provide a logbook endorsement that certifies the student has received that training and is proficient to conduct solo flight in that specific airspace or at that specific airport and in those aeronautical knowledge areas and areas of operation specified in this section.

■ 36. Amend § 61.95 by adding paragraph (c) to read as follows:

§ 61.95 Operations in Class B airspace and at airports located within Class B airspace.

* * * * *

(c) This section does not apply to a student pilot seeking a sport pilot certificate or a recreational pilot certificate.

■ 37. Amend § 61.99 by revising the introductory text to read as follows:

§ 61.99 Aeronautical experience.

A person who applies for a recreational pilot certificate must receive and log at least 30 hours of flight time that includes at least—

* * * * *

■ 38. Amend § 61.101 by:

■ a. Revising paragraph (b) introductory text and paragraph (c) introductory text;

■ b. Redesignating paragraphs (d) through (i) as paragraphs (e) through (j), respectively;

■ c. Revising redesignated paragraphs (e) introductory text, (e)(1), (e)(2), (e)(7), (e)(11), and (e)(12); and

■ d. Adding new paragraph (d).

■ The addition and revisions read as follows:

§ 61.101 Recreational pilot privileges and limits.

* * * * *

(b) A person who holds a current and valid recreational pilot certificate may act as pilot in command of an aircraft on a flight within 50 nautical miles from the departure airport, provided that person has—

* * * * *

(c) A person who holds a current and valid recreational pilot certificate may act as pilot in command of an aircraft on a flight that exceeds 50 nautical miles from the departure airport, provided that person has—

* * * * *

(d) A person who holds a current and valid recreational pilot certificate may act as pilot in command of an aircraft in Class B, C, and D airspace, at an airport located in Class B, C, or D airspace, and to, from, through, or at an airport having an operational control tower, provided that person has—

(1) Received and logged ground and flight training from an authorized instructor on the following aeronautical knowledge areas and areas of operation, as appropriate to the aircraft rating held:

(i) The use of radios, communications, navigation system and facilities, and radar services.

(ii) Operations at airports with an operating control tower to include three takeoffs and landings to a full stop, with each landing involving a flight in the traffic pattern at an airport with an operating control tower.

(iii) Applicable flight rules of part 91 of this chapter for operations in Class B, C, and D airspace and air traffic control clearances;

(2) Been found proficient in those aeronautical knowledge areas and areas of operation specified in paragraph (d)(1) of this section; and

(3) Received from an authorized instructor a logbook endorsement, which is carried on the person's possession or readily accessible in the aircraft, that certifies the person has received and been found proficient in those aeronautical knowledge areas and areas of operation specified in paragraph (d)(1) of this section.

(e) Except as provided in paragraphs (d) and (i) of this section, a recreational pilot may not act as pilot in command of an aircraft—

(1) That is certificated—

(i) For more than four occupants;

(ii) With more than one powerplant;

(iii) With a powerplant of more than 180 horsepower; or

(iv) With retractable landing gear;

(2) That is classified as a multiengine airplane, powered-lift, glider, airship, balloon, powered parachute, or weight-shift-control aircraft;

* * * * *

(7) In Class A, B, C, and D airspace, at an airport located in Class B, C, or D airspace, or to, from, through, or at an airport having an operational control tower;

* * * * *

(11) On a flight outside the United States, unless authorized by the country in which the flight is conducted;

(12) To demonstrate that aircraft in flight as an aircraft salesperson to a prospective buyer;

* * * * *

■ 39. Amend § 61.107 by adding paragraphs (b)(9) and (b)(10) to read as follows:

§ 61.107 Flight proficiency.

* * * * *

(b) * * *

(9) For a powered parachute category rating—

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and seaplane base operations, as applicable;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Night operations, except as provided in § 61.110;

(ix) Emergency operations; and

(x) Post-flight procedures.

(10) For a weight-shift-control aircraft category rating—

(i) Preflight preparation;

(ii) Preflight procedures;

(iii) Airport and seaplane base operations, as applicable;

(iv) Takeoffs, landings, and go-arounds;

(v) Performance maneuvers;

(vi) Ground reference maneuvers;

(vii) Navigation;

(viii) Slow flight and stalls;

(ix) Night operations, except as provided in § 61.110;

(x) Emergency operations; and

(xi) Post-flight procedures.

■ 40. Amend § 61.109 by:

■ a. Revising the reference to "paragraph (i)" to read "paragraph (k)" in the introductory text of paragraphs (a), (b), (c), (d), and (e);

■ b. Redesignating paragraph (i) as paragraph (k) and revising the reference to "paragraph (i)(2)" to read "paragraph (k)(2)" in redesignated paragraph (k)(1); and

■ c. Adding new paragraphs (i) and (j).

The additions and revisions read as follows:

§ 61.109 Aeronautical experience.

* * * * *

(i) *For a powered parachute rating.* A person who applies for a private pilot

certificate with a powered parachute category rating must log at least 25 hours of flight time in a powered parachute that includes at least 10 hours of flight training with an authorized instructor, including 30 takeoffs and landings, and 10 hours of solo flight training in the areas of operation listed in § 61.107 (b)(9) and the training must include at least—

(1) One hour of cross-country flight training in a powered parachute that includes a 1-hour cross-country flight with a landing at an airport at least 25 nautical miles from the airport of departure;

(2) Except as provided in § 61.110, 3 hours of night flight training in a powered parachute that includes 10 takeoffs and landings (with each landing involving a flight in the traffic pattern) at an airport;

(3) Three hours of flight training in preparation for the practical test in a powered parachute, which must have been performed within the 60-day period preceding the date of the test; and

(4) Three hours of solo flight time in a powered parachute, consisting of at least—

(i) One solo cross-country flight with a landing at an airport at least 25 nautical miles from the departure airport; and

(ii) Twenty solo takeoffs and landings to a full stop (with each landing involving a flight in a traffic pattern) at an airport, with at least 3 takeoffs and landings at an airport with an operating control tower.

(j) *For a weight-shift-control aircraft rating.* A person who applies for a private pilot certificate with a weight-shift-control rating must log at least 40 hours of flight time that includes at least 20 hours of flight training with an authorized instructor and 10 hours of solo flight training in the areas listed in § 61.107(b)(10) and the training must include at least—

(1) Three hours of cross-country flight training in a weight-shift-control aircraft;

(2) Except as provided in § 61.110, 3 hours of night flight training in a weight-shift-control aircraft that includes—

(i) One cross-country flight over 75 nautical miles total distance; and

(ii) Ten takeoffs and landings (with each landing involving a flight in the traffic pattern) at an airport;

(3) Three hours of flight training in preparation for the practical test in a weight-shift-control aircraft, which must have been performed within the 60-day period preceding the date of the test; and

(4) Ten hours of solo flight time in a weight-shift-control aircraft, consisting of at least—

(i) Five hours of solo cross-country time;

(ii) One solo cross-country flight over 100 nautical miles total distance, with landings at a minimum of three points, and one segment of the flight being a straight line distance of at least 50 nautical miles between takeoff and landing locations; and

(iii) Three takeoffs and landings (with each landing involving a flight in the traffic pattern) at an airport with an operating control tower.

* * * * *

■ 41. Amend § 61.110 by adding paragraph (c) to read as follows:

§ 61.110 Night flying exceptions.

* * * * *

(c) A person who does not meet the night flying requirements in § 61.109(d)(2), (i)(2), or (j)(2) may be issued a private pilot certificate with the limitation "Night flying prohibited." This limitation may be removed by an examiner if the holder complies with the requirements of § 61.109(d)(2), (i)(2), or (j)(2), as appropriate.

■ 42. Amend § 61.113 by revising paragraph (g) to read as follows:

§ 61.113 Private pilot privileges and limitations: Pilot in command.

* * * * *

(g) A private pilot who meets the requirements of § 61.69 may act as a pilot in command of an aircraft towing a glider or unpowered ultralight vehicle.

■ 43. Amend 61.165 by adding paragraph (f) to read as follows:

§ 61.165 Additional aircraft category and class ratings.

* * * * *

(f) *Category class ratings for the operation of aircraft with experimental certificates.* Notwithstanding the provisions of paragraphs (a) through (e) of this section, a person holding an airline transport certificate may apply for a category and class rating limited to a specific make and model of experimental aircraft, provided—

(1) The person has logged at least 5 hours flight time while acting as pilot in command in the same category, class, make, and model of aircraft that has been issued an experimental certificate;

(2) The person has received a logbook endorsement from an authorized instructor who has determined that he or she is proficient to act as pilot in command of the same category, class, make, and model of aircraft for which application is made; and

(3) The flight time specified in paragraph (f)(1) of this section must be logged between September 1, 2004 and August 31, 2005.

Subpart H—Flight Instructors Other Than Flight Instructors With a Sport Pilot Rating

■ 44. Revise the heading of subpart H to read as set forth above.

■ 45. Revise § 61.181 to read as follows:

§ 61.181 Applicability.

This subpart prescribes the requirements for the issuance of flight instructor certificates and ratings (except for flight instructor certificates with a sport pilot rating), the conditions under which those certificates and ratings are necessary, and the limitations on those certificates and ratings.

■ 46. Amend § 61.213 by revising paragraphs (a)(4)(i) and (a)(4)(ii) to read as follows:

§ 61.213 Eligibility requirements.

(a) * * *

(4) * * *

(i) For a basic ground instructor rating §§ 61.97, 61.105, and 61.309;

(ii) For an advanced ground instructor rating §§ 61.97, 61.105, 61.125, 61.155, and 61.309; and

* * * * *

■ 47. Amend § 61.215 by revising paragraph (a) to read as follows:

§ 61.215 Ground instructor privileges.

(a) A person who holds a basic ground instructor rating is authorized to provide—

(1) Ground training in the aeronautical knowledge areas required for the issuance of a sport pilot certificate, recreational pilot certificate, private pilot certificate, or associated ratings under this part;

(2) Ground training required for a sport pilot, recreational pilot, and private pilot flight review; and

(3) A recommendation for a knowledge test required for the issuance of a sport pilot certificate, recreational pilot certificate, or private pilot certificate under this part.

* * * * *

■ 48. Amend part 61 by adding subpart J to read as follows:

Subpart J—Sport Pilots

Sec.

61.301 What is the purpose of this subpart and to whom does it apply?
61.303 If I want to operate a light-sport aircraft, what operating limits and endorsement requirements in this subpart must I comply with?
61.305 What are the age and language requirements for a sport pilot certificate?
61.307 What tests do I have to take to obtain a sport pilot certificate?

61.309 What aeronautical knowledge must I have to apply for a sport pilot certificate?
61.311 What flight proficiency requirements must I meet to apply for a sport pilot certificate?
61.313 What aeronautical experience must I have to apply for a sport pilot certificate?
61.315 What are the privileges and limits of my sport pilot certificate?
61.317 Is my sport pilot certificate issued with aircraft category and class ratings?
61.319 Can I operate a make and model of aircraft other than the make and model for which I have received an endorsement?
61.321 How do I obtain privileges to operate an additional category or class of light-sport aircraft?
61.323 How do I obtain privileges to operate a make and model of lights-port aircraft in the same category and class within a different set of aircraft?
61.325 How do I obtain privileges to operate a light-sport aircraft at an airport within, or in airspace within, Class B, C, and D airspace, or in other airspace with an airport having an operational control tower?
61.327 How do I obtain privileges to operate a light-sport aircraft that has a VH greater than 87 knots CAS?
61.329 Are there special provisions for obtaining a sport pilot certificate for persons who are registered ultralight pilots with an FAA-recognized ultralight organization?

§ 61.301 What is the purpose of this subpart and to whom does it apply?

(a) This subpart prescribes the following requirements that apply to a sport pilot certificate:

(1) Eligibility.
(2) Aeronautical knowledge.
(3) Flight proficiency.
(4) Aeronautical experience.
(5) Endorsements.
(6) Privileges and limits.
(7) Transition provisions for registered ultralight pilots.

(b) Other provisions of this part apply to the logging of flight time and testing.

(c) This subpart applies to applicants for, and holders of, sport pilot certificates. It also applies to holders of recreational pilot certificates and higher, as provided in § 61.303.

§ 61.303 If I want to operate a light-sport aircraft, what operating limits and endorsement requirements in this subpart must I comply with?

(a) Use the following table to determine what operating limits and endorsement requirements in this subpart, if any, apply to you when you operate a light-sport aircraft. The medical certificate specified in this table must be valid. If you hold a recreational pilot certificate, but not a medical certificate, you must comply with cross-country requirements in § 61.101 (c), even if your flight does not exceed 50 nautical miles from your departure airport. You must also comply with requirements in other subparts of this part that apply to your certificate and the operation you conduct.

If you hold	And you hold	Then you may operate	And
(1) A medical certificate	(i) A sport pilot certificate,	(A) Any light sport aircraft for which you hold the endorsements required for its category, class, make and model,	(*1*) You must hold any other endorsements required by this subpart, and comply with the limitations in § 61.315.
	(ii) At least a recreational pilot certificate with a category and class rating,	(A) Any light sport aircraft in that category and class,	(*1*) You do not have to hold any of the endorsements required by this subpart, nor do you have to comply with the limitations in § 61.315.
	(iii) At least a recreational pilot certificate but not a rating for the category and class of light sport aircraft you operate,	(A) That light sport aircraft, only if you hold the endorsements required in § 61.321 for its category and class,	(*1*) You must comply with the limitations in § 61.315, except § 61.315(c)(14) and, if a private pilot or higher, § 61.315(c)(7).
(2) Only a U.S. driver's license	(i) A sport pilot certificate,	(A) Any light sport aircraft for which you hold the endorsements required for its category, class, make and model,	(*1*) You must hold any other endorsements required by this subpart, and comply with the limitations in § 61.315.
	(ii) At least a recreational pilot certificate with a category and class rating,	(A) Any light sport aircraft in that category and class,	(*1*) You do not have to hold any of the endorsements required by this subpart, but you must comply with the limitations in § 61.315.
	(iii) At least a recreational pilot certificate but not a rating for the category and class of light-sport aircraft you operate,	(A) That light sport aircraft, only if you hold the endorsements required in § 61.321 for its category and class,	(*1*) You must comply with the limitations in § 61.315, except § 61.315(c)(14) and, if a private pilot or higher, § 61.315(c)(7).
(3) Neither a medical certificate nor a U.S. driver's license	(i) A sport pilot certificate,	(A) Only a light sport glider or balloon for which you hold the endorsements required for its category, class, make and model,	(*1*) You must hold any other endorsements required by this subpart, and comply with the limitations in § 61.315.
	(ii) At least a private pilot certificate with a category and class rating for glider or balloon,	(A) Only a light sport glider or balloon in that category and class,	(*1*) You do not have to hold any of the endorsements required by this subpart, but you must comply with the limitations in § 61.315.
	(iii) At least a private pilot certificate but not a rating for glider or balloon,	(A) Only a light sport glider or balloon, if you hold the endorsements required in § 61.321 for its category and class,	(*1*) You must comply with the limitations in § 61.315, except § 61.315(c)(14) and, if a private pilot or higher, § 61.315(c)(7).

(b) A person using a current and valid U.S. driver's license to meet the requirements of this paragraph must—

(1) Comply with each restriction and limitation imposed by that person's U.S. driver's license and any judicial or administrative order applying to the operation of a motor vehicle;

(2) Have been found eligible for the issuance of at least a third-class airman medical certificate at the time of his or her most recent application (if the person has applied for a medical certificate);

(3) Not have had his or her most recently issued medical certificate (if the person has held a medical certificate) suspended or revoked or most recent Authorization for a Special Issuance of a Medical Certificate withdrawn; and

(4) Not know or have reason to know of any medical condition that would make that person unable to operate a light-sport aircraft in a safe manner.

§ 61.305 What are the age and language requirements for a sport pilot certificate?

(a) To be eligible for a sport pilot certificate you must:

(1) Be at least 17 years old (or 16 years old if you are applying to operate a glider or balloon).

(2) Be able to read, speak, write, and understand English. If you cannot read, speak, write, and understand English because of medical reasons, the FAA may place limits on your certificate as are necessary for the safe operation of light-sport aircraft.

§ 61.307 What tests do I have to take to obtain a sport pilot certificate?

To obtain a sport pilot certificate, you must pass the following tests:

(a) *Knowledge test.* You must pass a knowledge test on the applicable aeronautical knowledge areas listed in § 61.309. Before you may take the knowledge test for a sport pilot certificate, you must receive a logbook endorsement from the authorized instructor who trained you or reviewed and evaluated your home-study course on the aeronautical knowledge areas listed in § 61.309 certifying you are prepared for the test.

(b) *Practical test.* You must pass a practical test on the applicable areas of operation listed in §§ 61.309 and 61.311. Before you may take the practical test for a sport pilot certificate, you must receive a logbook endorsement from the authorized instructor who provided you with flight training on the areas of operation specified in §§ 61.309 and 61.311 in preparation for the practical test. This endorsement certifies that you meet the applicable aeronautical knowledge and experience requirements and are prepared for the practical test.

§ 61.309 What aeronautical knowledge must I have to apply for a sport pilot certificate?

Except as specified in § 61.329, to apply for a sport pilot certificate you must receive and log ground training from an authorized instructor or complete a home-study course on the following aeronautical knowledge areas:

(a) Applicable regulations of this chapter that relate to sport pilot privileges, limits, and flight operations.

(b) Accident reporting requirements of the National Transportation Safety Board.

(c) Use of the applicable portions of the aeronautical information manual and FAA advisory circulars.

(d) Use of aeronautical charts for VFR navigation using pilotage, dead reckoning, and navigation systems, as appropriate.

(e) Recognition of critical weather situations from the ground and in flight, windshear avoidance, and the procurement and use of aeronautical weather reports and forecasts.

(f) Safe and efficient operation of aircraft, including collision avoidance, and recognition and avoidance of wake turbulence.

(g) Effects of density altitude on takeoff and climb performance.

(h) Weight and balance computations.

(i) Principles of aerodynamics, powerplants, and aircraft systems.

(j) Stall awareness, spin entry, spins, and spin recovery techniques, as applicable.

(k) Aeronautical decision making and risk management.

(l) Preflight actions that include—

(1) How to get information on runway lengths at airports of intended use, data on takeoff and landing distances, weather reports and forecasts, and fuel requirements; and

(2) How to plan for alternatives if the planned flight cannot be completed or if you encounter delays.

§ 61.311 What flight proficiency requirements must I meet to apply for a sport pilot certificate?

Except as specified in § 61.329, to apply for a sport pilot certificate you must receive and log ground and flight training from an authorized instructor on the following areas of operation, as appropriate, for airplane single-engine land or sea, glider, gyroplane, airship, balloon, powered parachute land or sea, and weight-shift-control aircraft land or sea privileges:

(a) Preflight preparation.

(b) Preflight procedures.

(c) Airport, seaplane base, and gliderport operations, as applicable.

(d) Takeoffs (or launches), landings, and go-arounds.

(e) Performance maneuvers, and for gliders, performance speeds.

(f) Ground reference maneuvers (not applicable to gliders and balloons).

(g) Soaring techniques (applicable only to gliders).

(h) Navigation.

(i) Slow flight (not applicable to lighter-than-air aircraft and powered parachutes).

(j) Stalls (not applicable to lighter-than-air aircraft, gyroplanes, and powered parachutes).

(k) Emergency operations.

(l) Post-flight procedures.

§ 61.313 What aeronautical experience must I have to apply for a sport pilot certificate?

Except as specified in § 61.329, use the following table to determine the aeronautical experience you must have to apply for a sport pilot certificate:

If you are applying for a sport pilot certificate with . . .	Then you must log at least . . .	Which must include at least . . .
(a) Airplane category and single-engine land or sea class privileges,	(1) 20 hours of flight time, including at least 15 hours of flight training from an authorized instructor in a single-engine airplane and at least 5 hours of solo flight training in the areas of operation listed in §61.311,	(i) 2 hours of cross-country flight training, (ii) 10 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport, (iii) One solo cross-country flight of at least 75 nautical miles total distance, with a full-stop landing at a minimum of two points and one segment of the flight consisting of a straight-line distance of at least 25 nautical miles between the takeoff and landing locations, and (iv) 3 hours of flight training on those areas of operation specified in §61.311 preparing for the practical test within 60 days before the date of the test.
(b) Glider category privileges, and you have not logged at least 20 hours of flight time in a heavier-than-air aircraft,	(1) 10 hours of flight time in a glider, including 10 flights in a glider receiving flight training from an authorized instructor and at least 2 hours of solo flight training in the areas of operation listed in §61.311,	(i) Five solo launches and landings, and (ii) 3 hours of flight training on those areas of operation specified in §61.311 preparing for the practical test within 60 days before the date of the test.
(c) Glider category privileges, and you have logged 20 hours flight time in a heavier-than-air aircraft,	(1) 3 hours of flight time in a glider, including five flights in a glider while receiving flight training from an authorized instructor and at least 1 hour of solo flight training in the areas of operation listed in §61.311,	(i) Three solo launches and landings, and (ii) 3 hours of flight training on those areas of operation specified in §61.311, preparing for the practical test within 60 days before the date of the test.
(d) Rotorcraft category and gyroplane class privileges,	(1) 20 hours of flight time, including 15 hours of flight training from an authorized instructor in a gyroplane and at least 5 hours of solo flight training in the areas of operation listed in §61.311,	(i) 2 hours of cross-country flight training, (ii) 10 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport, (iii) One solo cross-country flight of at least 50 nautical miles total distance, with a full-stop landing at a minimum of two points, and one segment of the flight consisting of a straight-line distance of at least 25 nautical miles between the takeoff and landing locations, and (iv) 3 hours of flight training on those areas of operation specified in §61.311 preparing for the practical test within 60 days before the date of the test.
(e) Lighter-than-air category and airship class privileges,	(1) 20 hours of flight time, including 15 hours of flight training from an authorized instructor in an airship and at least 3 hours performing the duties of pilot in command in an airship with an authorized instructor in the areas of operation listed in §61.311,	(i) 2 hours of cross-country flight training, (ii) Three takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport, (iii) One cross-country flight of at least 25 nautical miles between the takeoff and landing locations, and (iv) 3 hours of flight training on those areas of operation specified in §61.311 preparing for the practical test within 60 days before the date of the test.
(f) Lighter-than-air category and balloon class privileges,	(1) 7 hours of flight time in a balloon, including three flights with an authorized instructor and one flight performing the duties of pilot in command in a balloon with an authorized instructor in the areas of operation listed in §61.311,	(i) 2 hours of cross-country flight training, and (ii) 3 hours of flight training on those areas of operation specified in §61.311 preparing for the practical test within 60 days before the date of the test.

If you are applying for a sport pilot certificate with . . .	Then you must log at least . . .	Which must include at least . . .
(g) Powered parachute category land or sea class privileges,	(1) 12 hours of flight time in a powered parachute, including 10 hours flight training and, and at least 2 hours solo flight training in the areas of operation listed in § 61.311.	(i) 1 hour of cross-country flight training, (ii) 20 takeoffs and landings to a full stop in a powered parachute with each landing involving flight in the traffic pattern at an airport; (iii) 10 solo takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport, (iv) One solo flight with a landing at a different airport and one segment of the flight consisting of a straight-line distance of at least 10 nautical miles between takeoff and landing locations, and (v) 3 hours of flight training on those areas of operation specified in § 61.311 preparing for the practical test within 60 days before the date of the test.
(h) Weight-shift-control aircraft category land or sea class privileges,	(1) 20 hours of light time, including 15 hours of flight training from an authorized instructor in a weight-shift-control aircraft and at least 5 hours of solo flight training in the areas of operation listed in § 61.311,	(i) 2 hours of cross-country flight training, (ii) 10 takeoffs and landings to a full stop (with each landing involving a flight in the traffic pattern) at an airport, (iii) One solo cross-country flight of at least 50 nautical miles total distance, with a full-stop landing at a minimum of two points, and one segment of the flight consisting of a straight-line distance of at least 25 nautical miles between takeoff and landing locations, and (iv) 3 hours of flight training on those areas of operation specified in § 61.311 preparing for the practical test within 60 days before the date of the test.

§ 61.315 What are the privileges and limits of my sport pilot certificate?

(a) If you hold a sport pilot certificate you may act as pilot in command of a light-sport aircraft, except as specified in paragraph (c) of this section.

(b) You may share the operating expenses of a flight with a passenger, provided the expenses involve only fuel, oil, airport expenses, or aircraft rental fees. You must pay at least half the operating expenses of the flight.

(c) You may not act as pilot in command of a light-sport aircraft:

(1) That is carrying a passenger or property for compensation or hire.

(2) For compensation or hire.

(3) In furtherance of a business.

(4) While carrying more than one passenger.

(5) At night.

(6) In Class A airspace.

(7) In Class B, C, and D airspace, at an airport located in Class B, C, or D airspace, and to, from, through, or at an airport having an operational control tower unless you have met the requirements specified in § 61.325.

(8) Outside the United States, unless you have prior authorization from the country in which you seek to operate. Your sport pilot certificate carries the limit "Holder does not meet ICAO requirements."

(9) To demonstrate the aircraft in flight to a prospective buyer if you are an aircraft salesperson.

(10) In a passenger-carrying airlift sponsored by a charitable organization.

(11) At an altitude of more than 10,000 feet MSL.

(12) When the flight or surface visibility is less than 3 statute miles.

(13) Without visual reference to the surface.

(14) If the aircraft has a V_H that exceeds 87 knots CAS, unless you have met the requirements of § 61.327.

(15) Contrary to any operating limitation placed on the airworthiness certificate of the aircraft being flown.

(16) Contrary to any limit or endorsement on your pilot certificate, airman medical certificate, or any other limit or endorsement from an authorized instructor.

(17) Contrary to any restriction or limitation on your U.S. driver's license or any restriction or limitation imposed by judicial or administrative order when using your driver's license to satisfy a requirement of this part.

(18) While towing any object.

(19) As a pilot flight crewmember on any aircraft for which more than one pilot is required by the type certificate of the aircraft or the regulations under which the flight is conducted.

§ 61.317 Is my sport pilot certificate issued with aircraft category and class ratings?

Your sport pilot certificate does not list aircraft category and class ratings. When you successfully pass the practical test for a sport pilot certificate, regardless of the light-sport aircraft privileges you seek, the FAA will issue you a sport pilot certificate without any category and class ratings. The FAA will provide you with a logbook endorsement for the category, class, and make and model of aircraft in which you are authorized to act as pilot in command.

§ 61.319 Can I operate a make and model of aircraft other than the make and model aircraft for which I have received an endorsement?

If you hold a sport pilot certificate you may operate any make and model of light-sport aircraft in the same category and class and within the same set of aircraft as the make and model of aircraft for which you have received an endorsement.

§ 61.321 How do I obtain privileges to operate an additional category or class of light-sport aircraft?

If you hold a sport pilot certificate and seek to operate an additional category or class of light-sport aircraft, you must—

(a) Receive a logbook endorsement from the authorized instructor who trained you on the applicable aeronautical knowledge areas specified in § 61.309 and areas of operation specified in § 61.311. The endorsement certifies you have met the aeronautical knowledge and flight proficiency requirements for the additional light-sport aircraft privilege you seek;

(b) Successfully complete a proficiency check from an authorized instructor other than the instructor who trained you on the aeronautical knowledge areas and areas of operation specified in §§ 61.309 and 61.311 for the additional light-sport aircraft privilege you seek;

(c) Complete an application for those privileges on a form and in a manner acceptable to the FAA and present this application to the authorized instructor who conducted the proficiency check specified in paragraph (b) of this section; and

(d) Receive a logbook endorsement from the instructor who conducted the proficiency check specified in paragraph (b) of this section certifying you are proficient in the applicable areas of operation and aeronautical knowledge areas, and that you are authorized for the additional category and class light-sport aircraft privilege.

§ 61.323 How do I obtain privileges to operate a make and model of light-sport aircraft in the same category and class within a different set of aircraft?

If you hold a sport pilot certificate and seek to operate a make and model of light-sport aircraft in the same category and class but within a different set of aircraft as the make and model of aircraft for which you have received an endorsement, you must—

(a) Receive and log ground and flight training from an authorized instructor in a make and model of light-sport aircraft that is within the same set of aircraft as the make and model of aircraft you intend to operate;

(b) Receive a logbook endorsement from the authorized instructor who provided you with the aircraft specific training specified in paragraph (a) of this section certifying you are proficient to operate the specific make and model of light-sport aircraft.

§ 61.325 How do I obtain privileges to operate a light-sport aircraft at an airport within, or in airspace within, Class B, C, and D airspace, or in other airspace with an airport having an operational control tower?

If you hold a sport pilot certificate and seek privileges to operate a light-sport aircraft in Class B, C, or D airspace, at an airport located in Class B, C, or D airspace, or to, from, through, or at an airport having an operational control tower, you must receive and log ground and flight training. The authorized instructor who provides this training must provide a logbook endorsement that certifies you are proficient in the following aeronautical knowledge areas and areas of operation:

(a) The use of radios, communications, navigation system/facilities, and radar services.

(b) Operations at airports with an operating control tower to include three takeoffs and landings to a full stop, with each landing involving a flight in the traffic pattern, at an airport with an operating control tower.

(c) Applicable flight rules of part 91 of this chapter for operations in Class B, C, and D airspace and air traffic control clearances.

§ 61.327 How do I obtain privileges to operate a light-sport aircraft that has a V_H greater than 87 knots CAS?

If you hold a sport pilot certificate and you seek to operate a light-sport aircraft that has a V_H greater than 87 knots CAS you must—

(a) Receive and log ground and flight training from an authorized instructor in an aircraft that has a V_H greater than 87 knots CAS; and

(b) Receive a logbook endorsement from the authorized instructor who provided the training specified in paragraph (a) of this section certifying that you are proficient in the operation of light-sport aircraft with a V_H greater than 87 knots CAS.

§ 61.329 Are there special provisions for obtaining a sport pilot certificate for persons who are registered ultralight pilots with an FAA-recognized ultralight organization?

(a) If you are a registered ultralight pilot with an FAA-recognized ultralight organization use the following table to determine how to obtain a sport pilot certificate.

If you are . . .	Then you must . . .
(1) A registered ultralight pilot with an FAA-recognized ultralight organization on or before September 1, 2004, and you want to apply for a sport pilot certificate	(i) Not later than January 31, 2007— (A) Meet the eligibility requirements in §§ 61.305 and 61.23, but not the aeronautical knowledge requirements specified in § 61.309, the flight proficiency requirements specified in § 61.311, and the aeronautical experience requirements specified in § 61.313, (B) Pass the knowledge test for a sport pilot certificate specified in § 61.307 or the knowledge test for a flight instructor certificate with a sport pilot rating specified in § 61.405, (C) Pass the practical test for a sport pilot certificate specified in § 61.307, (D) Provide the FAA with a certified copy of your ultralight pilot records from an FAA-recognized ultralight organization, and those records must (*1*) Document that you are a registered ultralight pilot with that FAA-recognized ultralight organization, and (*2*) Indicate that you are recognized to operate each category and class of aircraft for which you seek sport pilot privileges.
(2) A registered ultralight pilot with an FAA-recognized ultralight organization after September 1, 2004, and you want to apply for a sport pilot certificate	(i) Meet the eligibility requirements in §§ 61.305 and 61.23, (ii) Meet the aeronautical knowledge requirements specified in § 61.309, the flight proficiency requirements specified in § 61.311, and aeronautical experience requirements specified in § 61.313; however, you may credit your ultralight aeronautical experience in accordance with § 61.52 toward the requirements in §§ 61.309, 61.311, and 61.313,

If you are . . .	Then you must . . .
	(iii) Pass the knowledge and practical tests for a sport pilot certificate specified in § 61.307, and (iv) Provide the FAA with a certified copy of your ultralight pilot records from an FAA-recognized ultralight organization, and those records must (A) Document that you are a registered ultralight pilot with that FAA-recognized ultralight organization, and (B) Indicate that you are recognized to operate the category and class of aircraft for which you seek sport pilot privileges.

(b) When you successfully pass the practical test for a sport pilot certificate, the FAA will issue you a sport pilot certificate without any category and class ratings. The FAA will provide you with a logbook endorsement for the category, class, and make and model of aircraft in which you have successfully passed the practical test and for which you are authorized to act as pilot in command. If you meet the provisions of paragraph (a)(1) of this section, the FAA will provide you with a logbook endorsement for each category, class, and make and model of aircraft listed on the ultralight pilot records you provide to the FAA.

■ 49. Amend part 61 by adding subpart K to read as follows:

Subpart K—Flight Instructors With a Sport Pilot Rating

Sec.

61.401 What is the purpose of this subpart?
61.403 What are the age, language, and pilot certificate requirements for a flight instructor certificate with a sport pilot rating?
61.405 What tests do I have to take to obtain a flight instructor certificate with a sport pilot rating?
61.407 What aeronautical knowledge must I have to apply for a flight instructor certificate with a sport pilot rating?
61.409 What flight proficiency requirements must I meet to apply for a flight instructor certificate with a sport pilot rating?
61.411 What aeronautical experience must I have to apply for a flight instructor certificate with a sport pilot rating?
61.413 What are the privileges of my flight instructor certificate with a sport pilot rating?
61.415 What are the limits of a flight instructor certificate with a sport pilot rating?
61.417 Will my flight instructor certificate with a sport pilot rating list aircraft category and class ratings?
61.419 How do I obtain privileges to provide training in an additional category or class of light-sport aircraft?
61.421 May I give myself an endorsement?
61.423 What are the recordkeeping requirements for a flight instructor with a sport pilot rating?
61.425 How do I renew my flight instructor certificate?
61.427 What must I do if my flight instructor certificate with a sport pilot rating expires?
61.429 May I exercise the privileges of a flight instructor certificate with a sport pilot rating if I hold a flight instructor certificate with another rating?
61.431 Are there special provisions for obtaining a flight instructor certificate with a sport pilot rating for persons who are registered ultralight instructors with an FAA-recognized ultralight organization?

§ 61.401 What is the purpose of this subpart?

(a) This part prescribes the following requirements that apply to a flight instructor certificate with a sport pilot rating:

(1) Eligibility.
(2) Aeronautical knowledge.
(3) Flight proficiency.
(4) Endorsements.
(5) Privileges and limits.
(6) Transition provisions for registered ultralight flight instructors.

(b) Other provisions of this part apply to the logging of flight time and testing.

§ 61.403 What are the age, language, and pilot certificate requirements for a flight instructor certificate with a sport pilot rating?

To be eligible for a flight instructor certificate with a sport pilot rating you must:

(a) Be at least 18 years old.

(b) Be able to read, speak, write, and understand English. If you cannot read, speak, write, and understand English because of medical reasons, the FAA may place limits on your certificate as are necessary for the safe operation of light-sport aircraft.

(c) Hold at least a current and valid sport pilot certificate with category and class ratings or privileges, as applicable, that are appropriate to the flight instructor privileges sought.

§ 61.405 What tests do I have to take to obtain a flight instructor certificate with a sport pilot rating?

To obtain a flight instructor certificate with a sport pilot rating you must pass the following tests:

(a) *Knowledge test.* Before you take a knowledge test, you must receive a logbook endorsement certifying you are prepared for the test from an authorized instructor who trained you or evaluated your home-study course on the aeronautical knowledge areas listed in § 61.407. You must pass knowledge tests on—

(1) The fundamentals of instructing listed in § 61.407(a), unless you meet the requirements of § 61.407(c); and

(2) The aeronautical knowledge areas for a sport pilot certificate applicable to the aircraft category and class for which flight instructor privileges are sought.

(b) *Practical test.*

(1) Before you take the practical test, you must—

(i) Receive a logbook endorsement from the authorized instructor who provided you with flight training on the areas of operation specified in § 61.409 that apply to the category and class of aircraft privileges you seek. This endorsement certifies you meet the applicable aeronautical knowledge and experience requirements and are prepared for the practical test;

(ii) If you are seeking privileges to provide instruction in an airplane or glider, receive a logbook endorsement from an authorized instructor indicating that you are competent and possess instructional proficiency in stall awareness, spin entry, spins, and spin recovery procedures after you have received flight training in those training areas in an airplane or glider, as appropriate, that is certificated for spins;

(2) You must pass a practical test—

(i) On the areas of operation listed in § 61.409 that are appropriate to the category and class of aircraft privileges you seek;

(ii) In an aircraft representative of the category and class of aircraft for the privileges you seek;

(iii) In which you demonstrate that you are able to teach stall awareness, spin entry, spins, and spin recovery procedures if you are seeking privileges to provide instruction in an airplane or glider. If you have not failed a practical test based on deficiencies in your ability to demonstrate knowledge or skill in these areas and you provide the

endorsement required by paragraph (b)(1)(ii) of this section, an examiner may accept the endorsement instead of the demonstration required by this paragraph. If you are taking a test because you previously failed a test based on not meeting the requirements of this paragraph, you must pass a practical test on stall awareness, spin entry, spins, and spin recovery instructional competency and proficiency in the applicable category and class of aircraft that is certificated for spins.

§ 61.407 What aeronautical knowledge must I have to apply for a flight instructor certificate with a sport pilot rating?

(a) Except as specified in paragraph (c) of this section you must receive and log ground training from an authorized instructor on the fundamentals of instruction that includes:

(1) The learning process.

(2) Elements of effective teaching.

(3) Student evaluation and testing.

(4) Course development.

(5) Lesson planning.

(6) Classroom training techniques.

(b) You must receive and log ground training from an authorized instructor on the aeronautical knowledge areas applicable to a sport pilot certificate for the aircraft category and class in which you seek flight instructor privileges.

(c) You do not have to meet the requirements of paragraph (a) of this section if you—

(1) Hold a flight instructor certificate or ground instructor certificate issued under this part;

(2) Hold a current teacher's certificate issued by a State, county, city, or municipality; or

(3) Are employed as a teacher at an accredited college or university.

§ 61.409 What flight proficiency requirements must I meet to apply for a flight instructor certificate with a sport pilot rating?

You must receive and log ground and flight training from an authorized instructor on the following areas of operation for the aircraft category and class in which you seek flight instructor privileges:

(a) Technical subject areas.

(b) Preflight preparation.

(c) Preflight lesson on a maneuver to be performed in flight.

(d) Preflight procedures.

(e) Airport, seaplane base, and gliderport operations, as applicable.

(f) Takeoffs (or launches), landings, and go-arounds.

(g) Fundamentals of flight.

(h) Performance maneuvers and for gliders, performance speeds.

(i) Ground reference maneuvers (except for gliders and lighter-than-air).

(j) Soaring techniques.

(k) Slow flight (not applicable to lighter-than-air and powered parachutes).

(l) Stalls (not applicable to lighter-than-air, powered parachutes, and gyroplanes).

(m) Spins (applicable to airplanes and gliders).

(n) Emergency operations.

(o) Tumble entry and avoidance techniques (applicable to weight-shift-control aircraft).

(p) Post-flight procedures.

§ 61.411 What aeronautical experience must I have to apply for a flight instructor certificate with a sport pilot rating?

Use the following table to determine the experience you must have for each aircraft category and class:

If you are applying for a flight instructor certificate with a sport pilot rating for . . .	Then you must log at least . . .	Which must include at least . . .
(a) Airplane category and single-engine class privileges,	(1) 150 hours of flight time as a pilot,	(i) 100 hours of flight time as pilot in command in powered aircraft, (ii) 50 hours of flight time in a single-engine airplane, (iii) 25 hours of cross-country flight time, (iv) 10 hours of cross-country flight time in a single-engine airplane, and (v) 15 hours of flight time as pilot in command in a single-engine airplane that is a light-sport aircraft.
(b) Glider category privileges,	(1) 25 hours of flight time as pilot in command in a glider, 100 flights in a glider, and 15 flights as pilot in command in a glider that is a light-sport aircraft, or. (2) 100 hours in heavier-than-air aircraft, 20 flights in a glider, and 15 flights as pilot in command in a glider that is a light-sport aircraft.	
(c) Rotorcraft category and gyroplane class privileges,	(1) 125 hours of flight time as a pilot,	(i) 100 hours of flight time as pilot in command in powered aircraft, (ii) 50 hours of flight time in a gyroplane, (iii) 10 hours of cross-country flight time, (iv) 3 hours of cross-country flight time in a gyroplane, and (v) 15 hours of flight time as pilot in command in a gyroplane that is a light-sport aircraft.
(d) Lighter-than-air category and airship class privileges,	(1) 100 hours of flight time as a pilot,	(i) 40 hours of flight time in an airship, (ii) 20 hours of pilot in command time in an airship, (iii) 10 hours of cross-country flight time, (iv) 5 hours of cross-country flight time in an airship, and (v) 15 hours of flight time as pilot in command in an airship that is a light-sport aircraft.
(e) Lighter-than-air category and balloon class privileges,	(1) 35 hours of flight time as pilot-in-command,	(i) 20 hours of flight time in a balloon, (ii) 10 flights in a balloon, and (iii) 5 flights as pilot in command in a balloon that is a light-sport aircraft.

If you are applying for a flight instructor certificate with a sport pilot rating for . . .	Then you must log at least . . .	Which must include at least . . .
(f) Weight-shift-control aircraft category privileges,	(1) 150 hours of flight time as a pilot, ...	(i) 100 hours of flight time as pilot in command in powered aircraft, (ii) 50 hours of flight time in a weight-shift-control aircraft, (iii) 25 hours of cross-country flight time, (iv) 10 hours of cross-country flight time in a weight-shift-control aircraft, and (v) 15 hours of flight time as pilot in command in a weight-shift-control aircraft that is a light-sport aircraft.
(g) Powered-parachute category privileges,	(1) 100 hours of flight time as a pilot, ...	(i) 75 hours of flight time as pilot in command in powered aircraft, (ii) 50 hours of flight time in a powered parachute, (iii) 15 hours of cross-country flight time, (iv) 5 hours of cross-country flight time in a powered parachute, and (v) 15 hours of flight time as pilot in command in a powered parachute that is a light-sport aircraft.

§ 61.413 What are the privileges of my flight instructor certificate with a sport pilot rating?

If you hold a fight flight instructor certificate with a sport pilot rating, you are authorized, within the limits of your certificate and rating, to provide training and logbook endorsements for—

(a) A student pilot seeking a sport pilot certificate;

(b) A sport pilot certificate;

(c) A flight instructor certificate with a sport pilot rating;

(d) A powered parachute or weight-shift-control aircraft rating;

(e) Sport pilot privileges;

(f) A flight review or operating privilege for a sport pilot;

(g) A practical test for a sport pilot certificate, a private pilot certificate with a powered parachute or weight-shift-control aircraft rating or a flight instructor certificate with a sport pilot rating;

(h) A knowledge test for a sport pilot certificate, a private pilot certificate with a powered parachute or weight-shift-control aircraft rating or a flight instructor certificate with a sport pilot rating; and

(i) A proficiency check for an additional category, class, or make and model privilege for a sport pilot certificate or a flight instructor certificate with a sport pilot rating.

§ 61.415 What are the limits of a flight instructor certificate with a sport pilot rating?

If you hold a flight instructor certificate with a sport pilot rating, you are subject to the following limits:

(a) You may not provide ground or flight training in any aircraft for which you do not hold:

(1) A sport pilot certificate with applicable category and class privileges and make and model privileges or a pilot certificate with the applicable category and class rating; and

(2) Applicable category and class privileges for your flight instructor certificate with a sport pilot rating.

(b) You may not provide ground or flight training for a private pilot certificate with a powered parachute or weight-shift-control aircraft rating unless you hold:

(1) At least a private pilot certificate with the applicable category and class rating; and

(2) Applicable category and class privileges for your flight instructor certificate with a sport pilot rating.

(c) You may not conduct more than 8 hours of flight training in any 24-consecutive-hour period.

(d) You may not endorse a:

(1) Student pilot's certificate or logbook for solo flight privileges, unless you have—

(i) Given that student the flight training required for solo flight privileges required by this part; and

(ii) Determined that the student is prepared to conduct the flight safely under known circumstances, subject to any limitations listed in the student's logbook that you consider necessary for the safety of the flight.

(2) Student pilot's certificate and logbook for a solo cross-country flight, unless you have determined the student's flight preparation, planning, equipment, and proposed procedures are adequate for the proposed flight under the existing conditions and within any limitations listed in the logbook that you consider necessary for the safety of the flight.

(3) Student pilot's certificate and logbook for solo flight in Class B, C, and D airspace areas, at an airport within Class B, C, or D airspace and to from, through or on an airport having an operational control tower, unless that you have—

(i) Given that student ground and flight training in that airspace or at that airport; and

(ii) Determined that the student is proficient to operate the aircraft safely.

(4) Logbook of a pilot for a flight review, unless you have conducted a review of that pilot in accordance with the requirements of § 61.56.

(e) You may not provide flight training in an aircraft unless you have at least 5 hours of flight time in a make and model of light-sport aircraft within the same set of aircraft as the aircraft in which you are providing training.

(f) You may not provide training to operate a light-sport aircraft in Class B, C, and D airspace, at an airport located in Class B, C, or D airspace, and to, from, through, or at an airport having an operational control tower, unless you have the endorsement specified in § 61.325, or are otherwise authorized to conduct operations in this airspace and at these airports.

(g) You may not provide training in a light-sport aircraft with a V_H greater than 87 knots CAS unless you have the endorsement specified in § 61.327, or are otherwise authorized to operate that light-sport aircraft.

(h) You must perform all training in an aircraft that complies with the requirements of § 91.109 of this chapter.

(i) If you provide flight training for a certificate, rating or privilege, you must provide that flight training in an aircraft that meets the following:

(1) The aircraft must have at least two pilot stations and be of the same category and class appropriate to the certificate, rating or privilege sought.

(2) For single place aircraft, pre-solo flight training must be provided in an aircraft that has two pilot stations and is of the same category and class appropriate to the certificate, rating, or privilege sought.

§ 61.417 Will my flight instructor certificate with a sport pilot rating list aircraft category and class ratings?

Your flight instructor certificate does not list aircraft category and class ratings. When you successfully pass the practical test for a flight instructor certificate with a sport pilot rating, regardless of the light-sport aircraft privileges you seek, the FAA will issue you a flight instructor certificate with a sport pilot rating without any category and class ratings. The FAA will provide you with a logbook endorsement for the category and class of light-sport aircraft you are authorized to provide training in.

§ 61.419 How do I obtain privileges to provide training in an additional category or class of light-sport aircraft?

If you hold a flight instructor certificate with a sport pilot rating and seek to provide training in an additional category or class of light-sport aircraft you must—

(a) Receive a logbook endorsement from the authorized instructor who trained you on the applicable areas of operation specified in § 61.409 certifying you have met the aeronautical knowledge and flight proficiency requirements for the additional category and class flight instructor privilege you seek;

(b) Successfully complete a proficiency check from an authorized instructor other than the instructor who trained you on the areas specified in § 61.409 for the additional category and class flight instructor privilege you seek;

(c) Complete an application for those privileges on a form and in a manner acceptable to the FAA and present this application to the authorized instructor who conducted the proficiency check specified in paragraph (b) of this section; and

(d) Receive a logbook endorsement from the instructor who conducted the proficiency check specified in paragraph (b) of this section certifying you are proficient in the areas of operation and authorized for the additional category and class flight instructor privilege.

§ 61.421 May I give myself an endorsement?

No. If you hold a flight instructor certificate with a sport pilot rating, you may not give yourself an endorsement for any certificate, privilege, rating, flight review, authorization, practical test, knowledge test, or proficiency check required by this part.

§ 61.423 What are the recordkeeping requirements for a flight instructor with a sport pilot rating?

(a) As a flight instructor with a sport pilot rating you must:

(1) Sign the logbook of each person to whom you have given flight training or ground training.

(2) Keep a record of the name, date, and type of endorsement for:

(i) Each person whose logbook or student pilot certificate you have endorsed for solo flight privileges.

(ii) Each person for whom you have provided an endorsement for a knowledge test, practical test, or proficiency check, and the record must indicate the kind of test or check, and the results.

(iii) Each person whose logbook you have endorsed as proficient to operate—

(A) An additional category or class of light-sport aircraft;

(B) An additional make and model of light-sport aircraft;

(C) In Class B, C, and D airspace; at an airport located in Class B, C, or D airspace; and to, from, through, or at an airport having an operational control tower; and

(D) A light-sport aircraft with a V_H greater than 87 knots CAS.

(iv) Each person whose logbook you have endorsed as proficient to provide flight training in an additional—

(A) Category or class of light-sport aircraft; and

(B) Make and model of light-sport aircraft.

(b) Within 10 days after providing an endorsement for a person to operate or provide training in an additional category and class of light-sport aircraft you must—

(1) Complete, sign, and submit to the FAA the application presented to you to obtain those privileges; and

(2) Retain a copy of the form.

(c) You must keep the records listed in this section for 3 years. You may keep these records in a logbook or a separate document.

§ 61.425 How do I renew my flight instructor certificate?

If you hold a flight instructor certificate with a sport pilot rating you may renew your certificate in accordance with the provisions of § 61.197.

§ 61.427 What must I do if my flight instructor certificate with a sport pilot rating expires?

You may exchange your expired flight instructor certificate with a sport pilot rating for a new certificate with a sport pilot rating and any other rating on that certificate by passing a practical test as prescribed in § 61.405(b) or § 61.183(h) for one of the ratings listed on the expired flight instructor certificate. The FAA will reinstate any privilege authorized by the expired certificate.

§ 61.429 May I exercise the privileges of a flight instructor certificate with a sport pilot rating if I hold a flight instructor certificate with another rating?

If you hold a current and valid flight instructor certificate, a commercial pilot certificate with an airship rating, or a commercial pilot certificate with a balloon rating issued under this part, and you seek to exercise the privileges of a flight instructor certificate with a sport pilot rating, you may do so without any further showing of proficiency, subject to the following limits:

(a) You are limited to the aircraft category and class ratings listed on your flight instructor certificate, commercial pilot certificate with an airship rating, or commercial pilot certificate with a balloon rating, as appropriate, when exercising your flight instructor privileges and the privileges specified in § 61.413.

(b) You must comply with the limits specified in § 61.415 and the recordkeeping requirements of § 61.423.

(c) If you want to exercise the privileges of your flight instructor certificate, commercial pilot certificate with an airship rating, or commercial pilot certificate with a balloon rating, as appropriate, in a category, class, or make and model of light-sport aircraft for which you are not currently rated, you must meet all applicable requirements to provide training in an additional category or class of light-sport aircraft specified in § 61.419.

§ 61.431 Are there special provisions for obtaining a flight instructor certificate with a sport pilot rating for persons who are registered ultralight instructors with an FAA-recognized ultralight organization?

If you are a registered ultralight instructor with an FAA-recognized ultralight organization on or before September 1, 2004, and you want to apply for a flight instructor certificate with a sport pilot rating, not later than January 31, 2008—

(a) You must hold either a current and valid sport pilot certificate, a current recreational pilot certificate and meet the requirements § 61.101(c), or at least a current and valid private pilot certificate issued under this part.

(b) You must meet the eligibility requirements in §§ 61.403 and 61.23. You do not have to meet the

aeronautical knowledge requirements specified in § 61.407, the flight proficiency requirements specified in § 61.409 and the aeronautical experience requirements specified in § 61.411, except you must meet the minimum total flight time requirements in the category and class of light-sport aircraft specified in § 61.411.

(c) You do not have to meet the aeronautical knowledge requirement specified in § 61.407(a) if you have passed an FAA-recognized ultralight organization's fundamentals of instruction knowledge test.

(d) You must submit a certified copy of your ultralight pilot records from the FAA-recognized ultralight organization. Those records must—

(1) Document that you are a registered ultralight flight instructor with that FAA-recognized ultralight organization; and

(2) Indicate that you are recognized to operate and provide training in the category and class of aircraft for which you seek privileges.

(e) You must pass the knowledge test and practical test for a flight instructor certificate with a sport pilot rating applicable to the aircraft category and class for which you seek flight instructor privileges.

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

■ 50. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

■ 51. Amend § 65.85 by designating the existing text as paragraph (a) and inserting phrase "Except as provided in paragraph (b) of this section," at the beginning of new paragraph (a), and adding paragraph (b) to read as follows:

§ 65.85 Airframe rating; additional privileges.

* * * * *

(b) A certificated mechanic with an airframe rating can approve and return to service an airframe, or any related part or appliance, of an aircraft with a special airworthiness certificate in the light-sport category after performing and inspecting a major repair or major alteration for products that are not produced under an FAA approval provided the work was performed in accordance with instructions developed by the manufacturer or a person acceptable to the FAA.

■ 52. Amend § 65.87 by designating the existing text as paragraph (a) and inserting the phrase "Except as provided in paragraph (b) of this section," at the beginning of new paragraph (a) and adding paragraph (b) to read as follows:

§ 65.87 Powerplant rating; additional privileges.

* * * * *

(b) A certificated mechanic with a powerplant rating can approve and return to service a powerplant or propeller, or any related part or appliance, of an aircraft with a special airworthiness certificate in the light-sport category after performing and inspecting a major repair or major alteration for products that are not produced under an FAA approval, provided the work was performed in accordance with instructions developed by the manufacturer or a person acceptable to the FAA.

■ 53. Amend § 65.101 by revising paragraph (b) to read as follows:

§ 65.101 Eligibility requirements: General.

* * * * *

(b) This section does not apply to the issuance of a repairman certificate (experimental aircraft builder) under § 65.104 or to a repairman certificate (light-sport aircraft) under § 65.107.

■ 54. Amend § 65.103 by adding paragraph (c) to read as follows:

§ 65.103 Repairman certificate: Privileges and limitations.

* * * * *

(c) This section does not apply to the holder of a repairman certificate (light-sport aircraft) while that repairman is performing work under that certificate.

* * * * *

■ 55. Add § 65.107 to subpart E to read as follows:

§ 65.107 Repairman certificate (light-sport aircraft): Eligibility, privileges, and limits.

(a) Use the following table to determine your eligibility for a repairman certificate (light-sport aircraft) and appropriate rating:

To be eligible for	You must
(1) A repairman certificate (light-sport aircraft)	(i) Be at least 18 years old, (ii) Be able to read, speak, write, and understand English. If for medical reasons you cannot meet one of these requirements, the FAA may place limits on your repairman certificate necessary to safely perform the actions authorized by the certificate and rating, (iii) Demonstrate the requisite skill to determine whether a light-sport aircraft is in a condition for safe operation, and (iv) Be a citizen of the United States, or a citizen of a foreign country who has been lawfully admitted for permanent residence in the United States.
(2) A repairman certificate (light-sport aircraft) with an inspection rating	(i) Meet the requirements of paragraph (a)(1) of this section, and (ii) Complete a 16-hour training course acceptable to the FAA on inspecting the particular class of experimental light-sport aircraft for which you intend to exercise the privileges of this rating.
(3) A repairman certificate (light-sport aircraft) with a maintenance rating	(i) Meet the requirements of paragraph (a)(1) of this section, and (ii) Complete a training course acceptable to the FAA on maintaining the particular class of light-sport aircraft for which you intend to exercise the privileges of this rating. The training course must, at a minimum, provide the following number of hours of instruction: (A) For airplane class privileges—120-hours, (B) For weight-shift control aircraft class privileges—104 hours, (C) For powered parachute class privileges—104 hours, (D) For lighter than air class privileges—80 hours, (E) For glider class privileges—80 hours.

(b) The holder of a repairman certificate (light-sport aircraft) with an inspection rating may perform the annual condition inspection on a light-sport aircraft:

(1) That is owned by the holder;

(2) That has been issued an experimental certificate for operating a light-sport aircraft under § 21.191(i) of this chapter; and

(3) That is in the same class of light-sport-aircraft for which the holder has completed the training specified in paragraph (a)(2)(ii) of this section.

(c) The holder of a repairman certificate (light-sport aircraft) with a maintenance rating may—

(1) Approve and return to service an aircraft that has been issued a special airworthiness certificate in the light-sport category under § 21.190 of this chapter, or any part thereof, after performing or inspecting maintenance (to include the annual condition inspection and the 100-hour inspection required by § 91.327 of this chapter), preventive maintenance, or an alteration (excluding a major repair or a major alteration on a product produced under an FAA approval);

(2) Perform the annual condition inspection on a light-sport aircraft that has been issued an experimental certificate for operating a light-sport aircraft under § 21.191(i) of this chapter; and

(3) Only perform maintenance, preventive maintenance, and an alteration on a light-sport aircraft that is in the same class of light-sport aircraft for which the holder has completed the training specified in paragraph (a)(3)(ii) of this section. Before performing a major repair, the holder must complete additional training acceptable to the FAA and appropriate to the repair performed.

(d) The holder of a repairman certificate (light-sport aircraft) with a maintenance rating may not approve for return to service any aircraft or part thereof unless that person has previously performed the work concerned satisfactorily. If that person has not previously performed that work, the person may show the ability to do the work by performing it to the satisfaction of the FAA, or by performing it under the direct supervision of a certificated and appropriately rated mechanic, or a certificated repairman, who has had previous experience in the specific operation concerned. The repairman may not exercise the privileges of the certificate unless the repairman understands the current instructions of the manufacturer and the maintenance manuals for the specific operation concerned.

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 56. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–56507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

■ 57. Amend § 91.1 by revising paragraph (b) to read as follows:

§ 91.1 Applicability.

* * * * *

(b) Each person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States must comply with §§ 91.1 through 91.21; §§ 91.101 through 91.143; §§ 91.151 through 91.159; §§ 91.167 through 91.193; § 91.203; § 91.205; §§ 91.209 through 91.217; § 91.221; §§ 91.303 through 91.319; §§ 91.323 through 91.327; § 91.605; § 91.609; §§ 91.703 through 91.715; and § 91.903.

* * * * *

■ 58. Amend § 91.113 by revising paragraphs (d)(2) and (d)(3) to read as follows:

§ 91.113 Right-of-way rules: Except water operations.

* * * * *

(d) * * *

(2) A glider has the right-of-way over an airship, powered parachute, weight-shift-control aircraft, airplane, or rotorcraft.

(3) An airship has the right-of-way over a powered parachute, weight-shift-control aircraft, airplane, or rotorcraft.

* * * * *

■ 59. Amend § 91.126 by revising paragraph (b)(2) to read as follows:

§ 91.126 Operating on or in the vicinity of an airport in Class G airspace.

(b) * * *

(2) Each pilot of a helicopter or a powered parachute must avoid the flow of fixed-wing aircraft.

* * * * *

■ 60. Amend § 91.131 by revising paragraphs (b)(1)(i), (b)(1)(ii) and (b)(2), and by adding paragraphs (b)(1)(iii) and (b)(1)(iv) to read as follows:

§ 91.131 Operations in Class B airspace.

* * * * *

(b) * * *

(1) * * *

(i) The pilot in command holds at least a private pilot certificate;

(ii) The pilot in command holds a recreational pilot certificate and has met—

(A) The requirements of § 61.101(d) of this chapter; or

(B) The requirements for a student pilot seeking a recreational pilot certificate in § 61.94 of this chapter;

(iii) The pilot in command holds a sport pilot certificate and has met —

(A) The requirements of § 61.325 of this chapter; or

(B) The requirements for a student pilot seeking a recreational pilot certificate in § 61.94 of this chapter; or

(iv) The aircraft is operated by a student pilot who has met the requirements of § 61.94 or § 61.95 of this chapter, as applicable.

* * * * *

(2) Notwithstanding the provisions of paragraphs (b)(1)(ii), (b)(1)(iii) and (b)(1)(iv) of this section, no person may take off or land a civil aircraft at those airports listed in section 4 of appendix D to this part unless the pilot in command holds at least a private pilot certificate.

* * * * *

■ 61. Amend § 91.155 by revising paragraph (b)(2) to read as follows:

§ 91.155 Basic VFR weather minimums.

* * * * *

(b) * * *

(2) *Airplane, powered parachute, or weight-shift-control aircraft.* If the visibility is less than 3 statute miles but not less than 1 statute mile during night hours and you are operating in an airport traffic pattern within ½ mile of the runway, you may operate an airplane, powered parachute, or weight-shift-control aircraft clear of clouds.

* * * * *

■ 62. Amend § 91.213 by revising paragraph (d)(1)(i) to read as follows:

§ 91.213 Inoperative instruments and equipment.

* * * * *

(d) * * *

(1) * * *

(i) Rotorcraft, non-turbine-powered airplane, glider, lighter-than-air aircraft, powered parachute, or weight-shift-control aircraft, for which a master minimum equipment list has not been developed; or

* * * * *

■ 63. Amend § 91.309 by revising the section heading and paragraphs (a) introductory text, (a)(3), (a)(5), and (b) to read as follows:

§ 91.309 Towing: Gliders and unpowered ultralight vehicles.

(a) No person may operate a civil aircraft towing a glider or unpowered ultralight vehicle unless—

* * * * *

(3) The towline used has breaking strength not less than 80 percent of the maximum certificated operating weight of the glider or unpowered ultralight vehicle and not more than twice this operating weight. However, the towline used may have a breaking strength more than twice the maximum certificated operating weight of the glider or unpowered ultralight vehicle if—

(i) A safety link is installed at the point of attachment of the towline to the glider or unpowered ultralight vehicle with a breaking strength not less than 80 percent of the maximum certificated operating weight of the glider or unpowered ultralight vehicle and not greater than twice this operating weight;

(ii) A safety link is installed at the point of attachment of the towline to the towing aircraft with a breaking strength greater, but not more than 25 percent greater, than that of the safety link at the towed glider or unpowered ultralight vehicle end of the towline and not greater than twice the maximum certificated operating weight of the glider or unpowered ultralight vehicle;

* * * * *

(5) The pilots of the towing aircraft and the glider or unpowered ultralight vehicle have agreed upon a general course of action, including takeoff and release signals, airspeeds, and emergency procedures for each pilot.

(b) No pilot of a civil aircraft may intentionally release a towline, after release of a glider or unpowered ultralight vehicle, in a manner that endangers the life or property of another.

■ 64. Amend § 91.319 by redesignating paragraph (e) as paragraph (h) and adding new paragraphs (e), (f) and (g) to read as follows:

§ 91.319 Aircraft having experimental certificates: Operating limitations.

* * * * *

(e) No person may operate an aircraft that is issued an experimental certificate under § 21.191(i) of this chapter for compensation or hire, except a person may operate an aircraft issued an experimental certificate under § 21.191(i)(1) for compensation or hire to—

(1) Tow a glider that is a light-sport aircraft or unpowered ultralight vehicle in accordance with § 91.309; or

(2) Conduct flight training in an aircraft which that person provides prior to January 31, 2010.

(f) No person may lease an aircraft that is issued an experimental certificate under § 21.191(i) of this chapter, except in accordance with paragraph (e)(1) of this section.

(g) No person may operate an aircraft issued an experimental certificate under § 21.191(i)(1) of this chapter to tow a glider that is a light-sport aircraft or unpowered ultralight vehicle for compensation or hire or to conduct flight training for compensation or hire in an aircraft which that persons provides unless within the preceding 100 hours of time in service the aircraft has—

(1) Been inspected by a certificated repairman (light-sport aircraft) with a maintenance rating, an appropriately rated mechanic, or an appropriately rated repair station in accordance with inspection procedures developed by the aircraft manufacturer or a person acceptable to the FAA; or

(2) Received an inspection for the issuance of an airworthiness certificate in accordance with part 21 of this chapter.

(h) The FAA may issue deviation authority providing relief from the provisions of paragraph (a) of this section for the purpose of conducting flight training. The FAA will issue this deviation authority as a letter of deviation authority.

(1) The FAA may cancel or amend a letter of deviation authority at any time.

(2) An applicant must submit a request for deviation authority to the FAA at least 60 days before the date of intended operations. A request for deviation authority must contain a complete description of the proposed operation and justification that establishes a level of safety equivalent to that provided under the regulations for the deviation requested.

* * * * *

■ 65. Add § 91.327 to read as follows:

§ 91.327 Aircraft having a special airworthiness certificate in the light-sport category: Operating limitations.

(a) No person may operate an aircraft that has a special airworthiness certificate in the light-sport category for compensation or hire except—

(1) To tow a glider or an unpowered ultralight vehicle in accordance with § 91.309 of this chapter; or

(2) To conduct flight training.

(b) No person may operate an aircraft that has a special airworthiness certificate in the light-sport category unless—

(1) The aircraft is maintained by a certificated repairman with a light-sport aircraft maintenance rating, an appropriately rated mechanic, or an appropriately rated repair station in accordance with the applicable provisions of part 43 of this chapter and maintenance and inspection procedures developed by the aircraft manufacturer or a person acceptable to the FAA;

(2) A condition inspection is performed once every 12 calendar months by a certificated repairman (light-sport aircraft) with a maintenance rating, an appropriately rated mechanic, or an appropriately rated repair station in accordance with inspection procedures developed by the aircraft manufacturer or a person acceptable to the FAA;

(3) The owner or operator complies with all applicable airworthiness directives;

(4) The owner or operator complies with each safety directive applicable to the aircraft that corrects an existing unsafe condition. In lieu of complying with a safety directive an owner or operator may—

(i) Correct the unsafe condition in a manner different from that specified in the safety directive provided the person issuing the directive concurs with the action; or

(ii) Obtain an FAA waiver from the provisions of the safety directive based on a conclusion that the safety directive was issued without adhering to the applicable consensus standard;

(5) Each alteration accomplished after the aircraft's date of manufacture meets the applicable and current consensus standard and has been authorized by either the manufacturer or a person acceptable to the FAA;

(6) Each major alteration to an aircraft product produced under a consensus standard is authorized, performed and inspected in accordance with maintenance and inspection procedures developed by the manufacturer or a person acceptable to the FAA; and

(7) The owner or operator complies with the requirements for the recording of major repairs and major alterations performed on type-certificated products in accordance with § 43.9(d) of this chapter, and with the retention requirements in § 91.417.

(c) No person may operate an aircraft issued a special airworthiness certificate in the light-sport category to tow a glider or unpowered ultralight vehicle for compensation or hire or conduct flight training for compensation or hire in an aircraft which that persons provides unless within the preceding 100 hours of time in service the aircraft has—

(1) Been inspected by a certificated repairman with a light-sport aircraft maintenance rating, an appropriately rated mechanic, or an appropriately

rated repair station in accordance with inspection procedures developed by the aircraft manufacturer or a person acceptable to the FAA and been approved for return to service in accordance with part 43 of this chapter; or

(2) Received an inspection for the issuance of an airworthiness certificate in accordance with part 21 of this chapter.

(d) Each person operating an aircraft issued a special airworthiness certificate in the light-sport category must operate the aircraft in accordance with the aircraft's operating instructions, including any provisions for necessary operating equipment specified in the aircraft's equipment list.

(e) Each person operating an aircraft issued a special airworthiness certificate in the light-sport category must advise each person carried of the special nature of the aircraft and that the aircraft does not meet the airworthiness requirements for an aircraft issued a standard airworthiness certificate.

(f) The FAA may prescribe additional limitations that it considers necessary.

■ 66. Amend § 91.409 by revising paragraph (c)(1) to read as follows:

§ 91.409 Inspections.

* * * * *

(c) * * *

(1) An aircraft that carries a special flight permit, a current experimental certificate, or a light-sport or provisional airworthiness certificate;

* * * * *

■ 67. Amend Appendix D to part 91 by revising the section heading and introductory text of Section 4 to read as follows:

Appendix D to Part 91—Airports/ Locations: Special Operating Restrictions

* * * * *

Section 4. Locations at which solo student, sport, and recreational pilot activity is not permitted.

Pursuant to § 91.131(b)(2), solo student, sport, and recreational pilot operations are not permitted at any of the following airports.

* * * * *

Issued in Washington, DC, on July 16, 2004.

Marion C. Blakey,

Administrator.

[FR Doc. 04–16577 Filed 7–20–04; 9:33 am]

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Federal Register

Tuesday,
July 27, 2004

Part IV

The President

Exeuctive Order 13348—Blocking Property of Certain Persons and Prohibiting the Importation of Certain Goods from Liberia

Executive Order 13349—Amending Executive Order 13226 To Designate the President's Council of Advisors on Science and Technology To Serve as the National Nanotechnology Advisory Panel

Federal Register
Vol. 69, No. 143
Tuesday, July 27, 2004

Presidential Documents

Title 3—

The President

Executive Order 13348 of July 22, 2004

Blocking Property of Certain Persons and Prohibiting the Importation of Certain Goods from Liberia

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (NEA), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code, and in view of United Nations Security Council Resolutions 1521 of December 22, 2003, and 1532 of March 12, 2004,

I, GEORGE W. BUSH, President of the United States of America, note that the actions and policies of former Liberian President Charles Taylor and other persons, in particular their unlawful depletion of Liberian resources and their removal from Liberia and secreting of Liberian funds and property, have undermined Liberia's transition to democracy and the orderly development of its political, administrative, and economic institutions and resources. I further note that the Comprehensive Peace Agreement signed on August 18, 2003, and the related ceasefire have not yet been universally implemented throughout Liberia, and that the illicit trade in round logs and timber products is linked to the proliferation of and trafficking in illegal arms, which perpetuate the Liberian conflict and fuel and exacerbate other conflicts throughout West Africa. I find that the actions, policies, and circumstances described above constitute an unusual and extraordinary threat to the foreign policy of the United States and hereby declare a national emergency to deal with that threat. To address that threat, I hereby order:

Section 1. (a) Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) the persons listed in the Annex to this order; and

(ii) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) to be or have been an immediate family member of Charles Taylor;

(B) to have been a senior official of the former Liberian regime headed by Charles Taylor or otherwise to have been or be a close ally or associate of Charles Taylor or the former Liberian regime;

(C) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the unlawful depletion of Liberian resources, the removal of Liberian resources from that country, and the secreting of Liberian funds and property by any person whose property and interests in property are blocked pursuant to this order; or

(D) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.

(b) I hereby determine that the making of donations of the type of articles specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by, to, or for the benefit of, any person whose property or interests in property are blocked pursuant to paragraph (a) of this section would seriously impair my ability to deal with the national emergency declared in this order, and I hereby prohibit such donations as provided by paragraph (a) of this section.

(c) The prohibitions in paragraph (a) of this section include, but are not limited to,

(i) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of, any person whose property or interests in property are blocked pursuant to this order, and

(ii) the receipt of any contribution or provision of funds, goods, or services from any such person.

Sec. 2. Except to the extent provided in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, the direct or indirect importation into the United States of any round log or timber product originating in Liberia is prohibited.

Sec. 3. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 4. For purposes of this order: (a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(d) the term "round log or timber product" means any product classifiable in Chapter 44 of the Harmonized Tariff Schedule of the United States.

Sec. 5. For those persons whose property and interests in property are blocked pursuant to section 1 of this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 6. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, consistent with applicable law. All agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order and, where appropriate, to advise the Secretary of the Treasury in a timely manner of the measures taken.

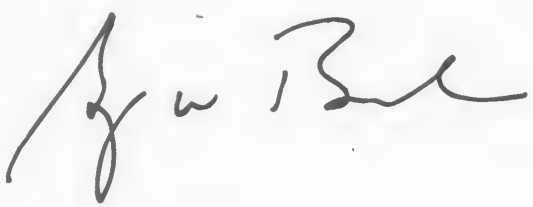
Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to submit the recurring and final reports to the Congress on the national emergency declared in this order, consistent with section 401(c) of NEA, 50 U.S.C. 1641(c), and section 204(c) of IEEPA, 50 U.S.C. 1703(c).

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to determine, subsequent to the issuance of this order, that circumstances no longer warrant the inclusion of a person in the Annex to this order and that the property and interests in property of that person are therefore no longer blocked pursuant to section 1 of this order.

Sec. 9. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 10. This order is effective at 12:01 a.m. eastern daylight time on July 23, 2004.

Sec. 11. This order shall be transmitted to the Congress and published in the *Federal Register*.



THE WHITE HOUSE,
July 22, 2004.

Billing code 3195–01–P

ANNEX

1. ALLEN, Cyril
DOB: 26 JUL 1952
Former Chairman, National Patriotic Party; nationality Liberian; alt. nationality Nigerian

2. BOUT, Viktor Anatolijevitch
aka BUTT
aka BONT
aka BUTTE
aka BOUTOV
aka SERGITOV, Vitali
DOB: 13 JAN 1967; alt. DOB: 13 JAN 1970
Businessman, dealer and transporter of weapons and minerals; Passport No. 21N0532664; alt. Passport No. 29N0006765; alt. Passport No. 21N0557148; alt. Passport No. 44N3570350

3. BRIGHT, Charles R.
DOB: 29 AUG 1948
Former Minister of Finance

4. CISSE, M. Moussa
aka KAMARA, Mamadee
DOB: 24 DEC 1946; alt. DOB: 26 JUN 1944
Former Chief of Presidential Protocol; Chairman, Mohammed Group of Companies; Diplomatic Passport No. D-001548-99 <Liberia>; Passport No. 0058070 <Liberia>

5. COOPER, Randolph
DOB: 28 OCT 1950
Former Managing Director, Roberts Intl. Airport

6. DARRAH, Kaddieyatu
aka DARAH, Kadiyatu
aka DARA, Kaddieyatu
aka DARA, Kadiyatu
Special Assistant to Charles Taylor

7. DUNBAR, Belle Y.
DOB: 27 OCT 1967; alt. DOB: 27 OCT 1963
Former Managing Director, Liberian Petroleum Refining Company

8. DUNBAR, Jenkins
DOB: 10 JAN 1947
Former Minister of Lands, Mines, Energy

9. FAWAS, Abbas
President, Maryland Wood Processing Industries; President, United Logging Company; nationality Lebanese

10. GIBSON, Myrtle
DOB: 03 NOV 1952
Former Senator; advisor to Charles Taylor

11. GOODRIDGE, Reginald B. (Senior)
aka GOODRICH, Reginald B. (Senior)
DOB: 11 NOV 1952
Former Minister for Culture, Information, Tourism

12. JOBE, Baba
Director, Gambia New Millenium Air Company; Member of Parliament of Gambia; nationality Gambian

13. KIIA TAI, Joseph Wong
Executive, Oriental Timber Company

14. KLEILAT, Ali
DOB: 10 JUL 1970; POB: Beirut, Lebanon; nationality Lebanese
Businessman

15. KOUWENHOVEN, Gus
aka KOUVENHOVEN, Gus
aka KOUENHOVEN, Gus
aka KOUENHAVEN, Gus
DOB: 15 SEP 1942; nationality Dutch
President, Oriental Timber Company; Owner, Hotel Africa;
Villa # 1, Hotel Africa Virginia, Monrovia, Liberia
P.O. Box 1522, Monrovia, Liberia

16. MININ, Leonid
aka BLAVSTEIN
aka BLYUVSHTEIN
aka BLYAFSHTEIN
aka BLUVSHTEIN
aka BLYUFSHTEIN
aka KERLER, Vladimir Abramovich
aka POPILOVESKI, Vladimir Abramovich
aka POPELAVESKI, Vladimir Abramovich
aka POPELOVESKI, Vladimir Abramovich
aka POPELA, Vladimir Abramovich
aka POPELO, Vladimir Abramovich
aka BRESLAN, Wolf
aka BRESLAN, Wulf
aka OSOLS, Igor
DOB: 14 DEC 1947; alt. DOB: 18 OCT 1946; Owner, Exotic Tropical Timber Enterprise; nationality Ukrainian; Passport No. 5280007248D <Germany>; alt. Passport No. 18106739D <Germany>; Passport No. 6019832 (6/11/94-5/11/99) <Israel>; alt. Passport No. 9001689 (23/1/97-22/1/02) <Israel>; alt. Passport No. 90109052 (26/11/97) <Israel>; Passport No. KI0861177 <Russia>; Passport No. 65118 <Bolivia>

17. NASR, Samir M.
aka RUPRAH, Sanjivan
DOB: 09 AUG 1966
Businessman; Former Deputy Commissioner, Bureau of Maritime Affairs; Passport No. D-001829-00 <Liberia>; nationality Kenyan

18. NEAL, Juanita
DOB: 09 MAY 1947
Former Deputy Minister of Finance

19. SALAMI, Mohamed Ahmad
aka SALAME, Mohamed Ahmad
DOB: 22 SEP 1961
Owner, Mohamed Group of Companies; Taylor's informal diplomatic representative; nationality Lebanese

20. SANKOH, Foday
Deceased

21. SHAW, Emmanuel (II)
DOB: 26 JUL 1946; alt. DOB: 26 JUL 1956; alt. DOB: 29 JUL 1956
Advisor to Charles Taylor

22. TAYLOR, Charles Ghankay
aka TAYLOR, Charles MacArthur
aka SOME, Jean-Paul
aka SONE, Jean-Paul
DOB: 01 SEP 1947
Former President of Liberia

23. TAYLOR, Charles (Junior)
aka "Chuckie"
DOB: 12 FEB 1978
Advisor and son of former President Taylor

24. TAYLOR, Tupee Enid
DOB: 17 DEC 1962
Ex-wife of former President Taylor

25. REEVES-TAYLOR, Agnes
aka TAYLOR, Agnes Reeves
aka REEVES-TAYLOR
DOB: 27 SEP 1965
Ex-wife of former President Taylor; ex-Permanent Representative to the International Maritime Organization; nationality Liberian

26. TAYLOR, Jewell Howard
DOB: 17 JAN 1963
Wife of former President Taylor

27. UREY, Benoni
DOB: 22 JUN 1957
Former Commissioner of Maritime Affairs; Diplomatic Passport No. D-00148399 <Liberia>

28. YEATON, Benjamin
aka YEATEN, Benjamin
Former Director, Special Security Services; Diplomatic Passport No. D-00123299 <Liberia>

Note: The identifying information with respect to each person listed in this Annex reflects information currently available and is provided solely to facilitate compliance with this order. Each individual listed in this Annex remains subject to the prohibitions of this order notwithstanding any change in title, position, or affiliation.

[FR Doc. 04–17205
Filed 7–26–04; 8:45 am]
Billing code 4810–25–C

Presidential Documents

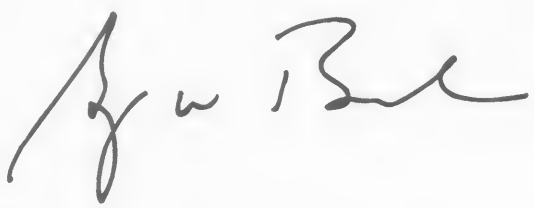
Executive Order 13349 of July 23, 2004

Amending Executive Order 13226 To Designate the President's Council of Advisors on Science and Technology To Serve as the National Nanotechnology Advisory Panel

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the 21st Century Nanotechnology Research and Development Act (Public Law 108–153), and in order to designate the National Nanotechnology Advisory Panel pursuant to section 4(a) of that Act, it is hereby ordered as follows:

Executive Order 13226 of September 30, 2001, as amended, is further amended by adding a new section 2(c), to read as follows:

"(c) PCAST shall serve as the National Nanotechnology Advisory Panel under section 4 of the 21st Century Nanotechnology Research and Development Act (Public Law 108–153) (Act). Nothing in this Order shall be construed to require the National Nanotechnology Advisory Panel to comply with any requirement from which it is exempted by section 4(f) of the Act."



THE WHITE HOUSE,
July 23, 2004.

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Filed 7–26–04; 8:45 am]
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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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- Wireless telecommunications services—
  - Local telecommunication markets; competitive networks promotion; published 5-28-04

Radio services, special:
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  - 24 GHz service; licensing and operation; correction; published 7-27-04

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- Administrative procedures and guidance; published 7-27-04
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- Airbus; published 6-22-04
- Alexander Schleicher; published 6-8-04
- Boeing; published 6-22-04
- Dowty Aerospace Propellers; published 6-22-04
- Empresa Brasileira de Aeronautica, S.A. (EMBRAER); published 6-22-04

Standard instrument approach procedures; published 7-27-04

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- Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

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  - Pacific Coast groundfish; comments due by 8-2-04; published 7-7-04 [FR 04-15379]
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To resolve boundary conflicts in Barry and Stone Counties in the State of Missouri. (July 22, 2004; 118 Stat. 872)

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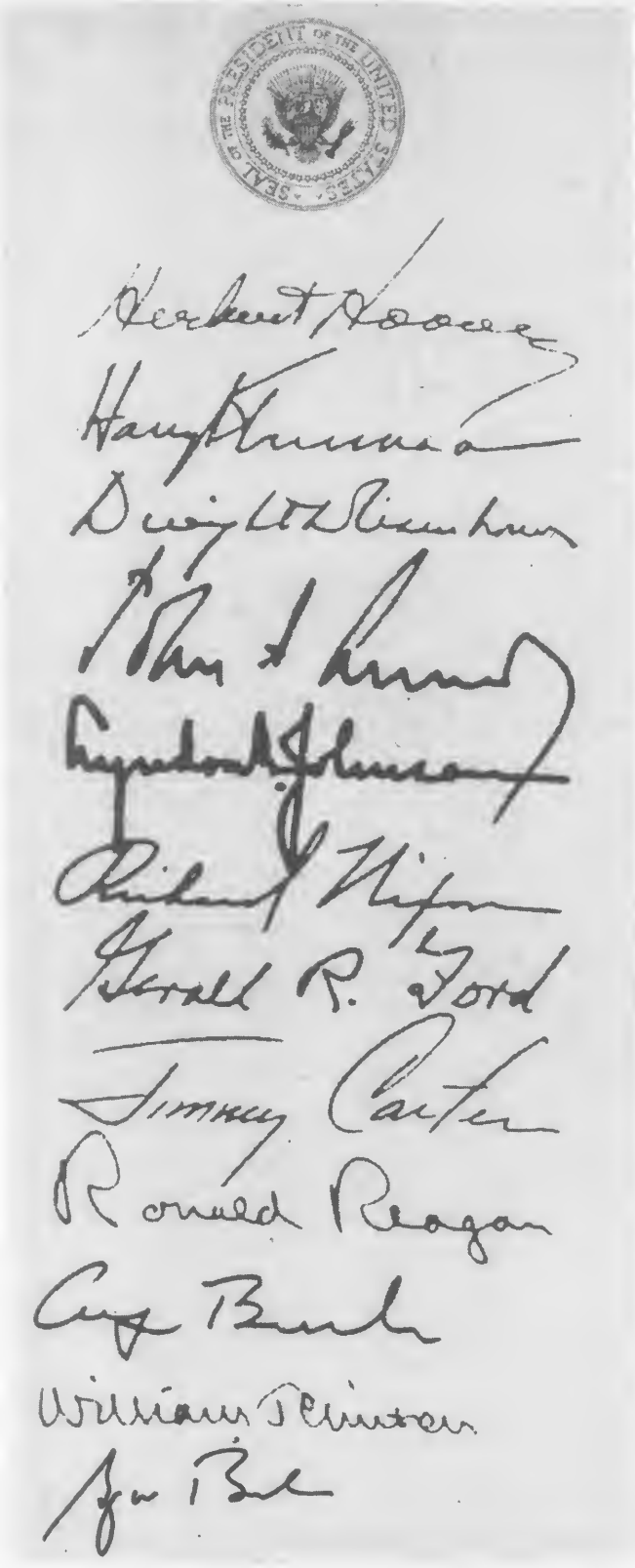

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