Federal Register

8–23–05 Tuesday
Vol. 70 No. 162 Aug. 23, 2005

United States Government Printing Office
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U.S. Government Printing Office
(ISSN 0097–6326)

Federal Register

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Vol. 70 No. 162 Aug. 23, 2005

Pages 49153–49478

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Thursday, September 22, 2005
9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741–6008

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
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Tuesday, August 23, 2005

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM326; Special Conditions No. 25–295–SC]

Special Conditions: Boeing Model 777 Series Airplanes; Side-Facing Single-Occupant Seats Equipped With Inflatable Lapbelts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Boeing Model 777 series airplanes. This airplane will have a novel or unusual design feature associated with side-facing single-occupant seats equipped with inflatable lapbelts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 9, 2005. Send your comments on or before October 7, 2005.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM326, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM326. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Alan Sinclair, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2195, facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

We invite interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

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

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

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

Background

On July 26, 2004, Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124, applied for a type certificate design change to install single-occupant side-facing seats equipped with inflatable lapbelts in Boeing Model 777 series airplanes. The Model 777 series airplane is a swept-wing, conventional-tail, twin-engine, turbofan-powered transport category airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Boeing Commercial Airplanes must show that the Model 777 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. T00001SE are as follows: 14 CFR part 25, Amendments 25–1 through 25–82 for the Model 777–200 and Amendments 25–1 through 25–86 with exceptions for the Model 777–300. The U.S. type certification basis for the Model 777 is established in accordance with §§ 21.29 and 21.17 and the type certification application date. The U.S. type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for Boeing Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.19 after public notice, as required by § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Boeing Model 777 offers interior arrangements which include single-occupant side-facing seat installations. These arrangements include a unique "pod" style of side-facing seats that use inflatable lapbelts instead of standard belts for occupant restraint. Side-facing seats are considered a novel design for transport category airplanes that include Amendment 25–64 in the certification basis, and were not considered when those airworthiness standards were established.

The existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing seats. In order to provide a level of safety that is equivalent to that afforded occupants of forward- and aft-facing seats, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement part 25 and, more specifically, supplement §§ 25.562 and 25.785. The requirements contained in these special conditions consist of both test conditions and injury pass/fail criteria.

Discussion

Section 25.785(b), "Seats, berths, safety belts, and harnesses," requires that "each seat * * * at each station designated as occupiable during takeoff and landing must be designed so that a person making proper use of these facilities will not suffer serious injury in an emergency landing as a result of the inertia forces specified in §§ 25.561 and 25.562." Additionally, § 25.562, "Emergency landing dynamic conditions," requires dynamic testing of all seats occupied during takeoff and landing. The relative forces and injury mechanisms affecting the occupants of side-facing seats during an emergency landing are different from those of standard forward- or aft-facing seats, or seats equipped with conventional restraint systems.

Side-facing Seats: Amendment 25–64, which adopted § 25.562, enhances occupant protection during emergency landing conditions. Although the rule was written with forward- and aft-facing seats in mind, the orientation of the seat does not change the relevant test conditions, and the rule applies to all seats regardless of orientation.

The dynamic test conditions included in § 25.562 are directly applicable to side-facing seats. However, for injury pass/fail criteria, the orientation of the seat may be significant. For forward-, aft-, and side-facing seats the injury criteria are currently limited to head, spine, and femur loads. The head and lumbar loads are critical but the femur load is not critical. For a side-facing seat, additional injury parameters may be identified and evaluation of those parameters would be necessary to provide an acceptable level of safety.

When evaluating side-facing seats the following should be taken into consideration:

1. The isolation of one occupant from another. Occupants should not rely on impact with other occupants to provide energy absorption; body-to-body impacts are unacceptable.

2. The restraint system and the retention of occupants in the seat. Addressing this concern may necessitate providing a means of restraint for the lower limbs as well as the torso. Failure to limit the forward (in the airplane's coordinate system) travel of the lower limbs may cause the occupant to come out of the restraint system or produce severe injuries due to the resulting position of the restraint system and/or twisting (torsional load) of the lower lumber spinal column.

3. The load limit in the torso in the lateral direction. Human tolerance for side-facing seats differs from that for forward- or aft-facing seats.

The automotive industry has developed test procedures and occupant injury criteria appropriate for side impact conditions. The criteria includes limiting lateral pelvic accelerations and using the "Thoracic Trauma Index," which is defined in 49 CFR 571.214. Use of the Side Impact Dummy (SID) identified in 49 CFR part 572, subpart F, rather than the Hybrid II dummy identified in 49 CFR part 572, subpart B, is required to evaluate these parameters. The Hybrid II dummy is used in the current § 25.562 test. Testing with a SID is the best means available to assess the injury potential of a sideward impact condition. Such an evaluation is considered necessary to provide an acceptable level of safety for side-facing seats.

The side-facing seat special conditions have been determined to result in a level of safety equivalent to that provided by the injury pass/fail criteria in § 25.562 for forward- or aft-facing seats.

Inflatable Lapbelts: From the standpoint of a passenger safety system, the inflatable lapbelt is unique because it is both an active and entirely autonomous device. While the automotive industry has good experience with airbags, which are similar to inflatable lapbelts, the conditions of use and reliance on the inflatable lapbelt as the sole means of injury protection in an airplane are quite different. In automobile installations, the airbag is a supplemental system that works in conjunction with an upper torso restraint. In addition, an automobile crash is more definable and is typically shorter in duration, which can simplify the activation logic of the airbag. The airplane operating environment is also quite different from automobiles and includes the potential for greater wear and tear and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.). Airplanes also operate where exposure to high intensity electromagnetic fields could affect the inflatable lapbelt activation system.

The lapbelt special conditions can be characterized as addressing either the safety performance of the inflatable lapbelt activation system, or the system's integrity against inadvertent activation. Because a crash requiring the use of inflatable lapbelts is a relatively rare event, and the consequences of an inadvertent activation are potentially quite severe, these latter requirements are more rigorous from a design standpoint.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 777. Should the Boeing Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 777 airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Boeing Model 777 series airplanes is imminent, the

FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 777 airplane.

In addition to the airworthiness standards of §§ 25.562 and 25.785, the minimum acceptable standards for dynamic certification of Boeing Model 777 single-occupant side-facing seats are as follows:

Additional Injury Criteria

(a) *Existing Criteria:* All injury protection criteria of § 25.562(c)(1) through (c)(6) apply to the occupant of a side-facing seat. Head Injury Criterion (HIC) assessments are only required for head contact with the seat and/or adjacent structures.

(b) *Body-to-Wall/Furnishing Contact:* Under the load condition defined in § 25.562(b)(2), the seat must be installed immediately aft of a structure such as an interior wall or furnishing that will support the pelvis, upper arm, chest, and head of an occupant seated next to the structure. A conservative representation of the structure and its stiffness must be included in the tests. It is recommended, but not required, that the contact surface of this structure be covered with at least two inches of energy absorbing protective padding (foam or equivalent), such as Ensolite.

(c) *Thoracic Trauma:* Under the load condition defined in § 25.562(b)(2), Thoracic Trauma Index (TTI) injury criterion must be substantiated by dynamic test or by rational analysis based on previous test(s) of a similar seat installation. Testing must be conducted with a Side Impact Dummy (SID), as defined by Title 49 Code of Federal Regulations (CFR) part 572, Subpart F, or its equivalent. The TTI must be less than 85, as defined in 49 CFR part 572, Subpart F. The SID TTI data must be processed as defined in Federal Motor Vehicle Safety Standard (FMVSS) part 571.214, section S6.13.5.

(d) *Pelvis:* Under the load condition defined in § 25.562(b)(2), pelvic lateral acceleration must be shown by dynamic test or by rational analysis based on previous test(s) of a similar seat installation to not exceed 130g. Pelvic acceleration data must be processed as defined in FMVSS part 571.214, section S6.13.5.

(e) *Shoulder Strap Loads:* Where upper torso straps (shoulder straps) are used for occupants, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total strap tension loads must not exceed 2,000 pounds.

(f) *Neck Injury Criteria:* The seating system must protect the occupant from experiencing serious neck injury.

Inflatable Lapbelt Conditions

(a) If inflatable lapbelts are used as the means of occupant restraint on single place side-facing seats, the requirements of existing Special Conditions 25–04–03–SC (1–14), "Boeing Model 777 Series Airplanes; Seats with Inflatable Lapbelts" are incorporated by reference except for special conditions 1 and 3, which are replaced by (b) and (c) below.

(b) Seats With Inflatable Lapbelts. It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head, neck, thoracic, and pelvic lateral acceleration injury from body-to-wall/furnishing contact. The means of protection must take into consideration a range of stature from two-year-old child to ninety-fifth percentile male. The inflatable lapbelt must provide a consistent approach to energy absorption throughout the range. In addition, the following situations must be considered:

1. The seat occupant is holding an infant.
2. The seat occupant is a child in a child restraint device.
3. The seat occupant is a child not using a child restraint device.
4. The seat occupant is a pregnant woman.

(c) The design must prevent the inflatable lapbelt from being either incorrectly buckled or incorrectly installed such that the inflatable lapbelt would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required injury protection.

Note: The existing means of controlling HIC, TTI and pelvic lateral acceleration result in a progressive reduction of injury severity for impact conditions less than the maximum specified by the requirements. However, airbag technology involves a step change in protection for impacts below and above that at which the airbag deploys. This could result in one or more of the injury criteria being higher at an intermediate impact condition than that resulting from the maximum. The step change in injury protection is acceptable, provided that the injury criteria values for any intermediate impact (whether or not the inflatable lapbelt delays) do not exceed the maximum allowed by the requirements.

Additional Test Requirements

(a) One longitudinal test with the SID Anthropomorphic Test Dummy (ATD), undeformed floor, no yaw, and with all lateral structural supports (armrests/walls).

Pass/fail injury assessments: The TTI and pelvic acceleration.

(b) One longitudinal test with the Hybrid II ATD, deformed floor, with 10 degrees yaw, and with all lateral structural supports (armrests/walls).

Pass/fail injury assessments: The HIC; upper torso restraint load, restraint system retention, and pelvic acceleration.

(c) Vertical (14 G's) test is to be conducted with modified Hybrid II ATDs with existing pass/fail criteria.

Note: It must be demonstrated that seats installed on plinths or pallets meet all applicable requirements. Compliance with the guidance contained in FAA Policy Memorandum PS–ANM–100–2000–00123, dated February 2, 2000, titled "Guidance for Demonstrating Compliance with Seat Dynamic Testing for Plinths and Pallets" will be acceptable to the FAA.

Issued in Renton, Washington, on August 9, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16745 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM307; Special Conditions No. 25–296–SC]

Special Conditions: Embraer Model ERJ 190 Series Airplanes; Sudden Engine Stoppage, Interaction of Systems and Structures, Operation Without Normal Electrical Power, Electronic Flight Control Systems, Automatic Takeoff Thrust Control System (ATTCS), and Protection From Effects of High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Embraer Model ERJ 190 series airplane. This airplane will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are associated with (1) engine size and torque load which affect sudden engine stoppage, (2) electrical and electronic systems which perform critical functions, and (3) an Automatic Takeoff thrust Control Systems (ATTCS). These special conditions also pertain to the effects of such novel or unusual design features, such as their effects on the structural performance of the airplane. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective August 23, 2005.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

Embraer made the original application for certification of the ERJ 190 on May 20, 1999. The Embraer application includes six different models, the initial variant being designated as the ERJ 190–100. The application was submitted concurrently with that for the ERJ 170–100, which received an FAA Type Certificate (TC) on February 20, 2004. Although the applications were submitted as two distinct type certificates, the airplanes share the same conceptual design and general configuration. On July 2, 2003, Embraer submitted a request for an extension of its original application for the ERJ 190 series, with a new proposed reference date of May 30, 2001, for establishing the type certification basis. The FAA certification basis was adjusted to reflect this new reference date. In addition Embraer has elected to voluntarily comply with certain 14 CFR part 25 amendments introduced after the May 30, 2001 reference date.

The Embraer ERJ 190–100 is a low wing, transport-category aircraft powered by two wing-mounted General Electric CF34–10E turbofan engines. The airplane is a 108 passenger regional jet with a maximum take off weight of 51,800 kilograms (114,200 pounds). The maximum operating altitude and speed are 41,000 feet and 320 knots calibrated air speed (KCAS)/0.82 MACH, respectively.

Type Certification Basis

Based on the May 30, 2001 reference date of application, and under the provisions of 14 CFR 21.17, Embraer must show that the Model ERJ 190 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–101. If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for the Embraer ERJ 190–100 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of 14 CFR 21.16.

Embraer has proposed to voluntarily adopt several 14 CFR part 25 amendments that became effective after the requested new reference date of May 30, 2001, specifically Amendment 25–102, except paragraph 25.981(c); Amendments 25–103 through 25–105 in their entirety; Amendment 25–107, except paragraph 25.735(h); Amendment 25–108 through 25–110 in their entirety; and Amendments 25–112 through 25–114 in their entirety.

In addition to the applicable airworthiness regulations and special conditions, the Embraer Model ERJ 190 series airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101.

Discussion of Novel or Unusual Design Features

The Embraer ERJ 190 series airplanes will incorporate a number of novel or unusual design features. Because of rapid improvements in airplane technology, the applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. The special conditions proposed for the Embraer ERJ 190 series airplanes contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. These special conditions are the same as those required for the Embraer Model ERJ 170.

The Embraer ERJ 190 series airplanes will incorporate the novel or unusual design features described below.

Engine Size and Torque Load

Since 1957, § 25.361(b)(1) has required that engine mounts and supporting structures must be designed to withstand the limit engine torque load which is posed by sudden engine stoppage due to malfunction or structural failure, such as compressor jamming. Design torque loads associated with typical failure scenarios were estimated by the engine manufacturer and provided to the airframe manufacturer as limit loads. These limit loads were considered simple, pure static torque loads. However, the size, configuration, and failure modes of jet engines have changed considerably from those envisioned when the engine seizure requirement of § 25.361(b) was first adopted. Current engines are much larger and are now designed with large bypass fans capable of producing much larger torque, if they become jammed.

Relative to the engine configurations that existed when the rule was developed in 1957, the present generation of engines is sufficiently different and novel to justify issuance of special conditions to establish appropriate design standards. The latest generation of jet engines is capable of producing, during failure, transient loads that are significantly higher and more complex than those produced by the generation of engines in existence when the current regulation was developed.

In order to maintain the level of safety envisioned in § 25.361(b), more comprehensive criteria are needed for the new generation of high bypass engines. The proposed special condition would distinguish between the more common failure events involving transient deceleration conditions with temporary loss of thrust capability and those rare events resulting from structural failures. Associated with these events, the proposed criteria establish design limit and ultimate load conditions.

Interaction of Systems and Structures

The Embraer Model 190 series airplane has fly-by-wire flight control systems and other power-operated systems that could affect the structural performance of the airplane, either directly or as a result of a failure or malfunction. These systems can alleviate loads in the airframe and, when in a failure state, can impose loads to the airframe. Currently, part 25 does not adequately account for the direct effects of these systems or for the effects of failure of these systems on structural performance of the airplane. The proposed special conditions provide the criteria to be used in assessing these effects.

Electrical and Electronic Systems Which Perform Critical Functions

The Embraer Model 190 series airplane will have electrical and electronic systems which perform critical functions. The electronic flight control system installations establish the criticality of the electrical power generation and distribution systems, since the loss of all electrical power may be catastrophic to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate standards for the protection of the Electronic Flight Control System from the adverse effects of operations without normal electrical power. Accordingly, this system is considered to be a novel or unusual design feature, and special conditions are proposed to retain the level of safety envisioned by § 25.1351(d).

Section 25.1351(d), "Operation without normal electrical power," requires safe operation in visual flight rule (VFR) conditions for at least five minutes without normal power. This rule was structured around a traditional design utilizing mechanical control cables for flight control surfaces and the pilot controls. Such traditional designs enable the flightcrew to maintain control of the airplane, while providing time to sort out the electrical failure, start engines if necessary, and re-establish some of the electrical power generation capability.

The Embraer Model 190 series airplane, however, will utilize an Electronic Flight Control System for the pitch and yaw control (elevator, stabilizer, and rudder). There is no mechanical linkage between the pilot controls and these flight control surfaces. Pilot control inputs are converted to electrical signals, which are processed and then transmitted via wires to the control surface actuators. At the control surface actuators, the electrical signals are converted to an actuator command to move the control surface.

In order to maintain the same level of safety as an airplane with conventional flight controls, an airplane with electronic flight controls—such as the Embraer Model 190 series—must not be time limited in its operation, including being without the normal source of electrical power generated by the engine or the Auxiliary Power Unit (APU) generators.

Service experience has shown that the loss of all electrical power generated by the airplane's engine generators or APU is not extremely improbable. Thus, it must be demonstrated that the airplane can continue safe flight and landing (including steering and braking on ground for airplanes using steer/brake-by-wire) after total loss of normal electrical power with the use of its emergency electrical power systems. These emergency electrical power systems must be able to power loads that are essential for continued safe flight and landing.

Electronic Flight Control System

In airplanes with Electronic Flight Control Systems, there may not always be a direct correlation between pilot control position and the associated airplane control surface position. Under certain circumstances, a commanded maneuver that does not require a large control input may require a large control surface movement, possibly encroaching on a control surface or actuation system limit without the flightcrew's knowledge. This situation can arise in either manually piloted or autopilot flight and may be further exacerbated on airplanes where the pilot controls are not back-driven during autopilot system operation. Unless the flightcrew is made aware of excessive deflection or impending control surface limiting, control of the airplane by the pilot or autoflight system may be inadvertently continued so as to cause loss of control of the airplane or other unsafe characteristics of stability or performance.

Given these possibilities, a special condition for Embraer Model ERJ 190 series airplanes addresses control surface position awareness. This special condition requires that suitable display or annunciation of flight control position be provided to the flightcrew when near full surface authority (not crew-commanded) is being used, unless other existing indications are found adequate or sufficient to prompt any required crew actions. Suitability of such a display or annunciation must take into account that some piloted maneuvers may demand the airplane's maximum performance capability, possibly associated with a full control surface deflection. Therefore, simple display systems—that would function in both intended and unexpected control-limiting situations—must be properly balanced between providing needed crew awareness and minimizing nuisance alerts.

Automatic Takeoff Thrust Control System

The Embraer Model ERJ 190 series airplane will incorporate an Automatic Takeoff Thrust Control System (ATTCS) in the engine's Full Authority Digital Electronic Control (FADEC) system architecture. The manufacturer requested that the FAA issue special conditions to allow performance credit to be taken for use of this function during go-around to show compliance with the requirement of § 25.121(d) regarding the approach climb gradient.

Section 25.904 and Appendix I refer to operation of ATTCS only during takeoff. Model ERJ 190 series airplanes have this feature for go-around also. The ATTCS will automatically increase thrust to the maximum go-around thrust available under the ambient conditions in the following circumstances:

- If an engine failure occurs during an all-engines-operating go-around, or
- If an engine has failed or been shut down earlier in the flight.

This maximum go-around thrust is the same as that used to show compliance with the approach-climb-gradient requirement of § 25.121(d). If the ATTCS is not operating, selection of go-around thrust will result in a lower thrust level.

The part 25 standards for ATTCS, contained in § 25.904 [Automatic takeoff thrust control system (ATTCS) and Appendix I], specifically restrict performance credit for ATTCS to takeoff. Expanding the scope of the standards to include other phases of flight, such as go-around, was considered when the standards were issued but was not accepted because of the effect on the flightcrew's workload. As stated in the preamble to Amendment 25–62:

In regard to ATTCS credit for approach climb and go-around maneuvers, current regulations preclude a higher thrust for the approach climb [§ 25.121(d)] than for the landing climb [§ 25.119]. The workload required for the flightcrew to monitor and select from multiple in-flight thrust settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the FAA does not agree that

the scope of the amendment should be changed to include the use of ATTCS for anything except the takeoff phase. (Refer to 52 FR 43153, November 9, 1987.)

The ATTCS incorporated on Embraer Model ERJ 190 series airplanes allows the pilot to use the same power setting procedure during a go-around, regardless of whether or not an engine fails. In either case, the pilot obtains go-around power by moving the throttles into the forward (takeoff/go-around) throttle detent. Since the ATTCS is permanently armed for the go-around phase, it will function automatically following an engine failure and advance the remaining engine to the ATTCS thrust level. This design adequately addresses the concerns about pilot workload which were discussed in the preamble to Amendment 25–62.

The system design allows the pilot to enable or disable the ATTCS function for takeoff. If the pilot enables ATTCS, a white "ATTCS" icon will be displayed on the Engine Indication and Crew Alerting System (EICAS) beneath the thrust mode indication on the display. This white icon indicates to the pilot that the ATTCS function is enabled. When the throttle lever is put in the TO/GA (takeoff/go-around) detent position, the white icon turns green, indicating to the pilot that the ATTCS is armed. If the pilot disables the ATTCS function for takeoff, no indication appears on the EICAS.

Regardless of whether the ATTCS is enabled for takeoff, it is automatically enabled when the airplane reaches the end of the take-off phase (that is, the thrust lever is below the TO/GA position and the altitude is greater than 1,700 feet above the ground, 5 minutes have elapsed since lift-off, or the airplane speed is greater than 140 knots).

During climb, cruise, and descent, when the throttle is not in the TO/GA position, the ATTCS indication is inhibited. During descent and approach to land, until the thrust management system go-around mode is enabled—either by crew action or automatically when the landing gear are down and locked and flaps are extended—the ATTCS indication remains inhibited.

When the go-around thrust mode is enabled, unless the ATTCS system has failed, the white "ATTCS" icon will again be shown on the EICAS, indicating to the pilot that the system is enabled and in an operative condition in the event a go-around is necessary. If the thrust lever is subsequently placed in the TO/GA position, the ATTCS icon turns green, indicating that the system is armed and ready to operate.

If an engine fails during the go-around or during a one-engine-inoperative go-around in which an engine had been shut down or otherwise made inoperative earlier in the flight, the EICAS indication will be GA RSV (go-around reserve) when the thrust levers are placed in the TO/GA position. The GA RSV indication means that the maximum go-around thrust under the ambient conditions has been commanded.

The propulsive thrust used to determine compliance with the approach climb requirements of § 25.121(d) is limited to the lesser of (i) the thrust provided by the ATTCS system, or (ii) 111 percent of the thrust resulting from the initial thrust setting with the ATTCS system failing to perform its uptrim function and without action by the crew to reset thrust. This requirement limits the adverse performance effects of a failure of the ATTCS and ensures adequate all-engines-operating go-around performance.

These special conditions require a showing of compliance with the provisions of § 25.904 and Appendix I applicable to the approach climb and go-around maneuvers.

The definition of a critical time interval for the approach climb case is of primary importance. During this time, it must be extremely improbable to violate a flight path derived from the gradient requirement of § 25.121(d). That gradient requirement implies a minimum one-engine-inoperative flight path with the airplane in the approach configuration. The engine may have been inoperative before initiating the go-around, or it may become inoperative during the go-around. The definition of the critical time interval must consider both possibilities.

Protection From Effects of HIRF

As noted earlier, Embraer Model ERJ 190 series airplanes will include an Electronic Flight Control System as well as advanced avionics for the display and control of critical airplane functions. These systems may be vulnerable to high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards that address the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be novel or unusual design features.

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

To ensure that a level of safety is achieved that is equivalent to that intended by the applicable regulations, special conditions are needed for the Embraer Model ERJ 190 series airplanes. These special conditions require that avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

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

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

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

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

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

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

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz ...	100	100
200 MHz–400 MHz ...	100	100

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

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

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

Discussion of Comments

Notice of Proposed Special Conditions No. 25–05–05–SC for the Embraer Model ERJ 190 series airplane was published in the **Federal Register** dated May 25, 2005 (70 FR 30020). Two comments indicating minor errors in the proposed special conditions were received from Embraer.

One comment points out an error in the table on page 30023 of the Notice of Proposed Special Conditions. The average level for 1 GHz–2 GHz is shown as 2000 rather than as 200 volts per meter. The FAA has determined that the correct value should be 200 volts per meter and, accordingly, has corrected the table in these final special conditions.

The second comment indicates an error on page 30025. The first sentence of Paragraph 2.c.(1)(i) says "For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure of the ultimate loads to be considered for design."

That sentence should say "For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design." The FAA has determined that the proposed wording was incorrect and has corrected it in these final special conditions. (We also corrected a typographical error in the following sentence by removing the letter "I.")

Applicability

As discussed above, these special conditions are applicable to the Embraer ERJ 190 series airplane. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of the Embraer ERJ 190 series airplane. This is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) issues the following special conditions as part of the type certification basis for the Embraer ERJ 190 series airplane.

Sudden Engine Stoppage

In lieu of compliance with § 25.361(b) the following special condition applies:

1. *For turbine engine installations*, the engine mounts, pylons and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

a. Sudden engine deceleration due to a malfunction which could result in a temporary loss of power or thrust; and

b. The maximum acceleration of the engine.

2. *For auxiliary power unit installations*, the power unit mounts and adjacent supporting airframe structure must be designed to withstand 1g level flight loads acting simultaneously with the maximum limit torque loads imposed by each of the following:

a. Sudden auxiliary power unit deceleration due to malfunction or structural failure; and

b. The maximum acceleration of the power unit.

3. *For engine supporting structures*, an ultimate loading condition must be considered that combines 1g flight loads with the transient dynamic loads resulting from:

a. The loss of any fan, compressor, or turbine blade; and

b. Separately, where applicable to a specific engine design, any other engine structural failure that results in higher loads.

4. *The ultimate loads* developed from the conditions specified in paragraphs 3.a. and 3.b. above are to be multiplied by a factor of 1.0 when applied to engine mounts and pylons and multiplied by a factor of 1 25 when applied to adjacent supporting airframe structure.

Interaction of Systems and Structures

In addition to the requirements of part 25, subparts C and D, the following special condition applies:

1. *General.* For airplanes equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction, the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of 14 CFR part 25, subparts C and D. The following criteria must be used to evaluate the structural performance of airplanes equipped with flight control systems, autopilots, stability augmentation systems, load alleviation systems, "flutter" control systems, and fuel management systems. If these criteria are used for other systems, it may be necessary to adapt the criteria to the specific system.

a. The criteria defined herein address only the direct structural consequences of the system responses and performances and cannot be considered in isolation but should be included in the overall safety evaluation of the airplane. These criteria may in some instances duplicate standards already established for this evaluation. These criteria are applicable only to structures whose failure could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements when operating in the system degraded or inoperative mode are not provided in this special condition.

b. Depending upon the specific characteristics of the airplane, additional studies that go beyond the criteria provided in this special condition may be required in order to demonstrate the capability of the airplane to meet other realistic conditions, such as alternative gust or maneuver descriptions for an airplane equipped with a load alleviation system.

c. The following definitions are applicable to this special condition:

Structural performance: Capability of the airplane to meet the structural requirements of 14 CFR part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in-flight

occurrence and that are included in the flight manual (*e.g.*, speed limitations, avoidance of severe weather conditions, etc.).

Operational limitations: Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (*e.g.*, fuel and payload limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in this special condition are the same as those used in 14 CFR 25.1309.

Failure condition: The term failure condition is the same as that used in 14 CFR 25.1309; however, this special condition applies only to system failure conditions that affect the structural performance of the airplane (*e.g.*, failure conditions that induce loads, lower flutter margins, or change the response of the airplane to inputs, such as gusts or pilot actions).

2. *Effects of Systems on Structures.*

a. General. The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

b. System fully operative. With the system fully operative, the following apply:

(1) Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in 14 CFR part 25, Subpart C, taking into account any special behavior of such a system or associated functions or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of 14 CFR part 25 (static strength, residual strength) using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

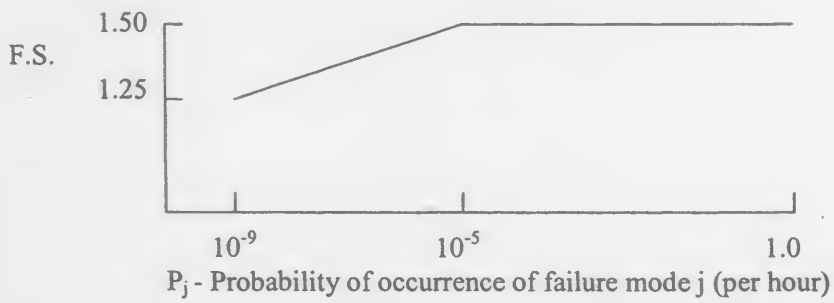
(3) The airplane must meet the aeroelastic stability requirements of 14 CFR 25.629.

c. System in the failure condition. For any system failure condition not shown to be extremely improbable, the following apply:

(1) At the time of occurrence. Starting from 1-g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after failure.

(i) For static strength substantiation, these loads multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure are ultimate loads to be considered for design. The factor of safety (FS) is defined in figure 1.

Figure 1
Factor of Safety at Time of Occurrence



(ii) For residual strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in subparagraph (c)(1)(i).

(iii) Freedom from aeroelastic instability must be shown up to the speeds defined in 14 CFR 25.629(b)(2). For failure conditions that result in speed increases beyond V_c/M_c, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by 14 CFR 25.629(b)(2) are maintained.

(iv) Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

(2) For the continuation of the flight. For the airplane, in the system-failed state and considering any appropriate reconfiguration and flight limitations, the following apply:

(i) The loads derived from the following conditions at speeds up to V_c or the speed limitation prescribed for the remainder of the flight must be determined:

(A) The limit symmetrical maneuvering conditions specified in 14 CFR 25.331 and 25.345.

(B) The limit gust and turbulent conditions specified in 14 CFR 25.341 and 25.345.

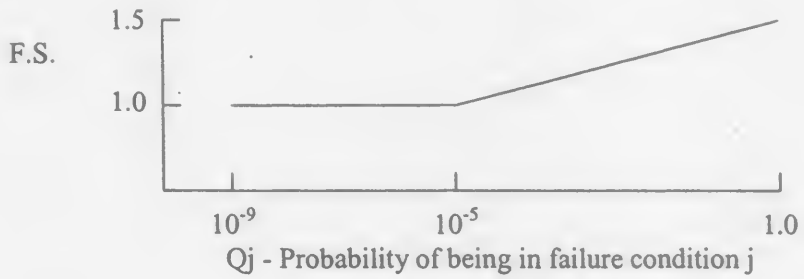
(C) The limit rolling conditions specified in 14 CFR 25.349 and the limit unsymmetrical conditions specified in 14 CFR 25.367 and 25.427(b) and (c).

(D) The limit yaw maneuvering conditions specified in 14 CFR 25.351.

(E) The limit ground loading conditions specified in 14 CFR 25.473 and 25.491.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads specified in paragraph (2)(i) above multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in figure 2.

Figure 2
Factor of Safety for Continuation of Flight



Qj = (Tj)(Pj) where:
Tj = Average time spent in failure condition j (in hours)
Pj = Probability of occurrence of failure mode j (per hour)

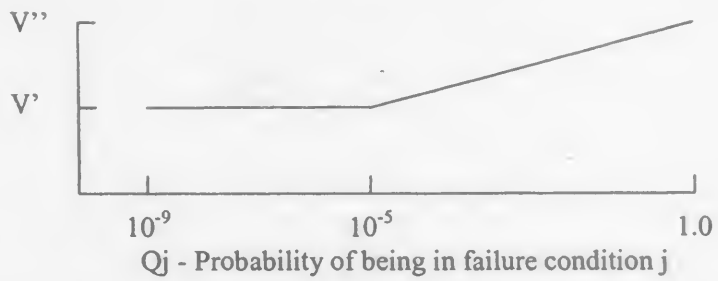
Note: If Pj is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in 14 CFR 25, Subpart C.

(iii) For residual strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in paragraph (c)(2)(ii) above.

(iv) If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance then their effects must be taken into account.

(v) Freedom from aeroelastic instability must be shown up to a speed determined from figure 3. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight using the margins defined by 14 CFR 25.629(b).

Figure 3
Clearance Speed



V′ = Clearance speed as defined by 14 CFR 25.629(b)(2)
V″ = Clearance speed as defined by 14 CFR 25.629(b)(1)
Qj = (Tj)(Pj) where:
Tj = Average time spent in failure condition j (in hours)
Pj = Probability of occurrence of failure mode j (per hour)

Note: If Pj is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.

(vi) Freedom from aeroelastic instability must also be shown up to V′ in figure 3 above for any probable system failure condition combined with any damage required or selected for investigation by 14 CFR 25.571(b).

(3) Consideration of certain failure conditions may be required by other sections of 14 CFR 25, regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9}, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

d. Warning considerations. For system failure detection and warning, the following apply:

(1) The system must be checked for failure conditions, not extremely improbable, that degrade the structural capability below the level required by 14 CFR part 25 or significantly reduce the reliability of the remaining system. The flight crew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks in lieu of warning systems to achieve the objective of this requirement. These certification maintenance requirements must be limited to component failures that are not readily detectable by normal warning systems and where service history shows that inspections will provide an adequate level of safety.

(2) The existence of any failure condition not extremely improbable during flight—that could significantly affect the structural capability of the airplane and for which the associated reduction in airworthiness can be minimized by suitable flight limitations—must be signaled to the

flight crew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of 14 CFR part 25, subpart C below 1.25 or flutter margins below V" must be signaled to the crew during flight.

e. Dispatch with known failure conditions. If the airplane is to be dispatched in a known system failure condition that affects structural performance or affects the reliability of the remaining system to maintain structural performance, then the provisions of this special condition must be met for the dispatched condition and for subsequent failures. Flight limitations and expected operational limitations may be taken into account in establishing Qj as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in figures 2 and 3. These limitations must be such that the probability of being in this combined failure state and then subsequently encountering limit load conditions is extremely improbable. No reduction in these safety margins is allowed if the subsequent system failure rate is greater than 10^{-3} per flight hour.

Operation Without Normal Electrical Power

In lieu of compliance with 14 CFR 25.1351(d), the following special condition applies:

It must be demonstrated by test or by a combination of test and analysis that the airplane can continue safe flight and landing with inoperative normal engine and APU generator electrical power (in other words without electrical power from any source, except the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the maximum diversion time capability being certified.

Electronic Flight Control System

In addition to compliance with §§ 25.143, 25.671 and 25.672, when a flight condition exists where, without being commanded by the crew, control surfaces are coming so close to their limits that return to the normal flight envelope and (or) continuation of safe flight requires a specific crew action, a suitable flight control position annunciation shall be provided to the crew, unless other existing indications are found adequate or sufficient to prompt that action.

Note: The term suitable also indicates an appropriate balance between nuisance and necessary operation.

Automatic Takeoff Thrust Control System (ATTCS)

To use the thrust provided by the ATTCS to determine the approach climb performance limitations, the Embraer Model ERJ 190 series airplane must comply with the requirements of § 25.904 and Appendix I, including the following requirements pertaining to the go-around phase of flight:

1. Definitions

a. *TOGA—(Take Off/Go-Around).* Throttle lever in takeoff or go-around position.

b. *Automatic Takeoff Thrust Control System—(ATTCS).* The Embraer Model ERJ–190 series ATTCS is defined as the entire automatic system available in takeoff when selected by the pilot and always in go-around mode, including all devices, both mechanical and electrical, that sense engine failure, transmit signals, and actuate fuel controls or power levers or increase engine power by other means on operating engines to achieve scheduled thrust or power increases and to furnish cockpit information on system operation.

c. *Critical Time Interval.* The definition of the Critical Time Interval in Appendix I, § I25.2(b) is expanded to include the following:

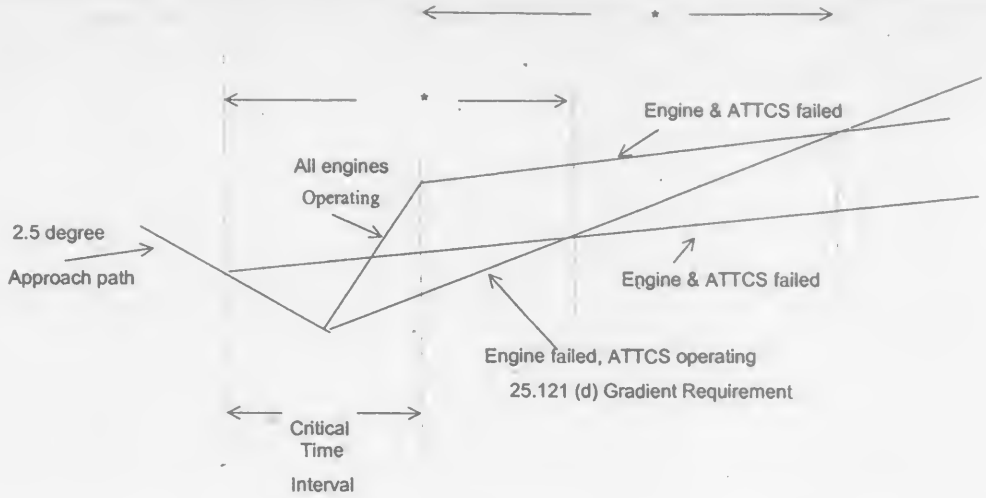
(1) When conducting an approach for landing using ATTCS, the critical time interval is defined as 120 seconds. A shorter time interval may be used if justified by a rational analysis. An accepted analysis that has been used on past aircraft certification programs is as follows:

(i) The critical time interval *begins* at a point on a 2.5 degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects a flight path originating at a later point on the same approach path corresponding to the part 25 one-engine-inoperative approach climb gradient. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for takeoff, beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(ii) The critical time interval *ends* at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects a flight path corresponding to the part 25 minimum one-engine-inoperative approach-climb-gradient. The all-engines-operating go-around flight path and the part 25 one-engine-inoperative, approach-climb-gradient flight path originate from a common point on a 2.5 degree approach path. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for the takeoff, beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(2) The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach climb performance data are presented in the Airplane Flight Manual (AFM).

(3) The critical time interval is illustrated in the following figure:



The engine and ATTCS failed time interval must be no shorter than the time interval from the point of simultaneous engine and ATTCS failure to a height of 400 feet used to comply with I25.2(b) for ATTCS use during takeoff.

2. Performance and System Reliability Requirements

The applicant must comply with the following performance and ATTCS reliability requirements:

a. An ATTCS failure or combination of failures in the ATTCS during the critical time interval:

(1) Shall not prevent the insertion of the maximum approved go-around thrust or power or must be shown to be an improbable event.

(2) Shall not result in a significant loss or reduction in thrust or power or must be shown to be an extremely improbable event.

b. The concurrent existence of an ATTCS failure and an engine failure during the critical time interval must be shown to be extremely improbable.

c. All applicable performance requirements of part 25 must be met with an engine failure occurring at the most critical point during go-around with the ATTCS system functioning.

d. The probability analysis must include consideration of ATTCS failure occurring after the time at which the flightcrew last verifies that the ATTCS is in a condition to operate until the beginning of the critical time interval.

e. The propulsive thrust obtained from the operating engine after failure of the critical engine during a go-around used to show compliance with the one-engine-inoperative climb requirements of § 25.121(d) may not be greater than the lesser of:

(i) The actual propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS functioning; or

(ii) 111 percent of the propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS failing to reset thrust or power and without any action by the crew to reset thrust or power.

3. Thrust Setting

a. The initial go-around thrust setting on each engine at the beginning of the go-around phase may not be less than any of the following:

(1) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

(2) That shown to be free of hazardous engine response characteristics when thrust or power is advanced from the initial go-around position to the maximum approved power setting.

b. For approval of an ATTCS for go-around, the thrust setting procedure must be the same for go-arounds initiated with all engines operating as for go-arounds initiated with one engine inoperative.

4. Powerplant Controls

a. In addition to the requirements of § 25.1141, no single failure or malfunction or probable combination thereof of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety.

b. The ATTCS must be designed to accomplish the following:

(1) Apply thrust or power on the operating engine(s), following any single engine failure during go around, to achieve the maximum approved go-around thrust without exceeding the engine operating limits;

(2) Permit manual decrease or increase in thrust or power up to the maximum go-around thrust approved for the airplane under existing conditions through the use of the power lever. For airplanes equipped with limiters that automatically prevent the engine operating limits from being exceeded under existing ambient conditions, other means may be used to increase the thrust in the event of an ATTCS failure, provided that the means meet the following criteria:

- Are located on or forward of the power levers;
- Are easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and
- Meet the requirements of § 25.777 (a), (b), and (c);

(3) Provide a means for the flightcrew to verify before beginning an approach for landing that the ATTCS is in a condition to operate (unless it can be demonstrated that an ATTCS failure combined with an engine failure during an entire flight is extremely improbable); and

(4) Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

5. Powerplant Instruments

In addition to the requirements of § 25.1305, the following requirements must be met:

a. A means must be provided to indicate when the ATTCS is in the armed or ready condition; and

b. If the inherent flight characteristics of the airplane do not provide adequate

warning that an engine has failed, a warning system that is independent of the ATTCS must be provided to give the pilot a clear warning of any engine failure during go-around.

Protection From Effects of HIRF

Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

For the purpose of this special condition, the following definition applies:

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

Issued in Renton, Washington, on August 12, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16728 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22145; Directorate Identifier 2005–NM–148–AD; Amendment 39–14223; AD 2005–17–12]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. This AD requires inspecting to identify the wing anti-ice ducts (piccolo tubes) in the wing leading edge. For airplanes with affected piccolo tubes, this AD requires revising the airplane flight manual (AFM) to introduce new procedures for operation in icing conditions. The optional implementation of repetitive inspections for cracks of affected piccolo tubes, and corrective actions if necessary, terminates the operational limitations. The optional installation of certain new piccolo tubes terminates both the AFM revision and the inspections. This AD was prompted by reports of failed piccolo tubes. We are issuing this AD to prevent cracked piccolo tubes, which could result in air leakage, a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability without annunciation to the flight crew, and consequent reduced controllability of the airplane.

DATES: This AD becomes effective September 7, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 7, 2005.

We must receive comments on this AD by October 24, 2005.

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

- *DOT Docket Web Site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide Rulemaking Web Site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- *Fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes. TCCA advises that it has received reports of failed wing anti-ice ducts (piccolo tubes) located in the wing leading edge. De-icing capability was degraded on the wing that had the piccolo tube damage. Upon investigation, it has been determined that piccolo tubes manufactured since June 2000 are susceptible to cracking due to the process used to drill the air distribution holes. Such cracking may cause air leakage, a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability without annunciation to the flight crew, and consequent reduced controllability of the airplane.

Relevant Service Information

Bombardier has issued Canadair Temporary Revision (TR) RJ/155, dated July 5, 2005, to the Canadair Regional Jet Airplane Flight Manual (AFM), CSP A–012. The TR introduces new procedures for operation in icing conditions. The TR revises the Operating Limitations and Abnormal Procedures sections of AFM CSP A–012 to include new procedures for operation in icing conditions.

Accomplishing the actions specified in the TR is intended to adequately address the unsafe condition. TCCA mandated the TR and issued Canadian airworthiness directive CF–2005–26, dated July 11, 2005, to ensure the continued airworthiness of these airplanes in Canada.

Bombardier has also issued Service Bulletin 601R–30–029, Revision A, dated July 7, 2005. The service bulletin describes procedures for:

- Repetitively inspecting, using fluorescent dye penetrant methods, the piccolo tubes to detect cracks.
- Replacing cracked piccolo tubes with acceptable parts, or reinstalling cracked piccolo tubes under certain conditions.
- Reporting the inspection results to the manufacturer.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD, which requires identifying the part and serial numbers of the piccolo tubes installed on the airplane. For airplanes

with affected piccolo tubes, the AD requires revising the AFM as specified previously. In addition, the optional implementation of the repetitive inspection program described previously terminates the operational limitations, provided operators comply with the exception described under "Differences Between the AD and the Service Bulletin/Canadian Airworthiness Directive." The optional installation of certain new piccolo tubes terminates both the AFM revision and the repetitive inspections.

Differences Between the AD and the Service Bulletin/Canadian Airworthiness Directive

The service bulletin specifies contacting the manufacturer for instructions on how to repair certain conditions, but this AD requires repair of those conditions using a method approved by the FAA or TCCA (or its delegated agent). In light of the type of repair required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this AD, a repair approved by the FAA or TCCA is acceptable for compliance with this AD.

The applicability of the Canadian airworthiness directive specifies serial numbers 7417 through 7990 inclusive, and 8000 and subsequent. However, this AD expands that applicability to include additional airplanes that have been recently identified as having the affected piccolo tube installed. We have been informed that the Canadian airworthiness directive and the service bulletin will be revised in the near future to incorporate this change.

These differences have been coordinated with TCCA.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include "Docket No. FAA–2005–22145; Directorate Identifier 2005–NM–148–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–17–12 Bombardier, Inc. (Formerly Canadair): Amendment 39–14233. Docket No. FAA–2005–22145; Directorate Identifier 2005–NM–148–AD.

Effective Date

(a) This AD becomes effective September 7, 2005.

Affected ADs

(b) None.

Applicability: (c) This AD applies to Bombardier Model CL–600–2B19 (Regional Jet Series 100 & 440) airplanes, certificated in any category, having the serial numbers listed below: 7013, 7017, 7037, 7046, 7059, 7076, 7105, 7127, 7151, 7157, 7163, 7174, 7179, 7203, 7204, 7228, 7271, 7347, 7362, 7378, 7417 through 7990 inclusive, 8000 and subsequent.

Unsafe Condition

(d) This AD was prompted by reports of failed wing anti-ice ducts (piccolo tubes) in the leading edge of the wing. We are issuing this AD to prevent cracked piccolo tubes,

which could result in air leakage, a possible adverse effect on the anti-ice air distribution pattern and anti-ice capability without annunciation to the flight crew, and consequent reduced controllability of the airplane.

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

Service Bulletin References

(f) For purposes of this AD, any reference to "the service bulletin" means the Accomplishment Instructions of Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005.

Identification of Affected Piccolo Tubes

(g) Before the airplane accumulates 3,000 total flight hours, or within 14 days after the effective date of this AD, whichever occurs later: Determine whether any affected piccolo tube is installed on the airplane. Affected piccolo tubes are identified in paragraph 1.A. of the service bulletin.

Revision to Aircraft Flight Manual (AFM)

(h) For airplanes with an affected or unidentifiable piccolo tube: Before the airplane accumulates 3,000 total flight hours, or within 14 days after the effective date of this AD, whichever occurs later, revise the Operating Limitations and Abnormal Procedures sections of the Canadair Regional Jet AFM, CSP A–012, to include the information in Canadair Temporary Revision (TR) RJ/155, dated July 5, 2005, as specified in the TR. This may be done by inserting a copy of the TR into the AFM. This TR introduces new procedures for operation in icing conditions. Operate the airplane according to the limitations and procedures in the TR. When this TR has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in the TR.

Optional Inspections

(i) For airplanes with an affected or unidentifiable piccolo tube: The operating limitations and abnormal procedures specified in the TR, as required by paragraph (h) of this AD, may be removed from the AFM, provided all requirements of this paragraph have been satisfied.

(1) A fluorescent dye penetrant inspection for cracks of the piccolo tubes is done and repeated thereafter within 2,000-flight-hour intervals in accordance with the service bulletin. An inspection done before the effective date of this AD in accordance with Bombardier Service Bulletin 601R–30–029, dated June 17, 2005, is acceptable for compliance with the requirements of paragraph (i)(1) of this AD.

(2) All applicable corrective actions are done as specified in paragraph (k) of this AD.

(3) Applicable inspection reports are submitted as specified in paragraph (o) of this AD.

AFM Limitations Required for Exceeding Inspection Interval

(j) During any period in which the inspection interval exceeds 2,000 flight hours after the initial inspection specified in paragraph (i)(1) of this AD, the airplane must be operated under the limitations and abnormal procedures specified in paragraph (h) of this AD.

Corrective Action

(k) If any crack is found during any inspection required by paragraph (i) of this AD: Before further flight, do the actions specified in paragraph (k)(1), (k)(2), (k)(3), (k)(4), or (k)(5) of this AD, except as required by paragraph (l) of this AD.

(1) Replace the cracked piccolo tube, in accordance with the service bulletin, with a new piccolo tube that has the same part number as identified in paragraph 1.A. of the service bulletin but that does not have a serial number listed in that paragraph.

(2) Replace the cracked piccolo tube, in accordance with the service bulletin, with a new piccolo tube that has a part number identified in the applicable Bombardier illustrated parts catalog but not identified in paragraph 1.A. of the service bulletin, or with a new piccolo tube identified in paragraph (m) of this AD.

(3) Replace the cracked piccolo tube, in accordance with the service bulletin, with a piccolo tube that has been inspected in accordance with the service bulletin, is not cracked, and has not accumulated any air time (hours time-in-service) since inspection.

(4) Replace the cracked piccolo tube with a piccolo tube that has been repaired in accordance with a method approved by either the Manager, New York Aircraft Certification Office (ACO), ANE–172, FAA; or Transport Canada Civil Aviation (TCCA) (or its delegated agent); and has not accumulated any air time (hours time-in-service) since the repair.

(5) Reinstall the cracked piccolo tube and operate the airplane in accordance with a method approved by either the Manager, New York ACO, or TCCA (or its delegated agent). Operation in accordance with the provisions of Master Minimum Equipment List (MMEL) entry 30–12–03 is one acceptable method.

Exception to Service Bulletin Procedures

(l) Where the service bulletin specifies that Bombardier may be contacted for information regarding repair, this AD requires repair according to a method approved by either the Manager, New York ACO, or TCCA (or its delegated agent).

Optional Terminating Action

(m) Installation, in accordance with the service bulletin, of a complete set of new inboard, center, and outboard piccolo tubes, as identified in paragraphs (m)(1), (m)(2), and (m)(3) of this AD terminates the requirements of paragraphs (g), (h), (i), (j), and (k) of this AD. When these piccolo tubes have been installed, remove the Operating Limitations and Abnormal Procedures, if inserted in accordance with paragraph (h) of this AD, from the AFM.

(1) For the inboard piccolo tube: P/N 601–80032–7 (14432–107) and 601–80032–8 (14432–108).

(2) For the center piccolo tube: P/N 14464–105 and 14464–106.

(3) For the outboard piccolo tube: P/N 14463–109 and 14463–110.

Parts Installation

(n) As of the effective date of this AD, no person may install, on any airplane, a piccolo tube having a P/N listed in listed in paragraph 1.A. of the service bulletin, unless the requirements of this AD have been accomplished for that piccolo tube.

Report

(o) For any inspection done in accordance with paragraph (i) of this AD: Submit a report of the inspection results (both positive and negative findings) in accordance with Appendix B of the service bulletin. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) If the most recent inspection was done after the effective date of this AD: Submit the report within 10 days after the inspection.

(2) If the most recent inspection was accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(p) The Manager, New York ACO, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(q) Canadian airworthiness directive CF–2005–26, dated July 11, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(r) You must use Canadair Temporary Revision RJ/155, dated July 5, 2005, to the Canadair Regional Jet Airplane Flight Manual, CSP A–012; and Bombardier Service Bulletin 601R–30–029, Revision A, dated July 7, 2005, including Appendix A, dated June 17, 2005, and Appendix B, Revision A, dated July 7, 2005; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the **Federal Register** approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For a copy of this service information, contact Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/*

code_of_federal_regulations/ibr_locations.html.

Issued in Renton, Washington, on August 11, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16533 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21109; Directorate Identifier 2005–CE–21–AD; Amendment 39–14232; AD 2005–17–11]

RIN 2120–AA64

Airworthiness Directives; The Cessna Aircraft Company Models 525, 525A, and 525B Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for certain The Cessna Aircraft Company (Cessna) Models 525, 525A, and 525B airplanes. This AD requires you to install identification sleeves on the wiring for both engine fire extinguisher bottles. This AD results from reports of incorrectly connecting wires to the engine fire extinguisher bottles. We are issuing this AD to prevent incorrect installation of the wires to the engine fire extinguisher bottles, which could result in failure of the engine fire extinguisher bottles to discharge when activated. This failure could lead to the inability to control an engine fire.

DATES: This AD becomes effective on October 7, 2005.

As of October 7, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact The Cessna Aircraft Company, Citation Marketing Division, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–6000; facsimile: (316) 517–8500.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2005–21109; Directorate Identifier 2005–CE–21–AD.

FOR FURTHER INFORMATION CONTACT: James P. Galstad, Aerospace Engineer, FAA, Wichita ACO, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4135; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Wires connected to the engine fire extinguisher bottles on Cessna Models 525B and 560XL airplanes were found reversed. Installing the wiring in an incorrect configuration resulted from a lack of clarity in the wiring schematics for connecting the wires and testing the connections.

The same lack of clarity in the wiring schematics for connecting the wires and testing the connections also exists for Cessna Models 525 and 525A airplanes.

An incorrect wiring configuration installation could go undetected because the existing circuit checks appear normal during routine checks. However, the engine fire extinguisher bottles will not discharge when activated.

What is the potential impact if FAA took no action? If not detected and corrected, incorrect wiring of the engine fire extinguisher bottles could result in failure of the engine fire extinguisher bottles to discharge when activated. This failure could lead to the inability to control an engine fire.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Cessna Models 525, 525A, and 525B airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 19, 2005 (70 FR 28857). The NPRM proposed to require you to do the following:

—Install identification sleeves on wires connecting to the engine fire extinguisher bottles;
—Reconnect the wires to the engine fire extinguisher bottles; and
—Test the wiring for correct installation.

Comments

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

Conclusion

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

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

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

Costs of Compliance

How many airplanes does this AD impact? We estimate that this AD affects 578 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to do the modification:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 workhours × $65 per hour = $260	Not applicable	$260	$260 × 578 = $150,280.

Cessna will provide warranty credit for the modification to the extent stated in the supplemental data to the service information.

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49

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

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

Regulatory Findings

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

Will this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "Docket No. FAA–2005–21109; Directorate Identifier 2005–CE–21–AD" in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2005–17–11 The Cessna Aircraft Company: Amendment 39–14232; Docket No. FAA–2005–21109; Directorate Identifier 2005–CE–21–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on October 7, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

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

Model	Serial Nos.
525	525–0001 through 525–0600.
525A	525A–0001 through 525A–0234.
525B	525B–0001 through 525B–0035.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports about the possibility to incorrectly connect the wires to the engine fire extinguisher bottles. The actions specified in this AD are intended to prevent incorrect installation of the wires to the engine fire extinguisher bottles, which could result in failure of the engine fire extinguisher bottles to discharge when activated. This failure could lead to the inability to control an engine fire.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Install identification sleeves on the wires for both engine fire extinguisher bottles.	Within the next 60 days or 100 hours time-in-service after October 7, 2005 (the effective date of this AD), whichever occurs first.	Follow the Accomplishment Instructions in: (i) Cessna Citation Service Bulletin SB525–26–01; (ii) Cessna Citation Service Bulletin SB525A–26–02; or (iii) Cessna Citation Service Bulletin SB525B–26–01, all dated April 5, 2005, as applicable.
(2) Reconnect the wires to both engine fire extinguisher bottles.	Before further flight after the sleeve installation required in paragraph (e)(1) of this AD.	Use the service information specified in paragraphs (e)(1)(i) through (e)(1)(iii) of this AD.
(3) Test the wires for correct installation	Before further flight after reconnecting the wires as required in paragraph (e)(2) of this AD.	Use the service information specified in paragraphs (e)(1)(i) through (e)(1)(iii) of this AD.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact James P. Galstad, Aerospace Engineer, FAA Wichita ACO, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4135; facsimile: (316) 946–4107.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Cessna Citation Service Bulletin SB525–26–01; Cessna Citation Service Bulletin SB525A–26–02; and Cessna Citation Service Bulletin SB525B–26–01, all dated April 5, 2005 (as applicable). The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact The Cessna Aircraft Company, Citation Marketing Division, Product Support P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–6000; facsimile: (316) 517–8500. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket

Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2005–21109; Directorate Identifier 2005–CE–21–AD.

Issued in Kansas City, Missouri, on August 16, 2005.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16530 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21342; Directorate Identifier 2004–NM–15–AD; Amendment 39–14229; AD 2005–17–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A321 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A321 series airplanes. This AD requires repetitive measurements for correct control rod gap of the hold-open mechanism of all emergency doors, and corrective actions if necessary. This AD also requires replacing the control rods with new, improved control rods, which would terminate the repetitive measurements. This AD results from a report that an operator found it impossible to lock emergency doors 2 and 3 in the open position. We are issuing this AD to prevent failure of the emergency doors to lock in the open position, which could interfere with passenger evacuation during an emergency.

DATES: Effective September 27, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of September 27, 2005.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Airbus Model A321 series airplanes. That NPRM was published in the **Federal Register** on June 3, 2005 (70 FR 32542). That NPRM proposed to require repetitive measurements for correct control rod gap of the hold-open mechanism of all emergency doors, and corrective actions if necessary. The NPRM also proposed to require replacing the control rods with new, improved control rods, which would terminate the repetitive measurements.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment that has been received on the NPRM.

Support for the Proposed AD

The commenter supports the NPRM.

Explanation of Change to Applicability

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

Conclusion

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

Costs of Compliance

This AD will affect about 28 airplanes of U.S. registry.

The measurement to determine control rod gap will take about 2 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the measurement for U.S. operators is $3,640, or $130 per airplane, per measurement cycle.

The replacement of the control rods with new, improved, water-resistant control rods will take about 9 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $400 per airplane. Based on these figures, the estimated cost of the required replacement for U.S. operators is $27,580, or $985 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–17–08 Airbus: Amendment 39–14229. Docket No. FAA–2005–21342; Directorate Identifier 2004–NM–15–AD.

Effective Date

(a) This AD becomes effective September 27, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A321 series airplanes, certificated in any category; except for those airplanes that have received Airbus Modification 33426 in production.

Unsafe Condition

(d) This AD was prompted by a report that an operator found it impossible to lock emergency doors 2 and 3 in the open position. We are issuing this AD to prevent failure of the emergency doors to lock in the open position, which could interfere with passenger evacuation during an emergency.

Compliance

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

Inspection of Emergency Exit Doors

(f) Within 600 flight hours after the effective date of this AD and thereafter at intervals not to exceed 600 flight hours, perform a measurement for correct gap of the control rod of the hold-open mechanism of all emergency doors, in accordance with Airbus All Operators Telex (AOT) A320–52A1120, Revision 02, dated July 10, 2003. If the gap of any control rod is not correct, prior to further flight, apply all necessary corrective actions in accordance with the AOT.

Optional Interim Terminating Action

(g) Replacing the polyamide control rod of any mechanism with an aluminum control rod prior to accomplishing paragraph (h) of this AD, as specified in AOT A320–52A1120, Revision 02, dated July 10, 2003, terminates the repetitive measurement required by paragraph (f) of this AD for that mechanism.

Final Terminating Action

(h) Within 18 months after the effective date of this AD, replace the polyamide or interim aluminum control rods of the release mechanisms with new, improved, water-resistant control rods in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–52–1121, dated December 12, 2003. This replacement terminates the repetitive measurement required by paragraph (f) of this AD.

Actions Accomplished per Previous Issue of Service Bulletin

(i) Actions accomplished before the effective date of this AD in accordance with Airbus AOT A320–52A1120, dated June 5, 2003; or Revision 01, dated June 19, 2003; are considered acceptable for compliance with the corresponding actions specified in this AD.

No Reporting Requirement

(j) Although the service information specifies procedures for reporting measurement results and control rod replacement to the manufacturer, this AD does not require these reports.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(l) French airworthiness directive F–2004–040, dated March 31, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use Airbus Service Bulletin A320–52–1121, dated December 12, 2003; and Airbus All Operators Telex A320–52A1120, Revision 02, dated July 10, 2003; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 11, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16458 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22142; Directorate Identifier 2005–NM–153–AD; Amendment 39–14228; AD 2005–17–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111 Airplanes and Model A320–200 Series Airplanes

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

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Model A320–111 airplanes and Model A320–200 series airplanes. This AD requires doing a one-time general visual inspection of the axle nut on each main landing gear (MLG) wheel for the presence of locking bolts and associated hardware; doing any related investigative and corrective actions as applicable; and submitting an inspection report to the manufacturer. This AD results from a report that an axle nut had separated from an axle on a main landing gear (MLG) wheel, due to missing locking bolts. We are issuing this AD to detect and correct missing locking bolts on the axle nuts of the MLG wheels. Absence of the locking bolts could result in separation of a wheel(s) from the axle and consequent reduced controllability of the airplane during takeoff and landing, and possible injury to people on the ground.

DATES: This AD becomes effective September 7, 2005.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of September 7, 2005.

We must receive comments on this AD by October 24, 2005.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

• Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.

• Fax: (202) 493–2251.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A320–111 airplanes and Model A320–200 series airplanes. The DGAC advises that it received a report that, during taxi-out, the flightcrew of a Model A320 airplane felt the brake at wheel position 3 of the main landing gear (MLG) dragging, and saw a rise in brake temperature. An inspection of wheel position 3 revealed that the axle nut had separated from the axle, the axle sleeve had started to move out, and that the wheel assembly, including the outer bearing, had been severely damaged. An inspection of the other three wheel positions on that airplane revealed that the axle nuts on those wheels were not secured with locking bolts and had started to move out. An investigation revealed that the locking bolts that were intended to secure the axle nut to the axle were most likely not installed during production. Absence of the locking bolts, if not detected and corrected, could result in separation of a wheel(s) from the axle and consequent reduced controllability of the airplane during takeoff and landing, and possible injury to people on the ground.

Relevant Service Information

Airbus has issued All Operators Telex (AOT) A320–32A1303, dated July 4, 2005. The AOT describes procedures for doing a one-time visual inspection of the axle nut on each MLG wheel for the presence of locking bolts and associated hardware (nuts, washers, and pins); doing related investigative and corrective actions as applicable; and reporting inspection results. The related investigative and corrective actions are:

• Doing a visual inspection of the debris guard, fan impeller or hubcap, tachometer mounting sleeve, and other related components for any damage;

• Ensuring the correct torque for the axle nut;

• Doing a general visual inspection of the axle sleeve, retaining ring, and wheel for any damage if the axle nut has not been torqued properly;

• Replacing any damaged components; and

• Installing locking bolts and associated hardware.

The DGAC mandated the service information and issued French emergency airworthiness directive UF–2005–128, dated July 13, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of this AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are issuing this AD to detect and correct missing locking bolts on the MLG wheels. Absence of the locking bolts could result in separation of a wheel(s) from the axle and consequent reduced controllability of the airplane during takeoff and landing, and possible injury to people on the ground. This AD requires accomplishing the actions specified in the service information described previously.

Clarification of Inspection Terminology

In this AD, the "visual inspection" specified in the Airbus service information is referred to as a "general visual inspection." We have included the definition for a general visual inspection in a note in the AD.

Interim Action

This is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the extent of the missing locking bolts and associated hardware in the fleet to develop final action to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed in the **ADDRESSES** section. Include "Docket No. FAA–2005–22142; Directorate Identifier 2005–NM–153–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD that might suggest a need to modify it.

We will post all comments we receive, without change, to http://dms.dot.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of that web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–17–07 Airbus: Amendment 39–14228. Docket No. FAA–2005–22142; Directorate Identifier 2005–NM–153–AD.

Effective Date

(a) This AD becomes effective September 7, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A320–111 airplanes, and Model A320–211, –212, –214, –231, –232, and –233 airplanes; certificated in any category; with serial numbers 2275 through 2440 inclusive, 2442 through 2446 inclusive, 2448, 2450, 2452, 2454, 2456 through 2458 inclusive, 2460 through 2474 inclusive, 2476 through 2478 inclusive, 2480 through 2483 inclusive, 2485, and 2486.

Unsafe Condition

(d) This AD results from a report that an axle nut had separated from an axle on a main landing gear (MLG) wheel, due to missing locking bolts. The FAA is issuing this AD to detect and correct missing locking bolts on the axle nuts of the MLG wheels. Absence of the locking bolts could result in separation of a wheel(s) from the axle and consequent reduced controllability of the airplane during takeoff and landing, and possible injury to people on the ground.

Compliance

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

Inspection and Related Investigative and Corrective Actions

(f) Within 500 flight hours after the effective date of this AD, do a one-time general visual inspection of the axle nut of each MLG wheel for the presence of locking bolts and associated hardware (nuts, washers, and pins), and any applicable related investigative and corrective actions, in accordance with the Description section of Airbus All Operators Telex (AOT) A320–32A1303, dated July 4, 2005. Do any related investigative or corrective action before further flight.

Note 1: For the purposes of this AD, a general visual inspection is: "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 ensure visual access to all 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."

Inspection Report

(g) Submit a report of the findings (both positive and negative) of the inspection(s) required by paragraph (f) of this AD to the manufacturer, in accordance with the Reporting/Acknowledgement section of Airbus AOT A320–32A1303, dated July 4, 2005, at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD. The report must include the inspection results, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(i) French emergency airworthiness directive UF–2005–128, dated July 13, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(j) You must use Airbus All Operators Telex A320–32A1303, dated July 4, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 11, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16457 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21341; Directorate Identifier 2003–NM–026–AD; Amendment 39–14231; AD 2005–17–10]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Saab Model SAAB 2000 airplanes. This AD requires an inspection for cracking of the fastener holes in the front and rear spars, a modification of the fastener holes of the front and rear spars and the rear spar web, and related investigative/corrective actions if necessary. This AD is prompted by a report of cracking of certain fastener holes in the lower spar cap of the rear spar and in the lower skin at the front spar. We are issuing this AD to prevent cracking of the front and rear spars, which could result in fuel leakage and consequent reduced structural integrity of the wing structure.

DATES: This AD becomes effective September 27, 2005.

The incorporation by reference of a certain publication listed in the AD is approved by the Director of the Federal Register as of September 27, 2005.

ADDRESSES: For service information identified in this AD, contact Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden.

Docket: The AD docket contains the proposed AD, comments, and any final disposition. You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW, room PL–401, Washington, DC. This docket number is FAA–2005–21341; the directorate identifier for this docket is 2003–NM–026–AD.

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: The FAA proposed to amend 14 CFR part 39 with an AD for certain Saab Model SAAB 2000 airplanes. That action, published in the **Federal Register** on June 3, 2005 (70 FR 32540), proposed to require an inspection for cracking of the fastener holes in the front and rear spars, a modification of the fastener holes of the front and rear spars and the rear spar web, and related investigative/corrective actions if necessary.

New Relevant Service Information

Saab has issued Service Bulletin 2000–57–038, Revision 01, dated June 24, 2004. The proposed AD refers to Saab Service Bulletin 2000–57–038, dated December 18, 2002, as the acceptable source of service information for doing the proposed actions. The procedures in Revision 01 of the service bulletin are essentially the same as those in the original issue. Therefore, we have revised paragraphs (f) and (g) of this AD to refer to Revision 01 of the service bulletin as the appropriate source of service information for doing the actions required by those paragraphs. We have also added a new paragraph (h) to this AD (and re-identified subsequent paragraphs accordingly) to give credit for actions done before the effective date of this AD in accordance with the original issue of the service bulletin.

Comments

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

Explanation of Change to Applicability

The FAA has revised the applicability of this AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

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

Costs of Compliance

This AD affects about 3 airplanes of U.S. registry. The required actions (inspections and modification) will take about 250 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $8,557 per airplane. Based on these figures, the estimated cost of this AD for U.S. operators is $74,421, or $24,807 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–17–10 SAAB Aircraft AB: Amendment 39–14231. Docket No. FAA–2005–21341; Directorate Identifier 2003–NM–026–AD.

Effective Date

(a) This AD becomes effective September 27, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to certain Saab Model SAAB 2000 airplanes having serial numbers 004 through 063 inclusive, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report of cracking of certain fastener holes in the lower spar cap of the rear spar and in the lower skin at the front spar. We are issuing this AD to prevent cracking of the front and rear spars, which could result in fuel leakage and consequent reduced structural integrity of the wing structure.

Compliance

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

Inspection

(f) Prior to the accumulation of 20,000 total flight cycles, perform non-destructive tests for cracking of the fastener holes in the lower spar cap of the rear spar and in the lower skin at the left-hand and right-hand sides of the front spar, between WS20 and WS83 inclusive; by accomplishing all the actions specified in Parts A, B, and C of the Accomplishment Instructions of Saab Service Bulletin 2000–57–038, Revision 01, dated June 24, 2004. If any cracking is detected, before further flight, repair the cracking according to a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Luftfartsverket (LFV) (or its delegated agent).

Modification

(g) Prior to the accumulation of 20,000 total flight cycles, modify the fastener holes of the front and rear spars and the rear spar web, including related investigative actions, by accomplishing all the actions specified in Part D of the Accomplishment Instructions of Saab Service Bulletin 2000–57–038, Revision 01, dated June 24, 2004. If ¼-inch fasteners are needed for holes No. 7 and No. 8, before further flight, contact the Manager, International Branch, ANM–116, for further actions, or the LFV (or its delegated agent). If any scratches or other damage is detected on the skin surface or the surface of the front spar, before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the LFV (or its delegated agent).

Actions Accomplished Previously

(h) Inspections or modifications accomplished before the effective date of this AD in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–57–038, dated December 18, 2002, are considered acceptable for compliance with the corresponding actions specified in this AD.

Alternative Methods of Compliance (AMOCs)

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

Material Incorporated by Reference

(j) You must use Saab Service Bulletin 2000–57–038, Revision 01, dated June 24, 2004, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approves the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get copies of the service information, contact Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 11, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16456 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19865; Directorate Identifier 2003–NM–242–AD; Amendment 39–14230; AD 2005–17–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747, 757, 767 and 777 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to certain Boeing Model 747, 757, 767, and 777 series airplanes. That AD currently requires modifying certain drip shields located on the flight deck, and follow-on actions. This new AD removes certain airplanes that are included in the applicability statement of the existing AD, and requires modifying additional drip shields on the flight deck of certain other airplanes. This AD is prompted by a determination that certain airplanes have drip shields that are not adequately resistant to fire. We are issuing this AD to prevent potential ignition of the moisture barrier cover of the drip shield, which could propagate a small fire that results from an electrical arc, leading to a larger fire.

DATES: This AD becomes effective September 27, 2005.

The incorporation by reference of certain publications listed in the AD is approved by the Director of the Federal Register as of September 27, 2005.

On February 2, 2001 (65 FR 82901, December 29, 2000), the Director of the Federal Register approved the incorporation by reference of certain other publications listed in the AD.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

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

FAA–2004–19865; the directorate identifier for this docket is 2003–NM–242–AD.

FOR FURTHER INFORMATION CONTACT: Patrick Gillespie, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6429; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an AD to supersede AD 2000–26–04, amendment 39–12054 (65 FR 82901, December 29, 2000). The existing AD applies to certain Boeing Model 747, 757, 767, and 777 series airplanes. The proposed AD was published in the **Federal Register** on December 16, 2004 (69 FR 75267), to require modifying certain drip shields located on the flight deck, and follow-on actions.

Comments

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

Support for the Proposed AD

One commenter concurs with the contents of the proposed AD and has no additional comments.

Request To Revise Applicability Statement

One commenter, the airplane manufacturer, requests that we revise Table 1 under Applicability in the proposed AD to remove the Model 777 series airplane having line number (L/N) 254. The commenter states that the affected Model 777 L/Ns include line numbers prior to 254, except L/Ns 1, 120, 219, 230, 235, 242, 245, and 249.

We agree and have revised Table 1 of this AD to remove L/N 254.

Request To Add Later Service Bulletin Revision

One commenter requests that we revise paragraph (f) of the proposed AD to refer to Boeing Service Bulletin 757–25–0228, Revision 1, dated March 28, 2002 (for Model 757–300 series airplanes); and Boeing Service Bulletin 777–25–0164, Revision 1, including Appendices A, B, C, and D, all dated March 22, 2001; as acceptable methods of compliance with that paragraph. The commenter notes that the procedures in Revision 1 of these service bulletins are substantially similar to those in the original issues of the service bulletin, which paragraph (f) refers to as acceptable sources of service information for Model 757–300 and Model 777 series airplanes. Boeing Service Bulletin 757–25–0228, Revision 1, clarifies certain procedures and corrects a part number for a washer used to attach fire blocks. Boeing Service Bulletin 777–25–0164, Revision 1, provides additional installation instructions and placard and dimensional information. The commenter also notes that the effectivity listing is the same in Revision 1 of the service bulletins as in the original issues.

We agree. We note that Revision 1 of these service bulletins was approved as an alternative method of compliance (AMOC) for AD 2000–26–04, and that AMOC remains valid as specified in paragraph (k)(2) of this AD. However, for clarification and for the convenience of affected operators, we have also revised paragraph (f) of this AD to specify both the original issue and Revision 1 of these service bulletins as acceptable methods of compliance for doing the modification required by that paragraph.

Request To Clarify Requirements for Certain Model 757 Series Airplanes

One commenter requests that we revise the proposed AD to allow the proposed actions to be accomplished in accordance with previous revisions of Boeing Service Bulletin 757–25–0226 for Boeing Model 757 series airplanes identified in Groups 2 and 4 of Boeing Service Bulletin 757–25–0226, Revision 3, dated September 2, 2004. The commenter states that, for airplanes in those groups, Boeing Service Bulletins 757–25–0226, Revision 2, dated October 31, 2002, and Revision 3, do not add additional work beyond what is specified for those airplanes in the original issue, dated July 3, 2000, and Revision 1, dated February 15, 2001. The commenter states that we should make it clear that no additional work is required by this AD for any airplane in Group 2 or 4 that was modified in accordance with a previous issue of the service bulletin. The commenter adds that the proposed AD should also be revised to give credit for using any revision of Boeing Service Bulletin 757–25–0226 to modify any airplane in Group 2 or 4. The commenter also notes that an AMOC was issued for AD 2000–26–04 to allow certain required actions to be accomplished in accordance with Boeing Service Bulletin 757–25–0226, Revision 1. The commenter states that this AMOC should also still be valid for airplanes in Groups 2 and 4.

We agree with the commenter's requests for the reasons stated by the commenter, and accordingly have made the following changes to this AD:

- We revised paragraph (i) of this AD to specify that paragraph (i) applies only to airplanes identified as being in Group 1 or 3 by Boeing Service Bulletin 757–25–0226, Revision 3.
- We revised paragraph (f) to state that only airplanes in Group 1 or 3 are required to use Revision 3 after the effective date of this AD.
- We added a new paragraph (j)(2) to this AD (and renumbered a subsequent paragraph) to give credit for modifying the drip shields on airplanes in Groups 2 and 4 before the effective date of this AD in accordance with Revision 1 of Boeing Service Bulletin 757–25–0226. (Paragraph (j)(1) of this AD already gives credit for modifying the drip shields in accordance with Revision 2 of that service bulletin.)
- We revised paragraph (k)(2) of this AD to state that, except for Model 757–200, –200CB, and –200PF series airplanes listed in Groups 1 and 3 of Boeing Service Bulletin 757–25–0226, Revision 3, dated September 2, 2004, AMOCs approved previously in accordance with AD 2000–26–04, amendment 39–12054, are acceptable for compliance with this AD.
- We revised the Costs of Compliance section to reduce the estimated number of Model 757–200, –200CB, and –200PF series airplanes subject to the new requirements from 491 U.S.-registered airplanes to 350. This figure includes only the airplanes in Groups 1 and 3.

Request To Revise Estimated Number of Airplanes No Longer Affected

One commenter, the airplane manufacturer, states that the estimate of Model 747 series airplanes no longer affected, as stated in the Actions Since Existing AD Was Issued section of the proposed AD, should be increased from 550 to 650 airplanes. The commenter points out that the effectivity listing of the original issue of Boeing Service Bulletin 747–25–3253, dated June 29, 2000, included L/Ns 1 through 1234 inclusive, except 1174 and 1216 (approximately 1230 airplanes). However, the effectivity listing of Boeing Service Bulletin 747–25–3253, Revision 3, dated September 4, 2003, includes L/Ns 1 through 299 inclusive and 951 through 1234 inclusive, except 292, 296, 297, 1174, and 1216 (approximately 580 airplanes). Therefore, approximately 650 airplanes are no longer affected.

We agree with the intent of the commenter's request. However, the relevant paragraph to which the commenter refers is not restated in this

final rule. Thus, we have made no change in this regard.

Request To Increase Estimate for Costs of Compliance

One commenter requests that we increase the number of work hours necessary to accomplish the required actions on affected Model 757 series airplanes. The commenter notes that the proposed AD estimates that 26 work hours would be needed, while the referenced service bulletin for Model 757 series airplanes states total work-hour estimates of 107, 94.5, 74, and 66 work hours for airplanes in Groups 1, 2, 3, and 4, respectively. The commenter states that its experience indicates that the figures provided by Boeing in the service bulletin are accurate, but the FAA's estimate times are lower than the service bulletin figures and, as a result, contribute to an erroneously low cost estimate.

We partially agree with the commenter's request. We note that the total work hour estimates to which the commenter refers include time for gaining access and closing up. The cost analysis in AD actions, however, typically does not include costs such as the time required to gain access and close up, time necessary for planning, or time necessitated by other administrative actions. Costs for those type of actions may vary significantly among operators and are almost impossible to calculate.

However, we do agree that the costs of compliance estimated in the proposed AD for Model 757 series airplanes did not include the work hours necessary for testing, as specified in Boeing Service Bulletin 757–25–0226, Revision 3. Therefore, we have revised the estimated costs of compliance in this AD to estimate that 58 work hours are needed to do the required actions on each affected Model 757 series airplane.

Conclusion

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

Costs of Compliance

There are about 2,222 airplanes of affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with the actions that are required by AD 2000–26–04 and retained in this proposed AD. The average labor rate is $65 per work hour.

ESTIMATED COSTS

Model	U.S.-registered airplanes	Work hours (estimated)	Labor cost (estimated)	Parts cost (estimated)	Maximum fleet cost (estimated)
747	105	39	$2,535	$2,300 to 3,500	$633,675
757	491	58	3,770	1,700	2,685,770
767	140	17	1,105	2,300	476,700
777	56	3	195	1,700	106,120

For Model 747 series airplanes listed in Group 1 in Boeing Service Bulletin 747–25–3253, Revision 3, in lieu of doing the modification of the drip shields, this proposed AD provides an option to take samples of the drip shields to determine if the modification is necessary. Therefore, the estimated costs above may be reduced if some airplanes do not need the modification. It would take approximately 18 work hours to do the sampling, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the sampling is estimated to be $1,170 per sampled airplane.

As many as 350 U.S.-registered Model 757–200, –200CB, and –200PF series airplanes may be subject to the new proposed actions. These new actions would take about 8 additional work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost an additional $160 per airplane (for a total parts cost of $1,860 per airplane). Based on these figures, the estimated cost of the new actions specified in this proposed AD for U.S. operators of affected airplanes is up to an additional $238,000, or $680 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–12054 (65 FR 82901, December 29, 2000), and by adding the following new airworthiness directive (AD):

2005–17–09 Boeing: Amendment 39–14230. Docket No. FAA–2004–19865; Directorate Identifier 2003–NM–242–AD.

Effective Date

(a) This AD becomes effective September 27, 2005.

Affected ADs

(b) This AD supersedes AD 2000–26–04, amendment 39–12054.

Applicability

(c) This AD applies to Model 747, 757, 767, and 777 series airplanes having the line numbers (L/Ns) listed in Table 1 of this AD; certificated in any category.

TABLE 1.—APPLICABILITY

Model	Affected L/Ns	Except L/Ns
747	1 through 299 inclusive and 951 through 1234 inclusive	292, 296, 297, 1174, 1216.
757	2 through 895 inclusive	870, 886, 894.
767	470 through 768 inclusive	758.
777	2 through 253 inclusive	120, 219, 230, 235, 242, 245, 249.

Unsafe Condition

(d) This AD was prompted by a determination that certain airplanes have drip shields that are not adequately resistant to fire. We are issuing this AD to prevent potential ignition of the moisture barrier cover of the drip shield, which could propagate a small fire that results from an electrical arc, leading to a larger fire.

Compliance

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

Requirements of AD 2000–26–04

Modification

(f) Within 6 years after February 2, 2001 (the effective date of AD 2000–26–04), accomplish paragraphs (f)(1), (f)(2), and (f)(3) of this AD; in accordance with Boeing Service Bulletin 747–25–3253, dated June 29, 2000, or Revision 3, dated September 4, 2003; 757–25–0226, dated July 3, 2000, or Revision 3, dated September 2, 2004; 757–25–0228, dated July 3, 2000, or Revision 1, dated March 28, 2002; 767–25–0290, dated June 29, 2000, or Revision 4, dated October 28, 2004; or 777–25–0164, dated June 29, 2000, or Revision 1, including Appendices A, B, C, and D, all dated March 22, 2001; as applicable; except as provided by paragraph (g) of this AD. For Model 757–200, –200CB, and –200PF series airplanes identified as being in Groups 1 and 3 in Boeing Service Bulletin 757–25–0226, Revision 3: As of the effective date of this AD, only Revision 3 of the service bulletin may be used. For Model 747 and 767 series airplanes: As of the effective date of this AD, only Boeing Service Bulletin 747–25–3253, Revision 3, or 767–25–0290, Revision 4, as applicable, may be used.

(1) Modify drip shields located on the flight deck by installing fire blocks.

(2) Prior to further flight following accomplishment of paragraph (f)(1) of this AD, perform a functional test of any system disturbed by the modification, in accordance with the applicable service bulletin or airplane maintenance manual (AMM), as applicable. If any functional test fails, prior to further flight, isolate the fault, correct the discrepancy in accordance with the applicable AMM, and repeat the failed test until it is successfully accomplished.

(3) Prior to further flight following the accomplishment of paragraphs (f)(1) and (f)(2) of this AD, install placards on all modified drip shields.

(g) If any wires or equipment are installed on the outboard surface of the drip shield (that is, between the drip shield and the airplane structure), modify that area in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

Optional Sampling (Certain Model 747 Series Airplanes)

(h) For Model 747 series airplanes listed in Group 1 in Boeing Service Bulletin 747–25–3253, Revision 3, dated September 4, 2003: In lieu of accomplishing paragraph (f) of this AD, within 6 years after February 2, 2001, collect samples of the insulation and adhesive of the drip shields, and submit the samples to the manufacturer for testing, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–25–3253, dated June 29, 2000, or Revision 3, dated September 4, 2003. After the effective date of this AD, only Revision 3 may be used.

(1) If the test on all samples is positive, no further action is required by this AD.

(2) If the test on any sample is negative, accomplish paragraph (f) of this AD before the compliance time specified in that paragraph.

New Requirements of This AD

Model 757–200/–200CB/–200PF Series Airplanes Previously Modified

(i) For Model 757–200, –200CB, and –200PF series airplanes identified as being in Group 1 or 3 in Boeing Service Bulletin 757–25–0226, Revision 3, dated September 2, 2004, and that were modified before the effective date of this AD in accordance with Boeing Service Bulletin 757–25–0226, dated July 3, 2000: Within 72 months after the effective date of this AD, modify drip shields located above windows number 2 and 3 on the flight deck by installing fire blocks, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 757–25–0226, Revision 3, dated September 2, 2004; except as provided by paragraph (g) of this AD. After the modification, do the actions required by paragraphs (f)(2) and (f)(3) of this AD because these actions apply to the drip shields modified in accordance with this paragraph.

Previously Accomplished Actions

(j) Modifying the drip shields before the effective date of this AD in accordance with the applicable service bulletin specified in paragraph (j)(1), (j)(2), or (j)(3) of this AD is acceptable for compliance with the corresponding requirements of paragraphs (f) and (i) of this AD, as applicable.

(1) For Model 757–200, –200CB, and –200PF series airplanes: Boeing Service Bulletin 757–25–0226, Revision 2, dated October 31, 2002.

(2) For Model 757–200, –200CB, and –200PF series airplanes identified in Groups 2 and 4 of Boeing Service Bulletin 757–25–0226, Revision 3, dated September 2, 2004: Boeing Service Bulletin 757–25–0226, Revision 1, dated February 15, 2001.

(3) For Model 767 series airplanes: Boeing Service Bulletin 767–25–0290, Revision 3, dated June 26, 2003.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) Except for Model 757–200, –200CB, and –200PF series airplanes listed in Groups 1 and 3 of Boeing Service Bulletin 757–25–0226, Revision 3, dated September 2, 2004: Alternative methods of compliance, approved previously in accordance with AD 2000–26–04, amendment 39–12054, are approved as alternative methods of compliance with this AD.

Material Incorporated by Reference

(l) You must use the applicable documents listed in Table 2 of this AD to perform the actions that are required by this AD, unless the AD specifies otherwise.

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Boeing service bulletin	Revision level	Date
747–25–3253, including Appendices A, B, and C	Original	June 29, 2000.
747–25–3253	3	September 4, 2003.
757–25–0226, including Appendices A, B, and C	Original	July 3, 2000.
757–25–0226	3	September 2, 2004.
757–25–0228, including Appendices A, B, and C	Original	July 3, 2000.
757–25–0228	1	March 28, 2002.
767–25–0290, including Appendices A, B, and C	Original	June 29, 2000.
767–25–0290	4	October 28, 2004.
777–25–0164, including Appendices A, B, and C	Original	June 29, 2000.
777–25–0164, including Appendices A, B, C, and D	1	March 22, 2001.

(1) The Director of the Federal Register approves the incorporation by reference of the documents listed in Table 3 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 3.—NEW MATERIAL INCORPORATED BY REFERENCE

Boeing service bulletin	Revision level	Date
747–25–3253	3	September 4, 2003.
757–25–0226	3	September 2, 2004.
757–25–0228	1	March 28, 2002.
767–25–0290	4	October 28, 2004.
777–25–0164, including Appendices A, B, C, and D	1	March 22, 2001.

(2) On February 2, 2001 (65 FR 82901, December 29, 2000), the Director of the Federal Register approved the incorporation by reference of the documents listed in Table 4 of this AD.

TABLE 4.—MATERIAL PREVIOUSLY INCORPORATED BY REFERENCE

Boeing service bulletin	Revision level	Date
747–25–3253, including Appendices A, B, and C	Original	June 29, 2000.
757–25–0226, including Appendices A, B, and C	Original	July 3, 2000.
757–25–0228, including Appendices A, B, and C	Original	July 3, 2000.
767–25–0290, including Appendices A, B, and C	Original	June 29, 2000.
777–25–0164, including Appendices A, B, and C	Original	June 29, 2000.

(3) To get copies of the service information, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. To view the AD docket, go to the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Nassif Building, Washington, DC. To review copies of the service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Renton, Washington, on August 11, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16455 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19144; Directorate Identifier 2003–NE–18–AD; Amendment 39–14226; AD 2005–17–05]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF6–80C2 and CF6–80E1 Turbofan Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain GE CF6–80C2 and CF6–80E1 turbofan engines. This AD requires you to inspect the high pressure compressor rotor (HPCR) stage 11–14 spool shaft for circumferential repair cuts, and to repair or replace the spool shaft if you find certain circumferential cuts. This AD results from an updated stress analysis. We are issuing this AD to prevent failure of the HPCR stage 11–14 spool shaft due to low-cycle fatigue that could result in an uncontained engine failure.

DATES: This AD becomes effective September 27, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 27, 2005.

ADDRESSES: You can get the service information identified in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the

Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; telephone (781) 238–7192; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to certain GE CF6–80C2 and CF6–80E1 turbofan engines. We published the proposed AD in the **Federal Register** on September 22, 2004 (69 FR 56730). That action proposed to require inspection of the spool shaft for circumferential repair cuts at the next piece-part level exposure, but not to exceed a specific service cap specified in this proposed AD, and repair or replacement of certain spool shafts.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Add a Definition

One commenter requests that for clarity, we add a definition for cycles-since-repair (CSR) to the AD. We agree and have added a definition to the compliance section. That definition states that for the purposes of this AD, CSR limit is the current cycles-since-new (CSN) minus the CSN at the time of the repair.

Request To Add Instructions

One commenter requests that for clarity, we add instructions to the compliance section if the CSR limit cannot be determined from the engine records. We agree and have added a sentence to the compliance section. That sentence states that if the CSR limit cannot be determined from the engine records, then CSN must be used.

Request for Document or Procedure References

One commenter requests that we add document or procedure references such as Repair Documents, Service Bulletin numbers, and Shop Manual tasks for the circumferential repairs, to help the commenter determine affected spools. We do not agree. The AD references the applicable GE Service Bulletins, which include the lists of affected parts by serial number (SN). The AD is only applicable to those parts. Additional references are not needed to determine if the operator has an affected part.

Request To Exclude Spools That Previously Complied

One commenter requests that the AD be modified to exclude spools that have previously complied with GEAE Service Bulletin (SB) No. CF6–80C2 S/B 72–1052, Revision 01, dated February 5, 2004, or certain revisions of engine shop manual (ESM) section 72–31–08 or ESM section 72–00–31. We partially agree. We agree that no further action is required for spools that have already complied with GEAE SB No. CF6–80C2 S/B 72–1052, Revision 01, dated February 5, 2004. The AD clearly states in paragraph (e) that the AD actions are only required if the actions are not already done.

We do not agree that accomplishment of ESM section 72–31–08 or 72–00–31 is equivalent to compliance with GEAE SB No. CF6–80C2 S/B 72–1052, Revision 01, dated February 5, 2004. ESM section 72–31–08, Revision 60 or later does contain the same repair procedure (Repair 12) referenced in the accomplishment instructions of the SB and incorporated by reference in this AD. Credit for repairs done before the effective date of the AD using ESM section 72–31–08, Revision 60 or later, should be requested using the alternative methods of compliance procedure described in this AD. However, ESM 72–00–31 does not include the necessary repair instructions. Therefore, we have not changed the AD to incorporate this comment.

Request To Add a Reference to List of Affected SNs

One commenter requests that Applicability paragraph (c) of the AD be modified to include a reference to the list of affected SNs of stage 11–14 spool shafts in the manufacturer's SBs. The commenter states that this additional information would clarify that the AD is only intended to apply to those specific spools and not the entire fleet. We partially agree. We agree that Applicability paragraph (c) would be clearer if it states that the list of affected SNs can be found in the referenced service bulletins. We have added a sentence to Applicability paragraph (c) that states the affected stage 11–14 spool shafts are identified by SN in the GE service information described in paragraphs (f) and (j) of this AD.

Request To Clarify Number of Affected Stage 11–14 Spool Shafts

One commenter requests that the number of affected stage 11–14 spool shafts be clarified, as the number in GEAE SB No. CF6–80C2 S/B 72–1052, Revision 01, dated February 5, 2004, and in the Supplementary Information of the NPRM are not the same.

We do not agree. The statement the commenter is referring to in the Supplementary Information of the NPRM states that GE reports that as many as 135 CF6–80C2 and CF6–80E1 HPCR 11–14 spool shafts have had this (circumferential cut) repair. This quantity is the combined number of affected spool shafts listed in not one, but two SBs, which are the SB for CF6–80C2 engines and the SB for CF6–80E1 engines. Since the issuance of the NPRM, however, these SBs have been revised to correct a few errors in the SN lists of affected spool shafts. The revised SBs referenced in this AD are GEAE SB No. CF6–80C2 S/B 72–1052, Revision 02, dated May 25, 2005, and GEAE SB No. CF6–80E1 S/B 72–0232, Revision 01, dated February 5, 2004. Therefore, we have not changed the AD to address this comment.

Request To Include List of Affected Stage 11–14 Spool Shafts in AD

One commenter requests that we include in the AD the list of affected stage 11–14 spool shafts, instead of referring readers to the SBs for the lists, to avoid the potential for confusion. The commenter also requests that we delete the stage 11–14 spool shaft SN MPOAP580 from the list of affected spools in the AD, suggesting that only stage 11 of spool shaft SN MPOAP580 was reworked, and so the proposed AD is inapplicable to that spool.

We do not agree that referring readers to the SBs for the lists is confusing. We believe it would be confusing to maintain lists of affected SNs in both the AD and the SBs. We agree that the AD doesn't affect spools repaired on stage 11. We also verified through the manufacturer that spool SN MPOAP580 was repaired in only stage 11. This SN spool shaft has been deleted from the revised SBs.

Request To Clarify Paragraph (f)

One commenter requests that compliance section paragraph (f) be clarified by adding the words "not to exceed the life limits specified in Table 2 in the column entitled Replace by (CSR) Limit", to the end of the sentence. We do not agree. Compliance section paragraphs (f)(1) and (f)(2) already include this necessary "not to exceed" information.

Request for Additional Cycles-in-Service

One commenter requests that up to 420 additional cycles-in-service (CIS) be granted for those affected spools that will have accumulated more cycles than the "Repair By Limit" but are within 420 cycles of the "Replace By Limit" on the effective date of the AD. The commenter states that this would provide margin for those operators suffering heavy impact from this AD. The commenter notes that paragraph (h) of the proposed AD provides an allowance of 420 CIS if an affected spool has already accumulated more cycles than the "Replace by Limit" on the effective date of the AD. We agree, and revised the compliance section based on this request.

Request To Include a Note

The same commenter requests that a note be included in the AD to specify that execution of the Accomplishment Instructions of GEAE SB No. CF6–80C2 S/B 72–1052, Revision 01, dated February 5, 2004, is considered terminating action for the AD. The commenter is unclear whether or not the SB is terminating action for the AD.

We do not agree. The AD requires that spools either be repaired or replaced. Once a spool has been repaired or replaced, no further action is required.

Conclusion

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

Costs of Compliance

There are approximately 173 GE CF6–80C2 and CF6–80E1 turbofan engines of the affected design in the worldwide fleet. We estimate that 24 engines installed on airplanes of U.S. registry will be affected by this AD. We also estimate that it will take about one work hour per engine to inspect for the location of previous circumferential cut repairs and 5 work hours per engine to repair the spool shaft. We estimate that 24 engines will be repaired and that three spool shafts will be replaced. The average labor rate is $65 per work hour. Each replacement spool shaft will cost approximately $447,400. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $1,351,755.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–17–05 General Electric Company: Amendment 39–14226. Docket No. FAA–2004–19144; Directorate Identifier. 2003–NE–18–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 27, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to certain GE CF6–80C2 and CF6–80E1 turbofan engines that have a high pressure compressor rotor (HPCR) stage 11–14 spool shaft with a part number (P/N) listed in Table 1 of this AD and that had a seal wire groove repaired using a circumferential cut at a location specified in Table 2 of this AD. The affected stage 11–14 spool shafts are identified by serial number (SN) in the GE service information described in paragraphs (f) and (j) of this AD. These engines are installed on, but not limited to, Airbus Industrie A300, A310, and A330 series airplanes and Boeing 747, 767, and MD–11 series airplanes.

TABLE 1.—STAGE 11–14 SPOOL SHAFT P/NS BY ENGINE MODEL AND FORGING GROUP DESIGNATIONS

Engine model	Stage 11–14 Spool Shaft P/Ns	Forging group designations
CF6–80C2	9380M30G07, 9380M30G08, 9380M30G09, 9380M30G10, 9380M30G12, 1509M71G02, 1509M71G03, 1509M71G04, and 1509M71G05.	Group 1.

TABLE 1.—STAGE 11–14 SPOOL SHAFT P/NS BY ENGINE MODEL AND FORGING GROUP DESIGNATIONS—Continued

Engine model	Stage 11–14 Spool Shaft P/Ns	Forging group designations
CF6–80C2	1531M21G01, 1531M21G02, 1531M21G04, 1509M71G06, 1509M71G07, 1509M71G08, 1509M71G11, 1509M71G12, 1703M74G01, and 1703M74G03.	Group 2.
CF6–80E1	1509M71G11, 1509M71G12, 1509M71G13, 1644M99G03, 1703M74G01, and 1703M74G03.	Not Applicable.

Unsafe Condition

(d) This AD results from an updated stress analysis. We are issuing this AD to prevent failure of the HPCR stage 11–14 spool shaft due to low-cycle fatigue that could result in an uncontained engine failure.

Compliance

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

CF6–80C2 Engines

(f) For CF6–80C2 series engines with HPCR stage 11–14 spool shaft SNs listed in 1.A.(2) of GE Aircraft Engines (GEAE) Service Bulletin (SB) No. CF6–80C2 S/B 72–1052, Revision 02, dated May 25, 2005, inspect the spool shaft for the location of the circumferential cut repair at the next piece-part exposure.

(1) If the stage and location of the repair is specified in the engine records, inspect prior to exceeding the cycles-since-repair (CSR) limit specified in the column titled, Replace By (CSR), in Table 2.

(2) For the purposes of this AD, CSR limit is defined as the current cycles-since-new (CSN) minus the CSN at the time of the repair.

(3) If the CSR limit cannot be determined from the engine records, then CSN must be used.

(4) If the stage or location of the repair is not known from the engine records, remove the spool shaft for inspection before exceeding 4,200 CSR for the Group 1 or before exceeding 10,000 CSR for Group 2. Use 3.A.(1) of the Accomplishment Instructions of GEAE SB No. CF6–80C2 S/B 72–1052, Revision 02, dated May 25, 2005, for the inspection. Table 2 follows:

TABLE 2.—REPAIR AND REPLACEMENT LIMITS FOR SPOOL SHAFTS BY FORGING GROUP AND LOCATION OF THE CIRCUMFERENTIAL CUT REPAIR

Engine model	Forging group (from Table 1)	Stage	Location of circumferential cut repair	Repair by (CSR) limit	Replace by (CSR) limit
(1) CF6–80C2	Group 1	14	(i) Aft Seal Wire Groove Not in Area X	3,600	4,200
			(ii) Aft Seal Wire Groove—In Area X	None—Replace spool	4,200
			(iii) Forward Seal Wire Groove—Not in Area X.	7,100	7,100
			(iv) Forward Seal Wire Groove—In Area X.	None—Replace spool	7,100
(2) CF6–80C2	Group 1	13	(i) Aft Seal Wire Groove—Not in Area X	7,100	7,100
			(ii) Aft Seal Wire Groove—In Area X	2,740	7,100
			(iii) Forward Seal Wire Groove—Not in Area X.	7,100	7,100
			(iv) Forward Seal Wire Groove—In Area X.	7,100	7,100
(3) CF6–80C2	Group 1	12	Aft Seal Wire Groove—In Area X	7,100	7,100
(4) CF6–80C2	Group 2	14	(i) Aft Seal Wire Groove—Not in Area X	13,700	13,700
			(ii) Aft Seal Wire Groove—In Area X	None—Replace spool	13,700
			(iii) Forward Seal Wire Groove—In Area X.	9,830	10,000
(5) CF6–80C2	Group 2	13	(i) Aft Seal Wire Groove—In Area X	9,830	10,000
			(ii) Forward Seal Wire Groove—In Area X.	9,830	10,000
(6) CF6–80C2	Group 2	12	Aft Seal Wire Groove—In Area X	9,830	10,000
(7) CF6–80E1	Not Applicable	14	(i) Aft Seal Wire Groove—Not in Area X	11,600	11,600
			(ii) Aft Seal Wire Groove—In spool Area X.	None—Replace spool	11,600
			(iii) Forward Seal Wire Groove—In Area X.	8,080	11,600
(8) CF6–80E1	Not Applicable	13	(i) Aft Seal Wire Groove—In Area X	8,080	11,600
			(ii) Forward Seal Wire Groove—In Area X.	8,080	11,600
(9) CF6–80E1	Not Applicable	12	Aft Seal Wire Groove—In Area X	8,080	11,600

(g) If you have a Group 2 spool shaft, and the circumferential cut repair is in the Stage 14 forward location, and not in Area X, no further action is required by this AD. However, GEAE recommends that you repair these spools at the next exposure of the spool shaft.

Replacement of the Spool Shaft

(h) After the effective date of this AD, replace spool shafts as follows:

(1) If the spool shaft exceeds the CSR limit in the column titled, Repair by (CSR), in Table 2 of this AD, replace the spool shaft within 420 cycles-in-service (CIS) or prior to exceeding the CSR limit in the column titled, Replace by (CSR), in Table 2 of this AD, whichever occurs later.

(2) If the spool shaft exceeds the CSR limit in the column titled, Replace by (CSR), in Table 2 of this AD, replace the spool shaft within 420 CIS or within the published part life limit, whichever occurs first.

Repair of the Spool Shaft

(i) You may repair the spool if the CSR on the spool shaft are fewer than or equal to the limit in the column titled, Repair by (CSR), in Table 2 of this AD. Use 3.B. of the Accomplishment Instructions of GEAE SB No. CF6–80C2 S/B 72–1052, Revision 02, dated May 25, 2005, for the repair.

CF6–80E1 Engines

(j) For CF6–80E1 series engines with HPCR stage 11–14 spool shafts with SNs listed in 1.A.(2) of GEAE SB No. CF6–80E1 S/B 72–0232, Revision 01, dated February 5, 2004, do the following:

(1) Inspect the spool shaft for the location of the cut circumferential repair at the next piece-part exposure, but before exceeding 11,600 CSR. Use 3.A.(1) of the Accomplishment Instructions of GEAE SB No. CF6–80E1 S/B 72–0232, Revision 01, dated February 5, 2004 for the inspection.

(2) For the purposes of this AD, CSR limit is defined as the current CSN minus the CSN at the time of the repair.

(3) If the CSR limit cannot be determined from the engine records, then CSN must be used.

(4) If the circumferential cut repair is in the Stage 14 forward location, and not in Area X, no further action is required by this AD. However, GEAE recommends that you repair these spools at the next exposure of the spool shaft.

Replacement of the Spool Shaft

(k) After the effective date of this AD, replace spool shafts as follows:

(1) If the spool shaft exceeds the CSR limit in the column titled, Repair by (CSR), in Table 2 of this AD, replace the spool shaft within 420 CIS or prior to exceeding the CSR limit in the column titled, Replace by (CSR), in Table 2 of this AD, whichever occurs later.

(2) If the spool shaft exceeds the CSR limit in the column titled, Replace by (CSR), in Table 2 of this AD, replace the spool shaft within 420 CIS or within the published part life limit, whichever occurs first.

Repair of the Spool Shaft

(l) You may repair the spool shaft if the CSR on the spool shaft are fewer than or equal to the limit in the column titled, Repair by (CSR), in Table 2 of this AD. Use 3.B. of the Accomplishment Instructions of GEAE SB CF6–80E1 S/B 72–0232, Revision 01, dated February 5, 2004, for the repair.

Alternative Methods of Compliance

(m) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(n) You must use the service information specified in Table 3 of this AD to perform the actions required by this AD.

TABLE 3.—INCORPORATION BY REFERENCE

Service bulletin No.	Page	Revision	Date
CF6–80C2 S/B 72–1052	ALL	02	May 25, 2005.
Total Pages: 11			
CF6–80E1 S/B 72–0232	ALL	01	February 5, 2004.
Total Pages: 9			

The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 3 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422, for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the internet at *http://dms.dot.gov*, 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/cfr/ibr-locations.html*.

Issued in Burlington, Massachusetts, on August 12, 2005.

Peter A. White,

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

[FR Doc. 05–16454 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20849; Directorate Identifier 2005–NE–04–AD; Amendment 39–14227; AD 2005–17–06]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Artouste III Series Turboshaft Engines

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Turbomeca Artouste III series turboshaft engines. This AD requires modification of the engine air intake assembly. This AD results from a report of an in-flight shutdown and subsequent loss of control of the helicopter due to ice ingestion into the engine. We are issuing this AD to prevent ice ingestion into the engine, which could lead to an in-flight shutdown and subsequent loss of control of the helicopter.

DATES: This AD becomes effective September 27, 2005. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 27, 2005.

ADDRESSES: Contact Turbomeca, 40220 Tarnos, France; telephone +33 05 59 74 40 00, fax +33 05 59 74 45 15, for the service information identified in this AD.

You may examine the AD docket on the Internet at *http://dms.dot.gov* or in Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7175; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to Turbomeca Artouste III series turboshaft engines. We published the proposed AD in the **Federal Register** on April 6, 2005 (70 FR 17368). That action proposed to require adding two additional water drain holes in the engine air intake assembly.

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in

person at the Docket Management Facility Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES**. Comments will be available in the AD docket shortly after the DMS receives them.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the one comment received.

One commenter, Turbomeca, states that we should change the compliance section to reference Update No. 1 of Mandatory Service Bulletin (MSB) No. 218 72 0104. Update No. 1 of the MSB corrects an error in the MSB original issue. The MSB original issue required only one hole to be drilled in each half-air intake assembly, preventing the half-air intake assemblies from being interchangeable. Update No. 1 of the MSB requires a second hole to be drilled in each half-air intake assembly to make them interchangeable. We agree, and have changed the compliance section of this AD to reference Turbomeca MSB No. 218 72 0104, Update No. 1, dated March 25, 2005.

Conclusion

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

Costs of Compliance

There are about 1,062 engines of the affected design in the worldwide fleet. We estimate that this AD will affect 59 engines installed on helicopters of U.S. registry. We also estimate that it will take about three work hours per engine to perform the actions, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $11,505.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2005–17–06 Turbomeca: Amendment 39–14227. Docket No. FAA–2005–20849; Directorate Identifier. 2005–NE–04–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 27, 2005.

Affected ADs

(b) None.

Applicability: (c) This AD applies to Turbomeca Artouste III B, B1, and D turboshaft engines. These engines are installed on, but not limited to, Aerospatiale (Eurocopter—France) SA–315B LAMA, and Alouette III SA3160, SA–316B, and SA–316C helicopters.

Unsafe Condition

(d) This AD results from a report of an in-flight shutdown and subsequent loss of control of the helicopter, due to ice ingestion into the engine. We are issuing this AD to prevent ice ingestion into the engine, which could lead to an in-flight shutdown and subsequent loss of control of the helicopter.

Compliance: (e) You are responsible for having the actions required by this AD performed within nine months after the effective date of this AD, unless the actions have already been done.

Addition of Water Drain Holes (Turbomeca Modification TU 171A)

(f) Within nine months from the effective date of this AD, drill two additional water drain holes in each engine air intake assembly half-cover, using paragraph 2.B. and the air intake assembly dimensional flat view of Turbomeca Artouste III Mandatory Service Bulletin No. 218 72 0104, Update No. 1, dated March 25, 2005.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) DGAC airworthiness directive F–2003–455, dated December 24, 2003, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Turbomeca Artouste III Mandatory Service Bulletin No. 218 72 0104, Update No. 1, dated March 25, 2005, to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Turbomeca, 40220 Tarnos, France; telephone +33 05 59 74 40 00, fax +33 05 59 74 45 15, for a copy of this service information. You may review copies at the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001, on the internet at *http://dms.dot.gov*, 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/cfr/ibr-locations.html*.

Issued in Burlington, Massachusetts, on August 12, 2005.

Peter A. White,

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

[FR Doc. 05–16453 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–19473; Directorate Identifier 2004–CE–35–AD; Amendment 39–14146; AD 2005–13–09]

RIN 2120–AA64

Airworthiness Directives; GROB–WERKE Model G120A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document incorporates corrections to add service information to Airworthiness Directive (AD) 2005–13–09, which was published in the **Federal Register** on June 22, 2005 (70 FR 35993). AD 2005–13–09 applies to certain GROB–WERKE Model G120A airplanes. This action adds GROB–WERKE Service Bulletin No. MSB1121–052/2, dated February 14, 2005, to paragraphs (e)(1), (e)(2), and (h) of AD 2005–13–09. This service information was included in the notice of proposed rulemaking (NPRM) for this AD, but we inadvertently omitted it in the final rule request for comments. We are re-issuing the AD in its entirety to help eliminate any confusion that this AD may have created.

DATES: The effective date of this AD remains July 26, 2005. As of July 26, 2005, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: To get the service information identified in this AD, contact GROB–WERKE, Burkart Grob e.K., Unternehmenbereich Luft-und Raumfahrt, Lettenbachstrasse 9, 86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998 105; facsimile: 011 49 8268 998 200. To review this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030.

To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–19473.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4146; facsimile: 816–329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On June 14, 2005, FAA issued AD 2005–13–09, Amendment 39–14146 (70 FR 35993, June 22, 2005), which applies to certain GROB–WERKE Model G120A airplanes. That AD requires you to replace the main landing gear (MLG) up-lock hook assembly.

Need for This Action

GROB–WERKE Service Bulletin No. MSB1121–052/2, dated February 14, 2005, was included in the NPRM, but we inadvertently omitted it from AD 2005–13–09. We are adding it paragraphs (e)(1), (e)(2), and (h) of this AD.

We are clarifying and re-issuing the AD in its entirety to help eliminate any confusion that this AD may have created.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2005–13–09 GROB–WERKE: Amendment 39–14146; Docket No. FAA–2005–19473; Directorate Identifier 2004-CE–35-AD.

When Does This AD Become Effective?

(a) The effective date of this AD (2005–13–09) remains July 26, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane models and serial numbers that are certificated in any category: Model G120A, all serial numbers beginning with 85001.

What Is the Unsafe Condition Presented in This AD?

(d) This AD results from a report that the main landing gear (MLG) may not extend because of contamination or misalignment of the assembly. The actions specified in this AD are intended to prevent the MLG from becoming jammed and not extending, which could result in loss of control of the airplane during landing.

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

Actions	Compliance	Procedures
(1) Remove MLG up-lock hook assembly and replace with the new MLG up-lock hook assembly.	Within 100 hours time-in-service after July 26, 2005 (the effective date of this AD), unless already done.	Follow GROB–WERKE Service Bulletin No. MSB1121–052/2, dated February 14, 2005; and GROB–WERKE Service Bulletin No.MSB1121–060, dated March 7, 2005.
(2) *For all serial numbers:* Do not install any elevator and aileron hinge pins that are not part number SY991A hinge pins.	After July 26, 2005 (the effective date of this AD).	Follow GROB–WERKE Service Bulletin No. MSB1121–052/2, datedFebruary 14, 2005; and GROB–WERKE Service Bulletin No. MSB1121–060, dated March 7, 2005.

May I Request an Alternative Method of Compliance?

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact

Karl Schletzbaum, Aerospace Engineer, ACE–112, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4146; facsimile: 816–329–4090.

Is There Other Information That Relates to This Subject?

(g) Luftfahrt-Bundesamt Airworthiness Directive D–2004–299R2, dated March 15, 2005; GROB–WERKE Service Bulletin No. MSB1121–052/2, dated February 14, 2005; and GROB–WERKE Service Bulletin No. MSB1121–060, dated March 7, 2005; also address the subject of this AD.

Does This AD Incorporate Any Material by Reference?

(h) You must do the actions required by this AD following the instructions in GROB–WERKE Service Bulletin No. MSB1121–052/2, dated February 14, 2005; and GROB–WERKE Service Bulletin No. MSB1121–060, dated March 7, 2005. The Director of the Federal Register approved the incorporation by reference of these service bulletins in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To get a copy of this service information, contact GROB–WERKE, Burkart Grob e.K., Unternehmenbereich Luft-und Raumfahrt, Lettenbachstrasse 9, 86874 Tussenhausen-Mattsies, Germany; telephone: 011 49 8268 998 105; facsimile: 011 49 8268 998 200. To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov*. The docket number is FAA–2004–19616.

Issued in Kansas City, Missouri, on August 15, 2005.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16440 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–20246; Airspace Docket No. 04–ASO–15]

RIN 2120–AA66

Establishment of Area Navigation Instrument Flight Rules Terminal Transition Routes (RITTR); Charlotte, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects errors in the legal descriptions of Area Navigation Instrument Flight Rules Terminal Transition Routes (RITTR) listed in a final rule published in the **Federal Register** on June 15, 2005 (70 FR 34649), Airspace Docket No. 04–ASO–15.

EFFECTIVE DATE: 0901 UTC, September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On June 15, 2005, a final rule for Airspace Docket No. 04–ASO–15 was published in the **Federal Register** (70 FR 34649). This rule established four RITTR routes (T–200, T–201, T–202, and T–203) in the Charlotte, NC, terminal area. In all four routes, points that were listed in the route descriptions as "waypoint" (WP) are actually existing published navigation "fixes." Therefore, the descriptions are corrected by removing "WP" and substituting "Fix." In addition, the descriptions for two of the routes contained an error in the geographic coordinates listed for one fix in each route. In route T–202, the latitude coordinate for the GANTS fix was published as 35°27′12″ N., while the correct point is 35°27′11″ N. In route T–203, the longitude coordinate for the LOCKS fix was published as 81°17′37″ W. The correct point is 81°17′33″ W. This action corrects those errors.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal descriptions for T–200, T–201, T–202 and T–203 as published in the **Federal Register** on June 15, 2005 (70 FR 34649), and incorporated by reference in 14 CFR 71.1, are corrected as follows:

PART 71—[Amended]

§ 71.1 [Amended]

* * * * *

T–200 Foothills, GA to Florence, SC [Corrected]

Foothills, GA (ODF), VORTAC, (lat. 34°41′45″ N., long. 83°17′52″ W.)
RICHE, Fix, (lat. 34°41′54″ N., long. 80°59′23″ W.)
Florence, SC (FLO), VORTAC, (lat. 34°13′59″ N., long. 79°39′26″ W.)

* * * * *

T–201 Columbia, SC to JOTTA [Corrected]

Columbia, SC (CAE), VORTAC, (lat. 33°51′26″ N., long. 81°03′14″ W.)
HUSTN, Fix, (lat. 34°53′20″ N., long. 80°34′20″ W.)
LOCAS, Fix, (lat. 35°12′05″ N., long. 80°26′45″ W.)
JOTTA, Fix, (lat. 36°00′53″ N., long. 80°50′58″ W.)

* * * * *

T–202 RICHE to GANTS [Corrected]

RICHE, Fix, (lat. 34°41′54″ N., long. 80°59′23″ W.)
HUSTN, Fix, (lat. 34°53′20″ N., long. 80°34′20″ W.)
GANTS, Fix, (lat. 35°27′11″ N., long. 80°06′16″ W.)

* * * * *

T–203 Columbia, SC to Pulaski, VA [Corrected]

Columbia, SC (CAE), VORTAC, (lat. 33°51′26″ N., long. 81°03′14″ W.)
LOCKS, Fix, (lat. 34°55′40″ N., long. 81°17′33″ W.)
Barretts Mountain, NC (BZM), VOR/DME, (lat. 35°52′08″ N., long. 81°14′26″ W.)
Pulaski, VA (PSK), VORTAC, (lat. 37°05′16″ N., long. 80°42′46″ W.)

* * * * *

Issued in Washington, DC, on August 18, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–16747 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22069; Airspace Docket No. 05–AEA–15]

Amendment of Class D Airspace; Worcester, MA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment realigns the boundary of the Class D airspace area at Worcester Regional Airport, MA. This action will incorporate a shelf and cutout of the Worcester Class D airspace area to accommodate the airport traffic pattern for Spencer Airport (60M).

DATES: Effective 0901 UTC, October 27, 2005.

Comments for inclusion in the Rules Docket must be received on or before September 22, 2005.

ADDRESSES: Send comments on the rule to the Docket Management System, U.S. Department of Transportation, Room

Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number, FAA–2005–22069/Airspace Docket No. 05–AEA–15, at the beginning of your comments. You may also submit comments on the internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person at the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated above.

An informal docket may also be examined during normal business hours at the office of the Area Director, Eastern Terminal Operations, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone (718) 553–4501; fax (718) 995–5691.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Airspace Specialist, Airspace and Operations, ETSU, 1 Aviation Plaza, Jamaica, NY 11434–4809; telephone (718) 553–4521; fax (718) 995–5693.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the legal description for Class D airspace at Worcester Regional Airport, MA to exclude the airspace in the vicinity of Spencer Airport (60M), a satellite airport, from the Worcester Class D airspace area. The remaining Class D area is adequate to provide controlled airspace for terminal VFR and IFR operations at Worcester Regional Airport. The cutout area will be depicted on the appropriate VFR aeronautical charts.

Class D airspace areas are published in paragraph 5000 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporateed by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment, and, therefore, issues it as a direct final rule. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

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

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

Agency Findings

This rule does not have federalism implications, as defined in Executive Order No. 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

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

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103, Sovereignty and use of airspace. Under that section, the FAA is charged with issuing regulations to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority since it defines controlled airspace in the vicinity of the Palmer Metropolitan Airport to ensure the safety of aircraft operating near that airport and the efficient use of that airspace.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

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

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

§ 71.1 [Amended]

Paragraph 5000 Class D airspace.

* * * * *

ANE MA D Worcester, MA [Revised]

Worcester Regional Airport, MA
(Lat. 42°16'02" N, long. 71°52'32" W)
Spencer Airport, MA
(Lat. 42°17'26" N, long. 71°57'53" W)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.2-mile radius of Worcester Regional Airport, excluding that airspace from the surface up to but not including 1,900 feet MSL within a 1-mile radius of the Spencer Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on August 17, 2005.

John G. McCartney,

Acting Area Director, Eastern Terminal Operations.

[FR Doc. 05–16740 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–21226; Airspace Docket No. 05–ASO–8]

Establishment of Class E Airspace; Marion, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Marion, KY. Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures (SIAP) Runway (RWY) 7 and RWY 25 have been developed for Marion-Crittenden County Airport. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAPs and for Instrument Flight Rules (IFR) operations at Marion-Crittenden County Airport. The operating status of the airport will change from Visual Flight Rules (VFR) to include IFR operations concurrent with the publication of the SIAP.

EFFECTIVE DATE: 0901 UTC, October 27, 2005.

FOR FURTHER INFORMATION CONTACT: Mark D. Ward, Manager, Airspace and Operations Branch, Eastern En Route and Oceanic Service Area, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On June 8, 2005, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Marion, KY, (70 FR 33403). This action provides adequate Class E airspace for IFR operations at Marion-Crittenden County Airport. Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in this Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Marion, KY.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO KY E5 Marion, KY [NEW]

Marion-Crittenden County Airport, KY
(Lat. 37°20'04" N, long. 88°06'54" W)

That airspace extending upward from 700 feet above the surface within a 6.7—radius of Marion-Crittenden County Airport; excluding that airspace within the Sturgis, KY, Class E airspace area.

* * * * *

Issued in College Park, Georgia, on July 29, 2005.

Mark D. Ward,

Acting Area Director, Air Traffic Division, Southern Region.

[FR Doc. 05–16746 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7957–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Environmental Protection Agency (EPA) is granting petitions submitted by Shell Oil Company (Shell Oil Company) to exclude (or delist) certain wastes generated by its Houston, TX Deer Park facility from the lists of hazardous wastes. This final rule responds to petitions submitted by Shell Oil Company to delist F039 and F037 wastes. The F039 waste is generated from the refinery wastewater treatment plant, North Effluent Treater (NET) and

primary solids from Shell Chemical and the South Effluent Treatment (SET). The F037 waste North Pond Sludge is generated from the process wastewater, gravel and road base that has settled from storm water flow to the pond.

After careful analysis and use of the Delisting Risk Assessment Software (DRAS), EPA has concluded the petitioned wastes are not hazardous waste. The F039 exclusion applies to 3.36 million gallons per year (16,619 cubic yards) of multi-source landfill leachate. The F037 exclusion is a one time exclusion for 15,000 cubic yards of the sludge. Accordingly, this final rule excludes the petitioned wastes from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

EFFECTIVE DATE: August 23, 2005.

ADDRESSES: The public docket for this final rule is located at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202, and is available for viewing in EPA Freedom of Information Act review room on the 7th floor from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The reference number for this docket is F–04–TEXDEL–Shell Oil. The public may copy material from any regulatory docket at no cost for the first 100 pages and at a cost of $0.15 per page for additional copies.

FOR FURTHER INFORMATION CONTACT: Ben Banipal, Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. For technical information concerning this notice, contact Michelle Peace, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202, at (214) 665–7430, or *peace.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information

A. What Action Is EPA Finalizing?

After evaluating the petitions for Shell Oil Company, EPA proposed, on December 28, 2004 and February 9, 2005, respectively, to exclude the wastes from the lists of hazardous waste under § 261.31. EPA is finalizing:

(1) The decision to grant Shell Oil Company's delisting petition to have its F039 multi-source landfill leachate underlying the Minimum Technology Requirements (MTR) hazardous waste landfill excluded, or delisted, from the definition of a hazardous waste; and subject to certain verification and monitoring conditions; and

(2) The decision to grant Shell Oil Company's delisting petition to have its North Pond F037 sludge excluded, or delisted, from the definition of a hazardous waste, once it is disposed in a Subtitle D landfill.

B. Why Is EPA Approving This Action?

Shell Oil Company's petitions request a delisting from the F039 and F037 wastes listing under 40 CFR 260.20 and 260.22. Shell Oil Company does not believe that the petitioned waste meets the criteria for which EPA listed it. Shell Oil Company also believes no additional constituents or factors could cause the waste to be hazardous. EPA's review of these petitions included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the final delisting determination, EPA evaluated the petitioned wastes against the listing criteria and factors cited in § 261.11(a)(2) and (a)(3). Based on this review, EPA agrees with the petitioner that the wastes are nonhazardous with respect to the original listing criteria. (If EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, EPA would have proposed to deny the petition.) EPA evaluated the wastes with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the wastes to be hazardous. EPA considered whether the wastes are acutely toxic, the concentrations of the constituents in the wastes, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. EPA believes that the petitioned wastes do not meet the listing criteria and thus should not be listed wastes. EPA's final decision to delist wastes from Shell Oil Company's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Deer Park, TX facility.

C. What Are the Limits of This Exclusion?

This exclusion applies to the waste described in the Shell Oil Company petitions only if the requirements described in 40 CFR part 261, Appendix IX, Table 1 and the conditions contained herein are satisfied.

D. How Will Shell Oil Company Manage the Wastes, If They Are Delisted?

If the multi-source landfill leachate is delisted, Shell Oil Company will make piping modifications to allow the leachate to be routed to the North Effluent Treater (NET) for treatment. After its treatment, the multi-source landfill leachate will be discharged through a TPDES-permitted outfall in compliance with its TPDES permit. If F037 North Pond Sludge is delisted, Shell Oil Company will dispose of it in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste.

E. When Is the Final Delisting Exclusion Effective?

This rule is effective August 23, 2005. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA, 42 U.S.C. 6930(b)(1), allow rules to become effective in less than six months after the rule is published when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous waste. This reduction in existing requirements also provides a

basis for making this rule effective immediately, upon publication, under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

F. How Does This Final Rule Affect States?

Because EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude states which have received authorization from EPA to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and State (non-RCRA) programs) may regulate a petitioner's waste, EPA urges petitioners to contact the State regulatory authority to establish the status of their wastes under the State law.

EPA has also authorized some states (for example, Louisiana, Oklahoma, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states unless that state makes the rule part of its authorized program. If Shell Oil Company transports the petitioned waste to or manages the waste in any state with delisting authorization, Shell Oil Company must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state.

II. Background

A. What Is a Delisting Petition?

A delisting petition is a request from a generator to EPA or another agency with jurisdiction to exclude or delist, from the RCRA list of hazardous waste, waste the generator believes should not be considered hazardous under RCRA.

B. What Regulations Allow Facilities To Delist a Waste?

Under 40 CFR 260.20 and 260.22, facilities may petition EPA to remove their wastes from hazardous waste regulation by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of 40 CFR parts 260 through 265 and 268. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste from a particular generating facility from the hazardous waste lists.

C. What Information Must the Generator Supply?

Petitioners must provide sufficient information to EPA to allow EPA to determine that the waste to be excluded does not meet any of the criteria under which the waste was listed as a hazardous waste. In addition, the Administrator must determine, where he/she has a reasonable basis to believe that factors (including additional constituents) other than those for which the waste was listed could cause the waste to be a hazardous waste and that such factors do not warrant retaining the waste as a hazardous waste.

III. EPA's Evaluation of the Waste Information and Data

A. What Wastes Did Shell Oil Company Petition EPA To Delist?

On January 29, 2003, Shell Oil Company petitioned EPA to exclude from the lists of hazardous waste contained in § 261.31, multi-source landfill leachate (F039) generated from its facility located in Deer Park, TX. Then on December 30, 2003, Shell Oil Company petitioned EPA to exclude from the lists of hazardous waste contained in §§ 261.31 and 261.32, F037 North Pond Sludge.

B. How Much Waste Did Shell Oil Company Propose To Delist?

Shell Oil Company requested that EPA grant an exclusion for 3.36 million gallons (16,619 cu. yards) per year of the multi-source landfill leachate in its January 29, 2003 petition. In the December 30, 2003 petition, Shell Oil Company requested that EPA grant a one time exclusion for 15,000 cubic yards of the F037 North Pond Sludge.

C. How Did Shell Oil Company Sample and Analyze the Waste Data in These Petitions?

To support its petitions, Shell Oil Company submitted:

(1) Historical information on past waste generation and management practices including analytical data from eleven samples collected in September 2003 for the F037 North Pond Sludge and four samples of combined leachate data for the F039 multi-source landfill leachate;

(2) Results of the total constituent list for 40 CFR part 264, Appendix IX volatiles, semivolatiles, metals, pesticides, herbicides, dioxins and PCBs for the F037 North Pond Sludge and the F039 multi-source landfill leachate;

(3) Results of the constituent list for 40 CFR part 264, Appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract for volatiles, semivolatiles, and metals for the F037 North Pond Sludge and the F039 multi-source landfill leachate;

(4) Analytical constituents of concern for F037 and F039;

(5) Results from total oil and grease analyses;

(6) Multiple pH testing for the petitioned wastes.

IV. Public Comments Received on the Proposed Exclusions

A. Who Submitted Comments on the Proposed Rules?

No comments were received on the proposed rule for the F037 wastes. Comments were submitted by Shell Deer Park Refining Company (Shell) to correct information contained in the proposed rule for F039.

B. What Were the Comments and What Are EPA's Responses to Them?

Shell noted that *Chloronated* Plate Interceptor should be *Corrugated* Plate Interceptor. EPA has noted this and made appropriate changes in the final rule and exclusion language to reflect this change.

Shell noted that: (1) the compound p-cresol (4-methlyphenol) should be added to Table I; and (2) the compound trichloropropane should be deleted from Table I as this constituent was not detected in any of the samples above the reporting level.

The compound p-cresol (4-methlyphenol) appears in Table 1.—Waste Excluded From the Non-Specific Sources as "Cresol, p." EPA has made the appropriate change to read p-Cresol. The compound trichloropropane estimated value of 0.00025 mg/l was reported in the revised analyses on October 11, 2004, Combined Leachate Data, and thus it will not be deleted.

Shell requested: (1) that the following constituents be deleted from Table 1—Wastes Excluded from Non-Specific Sources in the exclusion language to be consistent with Table I in Section III. D in the preamble of the proposed rule: Thallium, Acrylonitrile, Bis (2-chlorethyl) ether, Bis (2-ethylhexyl) phthlate, Dichlorobenzene 1,3, Dimethoate, Dimethylphenol 2,4, Dinitrophenol, Dinitrotoluene 2,6, Diphenylhydrazine, Dichloroethylene 1,1, Kepone, Methacrylonitrile, Methanol, Nitrobenzene, Nitrosodiethylamine, Nitrosodimethylamine, Nitrosodi-n-butylamine, N-Nitrodi-n-propylamine, N-Nitrosopiperdine, N-

Nitrosopyrrolidine, N-Nitrosomethylethylamine, PCBs, Pentachlorophenol, Pyridine, Trichloropropane, Vinyl Chloride; and (2) that the compound phenanthrene should be added with a delisting level of 1.36 mg/L to be consistent with Table I in Section III. D.

EPA has made the deletions as prescribed. EPA has added the compound phenanthrene with a delisting level of 1.36 mg/L to Table 1.—Waste Excluded From Non-Specific Sources. EPA also added compounds toluene, fluorene, and vanadium because they were inadvertently left off of Table 1—Wastes Excluded from Non-Specific Sources.

Shell noted that in the exclusion language paragraph (3)(A)(i) of Table 1—Waste Excluded from Non-Specific Sources, the number of samples to be collected within the first 60 days should be changed from eight to four. Also in paragraph (3)(B) for subsequent verification sampling, Shell Oil Company requested that the number of samples per quarter be changed from two to one. Previous discussions between EPA and Shell Oil Company were based on two different waste streams. Since this is one stream, EPA will allow the changes in the number of samples collected and the number of samples taken per quarter.

In addition, on October 30, 2002, (67 FR 66251), EPA proposed the Methods Innovation Rule to remove from the regulations unnecessary requirements other than those considered to be Method Defined Parameters (MDP). An MDP is a method that, by definition or design, is the only one capable of measuring the particular property (*e.g.* Method 1311–TCLP). Therefore, EPA is no longer generally requiring the use of only SW–846 methods for regulatory applications other than those involving MDPs. The general purpose of this rule is to allow more flexibility when conducting RCRA-related sampling and analysis activities. We retained only those methods considered to be MDPs in the regulations and incorporate them by reference in 40 CFR 260.11. EPA is changing Shell's delisting exclusion language found in paragraph (3) of the F039 exclusion language to reflect the generic language placed in all delisting exclusions as a result of the Methods Innovation Rule (70 FR 34537) which was finalized on June 14, 2005.

V. Statutory and Executive Order Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this rule is not of general applicability and therefore is not a regulatory action subject to review by the Office of Management and Budget (OMB). 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.*) because it applies to a particular facility only. Because this rule is of particular applicability relating to a particular facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA). Because this rule will affect only a particular facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA. Because this rule will affect only a particular facility, this final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism," (64 FR 43255, August 10, 1999). Thus, Executive Order 13132 does not apply to this rule. Similarly, because this rule will affect only a particular facility, this final rule does not have tribal implications, as specified in Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule. 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 as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. The basis for this belief is that the Agency used the DRAS program, which considers health and safety risks to infants and children, to calculate the maximum allowable concentrations for this rule. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866. This rule does not involve technical standards; 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. As required by section 3 of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. 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. Section 804 exempts from section 801 the following types of rules (1) rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f)

Dated: August 10, 2005.

Carl E. Edlund,

Director, Multimedia Planning and Permitting Division, Region 6.

■ For the reasons set out in the preamble, 40 CFR part 261 is to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

■ 2. In Table 1 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * * *
Shell Oil Company	Deer Park, TX ..	North Pond Sludge (EPA Hazardous Waste No. F037) generated one time at a volume of 15,000 cubic yards August 23, 2005 and disposed in a Subtitle D landfill. This is a one time exclusion and applies to 15,000 cubic yards of North Pond Sludge. (1) Reopener: (A) If, anytime after disposal of the delisted waste, Shell possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If Shell fails to submit the information described in paragraph (A) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (C) If the Division Director determines that the reported information does require EPA action, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed EPA action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (D) Following the receipt of information from the facility described in paragraph (C) or if no information is presented under paragraph (C), the Division Director will issue a final written determination describing the actions that are necessary to protect human health or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (2) Notification Requirements: Shell must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state regulatory agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification, if they ship the delisted waste to a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting variance and a possible revocation of the decision.
Shell Oil Company	Deer Park, TX ..	Multi-source landfill leachate (EPA Hazardous Waste No. F039) generated at a maximum annual rate of 3.36 million gallons (16,619 cu. yards) per calendar year after August 23, 2005 and disposed in accordance with the TPDES permit. The delisting levels set do not relieve Shell Oil Company of its duty to comply with the limits set in its TPDES permit. For the exclusion to be valid, Shell Oil Company must implement a verification testing program that meets the following paragraphs: (1) Delisting Levels: All total concentrations for those constituents must not exceed the following levels (mg/l). The petitioner must analyze the aqueous waste on a total basis to measure constituents in the multi-source landfill leachate. Multi-source landfill leachate (i) Inorganic Constituents Antimony-0.0204; Arsenic-0.385; Barium-2.92; Copper-418.00; Chromium-5.0; Cobalt-2.25; Nickel-1.13; Selenium-0.0863; Thallium-0.005; Vanadium-0.838 (ii) Organic Constituents Acetone-1.46; Acetophenone-1.58; Benzene-0.0222; p-Cresol-0.0788; Bis(2-ethylhexyl)phthlate-15800.00; Dichloroethane, 1,2–0.0803; Ethylbenzene-4.51; Fluorene-1.87; Napthalene-1.05; Phenol-9.46; Phenanthrene-1.36; Pyridine-0.0146; 2,3,7,8-TCDD equivalents as TEQ–0.0000926; Toluene-4.43; Trichloropropane-0.000574; Xylenes (total)-97.60 (2) Waste Management: (A) Shell Oil Company must manage as hazardous all multi-source landfill leachate generated, until it has completed initial verification testing described in paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the multi-source landfill leachate that do not exceed the levels set forth in paragraph (1) are non-hazardous. Shell Oil Company can manage and dispose of the non-hazardous multi-source landfill leachate according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the delisting levels set in paragraph (1), Shell Oil Company can collect one additional sample and perform expedited analyses to verify if the constituent exceeds the delisting level. If this sample confirms the exceedance, Shell Oil Company must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1). (D) If the facility has not treated the waste, Shell Oil Company must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(E) Upon completion of the Verification Testing described in paragraph 3(A) and (B) as appropriate and the transmittal of the results to EPA, and if the testing results meet the requirements of paragraph (1), Shell Oil Company may proceed to manage its multi-source landfill leachate as non-hazardous waste. If Subsequent Verification Testing indicates an exceedance of the delisting levels in paragraph (1), Shell Oil Company must manage the multi-source landfill leachate as a hazardous waste until two consecutive quarterly testing samples show levels below the delisting levels in Table I. (3) Verification Testing Requirements: Shell Oil Company must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods used must meet Performance Based Measurement System Criteria in which the Data Quality Objectives demonstrate that representative samples of the Shell-Deer Park multi-source landfill leachate are collected and meet the delisting levels in paragraph (1). (A) Initial Verification Testing: After EPA grants the final exclusion, Shell Oil Company must do the following: (i) Within 60 days of this exclusions becoming final, collect four samples, before disposal, of the multi-source landfill leachate. (ii) The samples are to be analyzed and compared against the delisting levels in paragraph (1). (iii) Within sixty (60) days after this exclusion becomes final, Shell Oil Company will report initial verification analytical test data for the multi-source landfill leachate, including analytical quality control information for the first thirty (30) days of operation after this exclusion becomes final. If levels of constituents measured in the samples of the multi-source landfill leachate that do not exceed the levels set forth in paragraph (1) are also non-hazardous in two consecutive quarters after the first thirty (30) days of operation after this exclusion become effective, Shell Oil Company can manage and dispose of the multi-source landfill leachate according to all applicable solid waste regulations. (B) Subsequent Verification Testing: Following written notification by EPA, Shell Oil Company may substitute the testing conditions in (3)(B) for (3)(A). Shell Oil Company must continue to monitor operating conditions, and analyze one representative sample of the multi-source landfill leachate for each quarter of operation during the first year of waste generation. The sample must represent the waste generated during the quarter. After the first year of analytical sampling verification sampling can be performed on a single annual sample of the multi-source landfill leachate. The results are to be compared to the delisting levels in paragraph (1). (C) Termination of Testing: (i) After the first year of quarterly testing, if the delisting levels in paragraph (1) are being met, Shell Oil Company may then request that EPA not require quarterly testing. After EPA notifies Shell Oil Company in writing, the company may end quarterly testing. (ii) Following cancellation of the quarterly testing, Shell Oil Company must continue to test a representative sample for all constituents listed in paragraph (1) annually. (4) Changes in Operating Conditions: If Shell Oil Company significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing; it may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. (5) Data Submittals: Shell Oil Company must submit the information described below. If Shell Oil Company fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph 6. Shell Oil Company must: (A) Submit the data obtained through paragraph 3 to the Section Chief, Region 6 Corrective Action and Waste Minimization Section, EPA, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–C) within the time specified. (B) Compile records of operating conditions and analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the state of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

TABLE 1.—WASTE EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) Reopener: (A) If, anytime after disposal of the delisted waste, Shell Oil Company possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in paragraph 1, Shell Oil Company must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If Shell Oil Company fails to submit the information described in paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information does require action, he will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed action by EPA is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or if no information is presented under paragraph (6)(D), the Division Director will issue a final written determination describing the actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) Notification Requirements: Shell Oil Company must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state regulatory agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting exclusion and a possible revocation of the decision.

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[FR Doc. 05–16688 Filed 8–22–05; 8:45 am]
BILLING CODE 6560–50–P

COMMISSION OF FINE ARTS

45 CFR Part 2102

Procedures and Policies Amendment

AGENCY: The Commission of Fine Arts.

ACTION: Final rule.

SUMMARY: This document amends the procedures and policies governing the administration of the U.S. Commission of Fine Arts. This document serves to establish a Consent Calendar and to clarify the functions and requirements of a Consent Calendar and Appendices for the review of projects submitted to the Commission in order to address more efficiently the needs of the Federal government and the public.

DATES: Effective September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Thomas Luebke, Secretary, (202) 504–2200.

SUPPLEMENTARY INFORMATION: As established by Congress in 1910, the Commission of Fine Arts is a small independent advisory body made up of seven Presidentially appointed "well qualified judges of the arts" whose primary role is architectural review of designs for buildings, parks, monuments and memorials erected by the Federal or District of Columbia governments in Washington, DC. In addition to architectural review, the Commission considers and advises on the designs for coins, medals and U.S. memorials on foreign soil. The Commission also advises the District of Columbia government on private building projects within the Georgetown Historic District, the Rock Creek Park perimeter and the Monumental Core area. The Commission advises Congress, the President, Federal agencies, and the District of Columbia government on the general subjects of design, historic preservation and on orderly planning on matters within its jurisdiction.

The regulations amended with this rule were last published in the **Federal Register** on January 31, 1997 (45 CFR Parts 2101, 2102, 2103). Specific items this document amends include providing the current address and telephone number of the agency, and clarifying a series of procedural functions. Therefore, as these changes clarify established and new procedures, and are minor in nature, the Commission determines that notice and comment are unnecessary and that, in accordance with 5 U.S.C. 553(b)(B), good cause to waive notice and comment is established.

List of Subjects in 45 CFR Part 2102

Administrative practice and procedure, Sunshine Act.

This document was prepared under the direction of Thomas Luebke, Secretary. U.S. Commission of Fine Arts, 401 F Street, NW., Suite 312, Washington, DC 20001.

■ Accordingly, for the reasons set forth above, Part 2102 is amended as set forth below.

■ For the reasons stated in the preamble, the Commission of Fine Arts hereby amends 45 CFR 2102, Subpart B—Procedures on Submission of Plans or Designs, with the addition of the following sections to read:

PART 2102—MEETINGS AND PROCEDURES OF THE COMMISSION

■ 1. The authority citation for part 2102 is revised to read as follows:

Authority: 5 U.S.C., App. 1.

■ 2. Add § 2102.13 to Part 2102, Subpart B—Procedures on Submission of Plans or Designs, to read as follows:

§ 2102.13 Project eligibility criteria for placement on a Consent Calendar.

With respect to submissions to the Commission for projects that meet the following criteria, the Secretary, at his/her discretion and in coordination with the Commission's staff, may place these projects on a Consent Calendar according to § 2102.14.

(a) Additions to buildings of less than 25 percent (%) of the original structure and no more than 25,000 sq. ft.;

(b) New construction of less than 25,000 sq. ft.;

(c) Window replacement projects;

(d) Cellular or other communications antenna installations or replacements;

(e) New or replacement signs;

(f) Cleaning, routine maintenance, repairs or replacement-in-kind of exterior finish materials;

(g) Temporary utility or construction structures;

(h) And does not include new physical perimeter security items.

■ 3. Add § 2102.14 to Part 2102, Subpart B—Procedures on Submission of Plans or Designs, to read as follows:

§ 2102.14 Consent Calendar and Appendices procedures.

(a) The Commission shall review applications scheduled on its Meeting Agenda, Consent Calendar, or Appendices (Old Georgetown Act and Shipstead-Luce Act). Cases on the Meeting Agenda will be heard by the Commission in open session. Cases on the Consent Calendar or Appendices will be acted upon based on submitted materials and staff recommendations without further public comment.

(b) The Commission shall release the proposed Meeting Agenda, and the Consent Calendar and Appendices with staff recommendation to the public not later than five (5) calendar days before the meeting.

(c) The scheduling of cases on the Meeting Agenda, Consent Calendar, and Appendices shall be at the sole discretion of the Commission and staff, and nothing shall preclude the Commission from amending or changing the scheduling at a public meeting.

(d) The staff shall prepare a written recommendation for each case on the Consent Calendar or Appendices the Commission will review.

(e) The Commission shall conduct public review of cases in accordance with a proposed Agenda released to the public before the Commission meeting. The Commission shall dispose of other cases by adoption of a Consent Calendar and Appendices, as appropriate. The Commission may amend the Meeting Agenda, Consent Calendar and Appendices at the public meeting as it may deem appropriate.

(f) An application may be placed on the Consent Calendar if the applicant and staff agree that the proposed work has no known objection by an affected government agency, neighborhood organization, historic preservation organization, or affected person. Any relevant terms or modifications agreed upon by the applicant and staff may be included as conditions of the approval.

(g) At the request of any Commission member, the Chairperson may remove any case from the Consent Calendar and place it on the Meeting Agenda for individual consideration by the Commission at the meeting. A request from any other group or person to remove a case from the Consent Calendar should be made to the staff in advance of the meeting and shall be considered as a preliminary matter at the meeting.

(h) The Chairperson may also remove any case from a duly noticed Meeting Agenda and place it on the Consent Calendar, provided there is no objection from the applicant, any Commission member, or any affected group or person present and wishing to comment on the case.

(i) The Commission may approve the Consent Calendar and Appendices on a voice vote.

Dated: August 18, 2005.

Thomas Luebke,

Secretary, U.S. Commission of Fine Arts.

[FR Doc. 05–16712 Filed 8–22–05; 8:45 am]

BILLING CODE 6330–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AT87

Migratory Bird Hunting; Approval of Iron-Tungsten-Nickel Shot as Nontoxic for Hunting Waterfowl and Coots

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; availability of Final Environmental Assessment and Finding of No Significant Impact.

SUMMARY: The U.S. Fish and Wildlife Service (we, us, or USFWS) approves shot formulated of 62 percent iron, 25 percent tungsten, and 13 percent nickel as nontoxic for waterfowl and coot hunting in the United States. We assessed possible toxicity effects of the Iron-Tungsten-Nickel (ITN) shot, and determined that it is not a threat to wildlife or their habitats, and that further testing of ITN shot is not necessary. We have prepared a Final Environmental Assessment and a Finding of No Significant Impact in support of this decision.

This rule also corrects an error and adds clarity to the list of currently approved nontoxic shot types.

DATES: This rule takes effect on September 22, 2005.

ADDRESSES: The Final Environmental Assessment for approval of ITN shot and the associated Finding of No Significant Impact are available from the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, Virginia 22203–1610. You may call 703–358–1825 to request copies.

The complete file for this rule is available, by appointment, during normal business hours at the same address. You may call 703–358–1825 to make an appointment to view the files.

FOR FURTHER INFORMATION CONTACT: Dr. George T. Allen, Division of Migratory Bird Management, 703–358–1714.

SUPPLEMENTARY INFORMATION:

Background

The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–711) and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712) implement migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union, 1978). These treaties

protect certain migratory birds from take, except as permitted under the Acts. The Acts authorize the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the U.S. Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

Deposition of toxic shot and release of toxic shot components in waterfowl hunting locations are potentially harmful to many organisms. Research has shown that ingested spent lead shot causes significant mortality in migratory birds. Since the mid-1970s, we have sought to identify shot types that do not pose significant toxicity hazards to migratory birds or other wildlife. We addressed the issue of lead poisoning in waterfowl in an Environmental Impact Statement in 1976, and again in a 1986 supplemental EIS. The 1986 document provided the scientific justification for a ban on the use of lead shot and the subsequent approval of steel shot for hunting waterfowl and coots that began that year, with a complete ban of lead for waterfowl and coot hunting in 1991. We have continued to consider other potential candidates for approval as nontoxic shot. We are obligated to review applications for approval of alternative shot types as nontoxic for hunting waterfowl and coots.

We received an application from ENVIRON-Metal, Inc. of Sweet Home, Oregon, for approval of Iron-Tungsten-Nickel shot formulated as 62 percent iron, 25 percent tungsten, and 13 percent nickel by weight for waterfowl and coot hunting. We reviewed the shot under the criteria in Tier 1 of the revised nontoxic shot approval procedures contained in 50 CFR 20.134 for permanent approval of shot as nontoxic for hunting waterfowl and coots. We amend 50 CFR 20.21(j) to add ITN shot to the list of the approved types of shot for waterfowl and coot hunting.

On May 6, 2005, we published a proposed rule to approve ITN as a nontoxic shot type (70 FR 23954). The application for the approval of ITN shot included information on chemical characterization, production variability, use, expected production volume, toxicological effects, environmental fate and transport, and evaluation, and the proposed rule included this information, a comprehensive evaluation of the likely effects of each shot, and an assessment of the affected environment.

The Director of the U.S. Fish and Wildlife Service has concluded that the spent shot material will not pose a significant danger to migratory birds or other wildlife or their habitats, and therefore approves the use of Iron-Tungsten-Nickel shot as nontoxic for hunting waterfowl and coots.

We received one comment in response to the proposed rule. However, the commenter did not raise any issues that caused us to reconsider our proposed approval of ITN shot as nontoxic. Neither manufacturing the shot nor firing shotshells containing the shot will alter the metals or increase their susceptibility to dissolving in the environment.

ENVIRON-Metal estimates that the volume of ITN shot used hunting migratory birds in the United States will be approximately 200,000 pounds (90,719 kilograms) during the first year of sale, and perhaps 500,000 pounds (227,000 kg) per year thereafter.

This rule also corrects the formulation of Tungsten-Tin-Bismuth (TTB) shot. We inadvertently left out the iron in the TTB formulation in our August 9, 2004, approval of the shot type (69 FR 48163).

The listing of approved nontoxic shot types is also changed to provide more consistent naming of approved shot types. The shot types are now named and listed by the predominant metals in the alloys.

Cumulative Impacts

We foresee no negative cumulative impacts from approval of this nontoxic shot type. Approval of a shot type that contains only metals already approved as nontoxic will not additionally impact the human environment.

NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), though all of the metals in this shot type have been approved in higher concentrations in other shot types and are not likely to pose adverse toxicity effects on fish, wildlife, their habitats, or the human environment, we prepared a Draft Environmental Assessment for this action, on which we received no comments. We have completed the Final Environmental Assessment for approval of ITN shot as nontoxic.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 *et seq.*), provides that Federal agencies shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat." We have concluded that because all of the metals in this shot type have been approved in higher concentrations in other shot types and should not be available to biota due to use of ITN shot, this action will not affect endangered or threatened species. A Section 7 consultation under the ESA for this rule is not needed.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. This rule approves an additional type of nontoxic shot that may be sold and used to hunt migratory birds; this rule would provide one shot type in addition to the types that are approved. We have determined, however, that this rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters or others.

Small Business Regulatory Enforcement Fairness Act

This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not impose an unfunded mandate of more than $100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector because it is the Service's responsibility to regulate the take of migratory birds in the United States. This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; it will only affect availability of the approved nontoxic shot type. Finally, because this rule only affects approval of this nontoxic shot type, it will not have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12866

This rule is not a significant regulatory action subject to Office of Management and Budget (OMB) review under Executive Order 12866. This rule will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity,

jobs, the environment, or other units of government. Therefore, a cost-benefit economic analysis is not required. This action will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. No other Federal agency has any role in regulating nontoxic shot for migratory bird hunting. The action is consistent with the policies and guidelines of other Department of the Interior bureaus. This action will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients because it has no mechanism to do so. This action will not raise novel legal or policy issues because the Service has already approved several other nontoxic shot types.

Paperwork Reduction Act

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. We have examined this regulation under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501) and found it to contain no information collection requirements. OMB has approved collection of information from shot manufacturers for the nontoxic shot approval process, and has assigned control number 1018–0067, which expires on December 31, 2006. For further information, see 50 CFR 20.134.

Unfunded Mandates Reform

We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

We, in promulgating this rule, have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, this regulation does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have determined that this rule has no effects on Federally recognized Indian tribes.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ For the reasons discussed in the preamble, we amend part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

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

Authority: 16 U.S.C. 703–712; 16 U.S.C. 742a–j; Pub. L. 106–108.

■ 2. Section 20.21 is amended by revising paragraph (j)(1) to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(j)(1) While possessing loose shot for muzzle loading or shotshells containing other than the following approved shot types.

Approved shot type	Percent composition by weight
bismuth-tin	97 bismuth, 3 tin.
iron (steel)	iron and carbon.
iron-tungsten (2 types)	60 iron, 40 tungsten and 78 iron, 22 tungsten.
iron-tungsten-nickel	62 iron, 25 tungsten, 13 nickel.
tungsten-bronze	51.1 tungsten, 44.4 copper, 3.9 tin, 0.6 iron.
tungsten-matrix	95.9 tungsten, 4.1 polymer.
tungsten-nickel-iron	50 tungsten, 35 nickel, 15 iron.
tungsten-polymer	95.5 tungsten, 4.5 Nylon 6 or 11.
tungsten-tin-bismuth	49–71 tungsten, 29–51 tin; 0.5–6.5 bismuth, 0.8 iron.
tungsten-tin-iron-nickel	65 tungsten, 21.8 tin, 10.4 iron, 2.8 nickel.

* * * * *

Dated: July 26, 2005.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–16720 Filed 8–22–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 081705G]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 18, 2005, through 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI is 886 metric tons as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the 2005 halibut bycatch allowance specified for the trawl yellowfin sole fishery category in the BSAI has been caught. Consequently, NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for yellowfin sole by vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 17, 2005.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 17, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–16706 Filed 8–18–05; 2:30 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 081605D]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Lottery in Areas 542 and 543

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; notification of fishery assignments.

SUMMARY: NMFS is notifying the owners and operators of registered vessels of their assignments for the B season Atka mackerel fishery in harvest limit area (HLA) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the B season Atka mackerel HLA limits established for area 542 and area 543.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 18, 2005, until 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(8)(iii)(A), owners and operators of vessels using trawl gear for directed fishing for Atka mackerel in the HLA are required to register with NMFS. Ten vessels have registered with NMFS to fish in the B season HLA fisheries in areas 542 and/or 543. In order to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over time and in accordance with § 679.20(a)(8)(iii)(B), the Administrator, Alaska Region, NMFS, has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which they have registered and is now notifying each vessel of its assignment.

Vessels authorized to participate in the first HLA directed fishery in area 542 and/or in the second HLA directed fishery in area 543 in accordance with § 679.20(a)(8)(iii) are as follows: Federal Fishery Permit number (FFP) 3835 Seafisher, FFP 3400 Alaska Ranger, FFP 1879 American No. 1, FFP 4093 Alaska Victory, and FFP 3819 Alaska Spirit.

Vessels authorized to participate in the first HLA directed fishery in area 543 and/or the second HLA directed fishery in area 542 in accordance with § 679.20(a)(8)(iii) are as follows: FFP 2134 Ocean Peace; FFP 2443 Alaska

Juris, FFP 3423 Alaska Warrior, FFP 2800 US Intrepid, and FFP 2733 Seafreeze Alaska.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is unnecessary. This notice merely advises the owners of these vessels of the results of a random assignment required by regulation. The notice needs to occur immediately to notify the owner of each vessel of its assignment to allow these vessel owners to plan for participation in the B season HLA fisheries in area 542 and area 543.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by §§ 679.20 and 679.22 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 17, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–16707 Filed 8–18–05; 2:30 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 081705E]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock Sole/Flathead Sole/"Other Flatfish" Fishery Category by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 18, 2005, through 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category in the BSAI is 779 metric tons as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the 2005 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category in the BSAI has been caught. Consequently, NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 17, 2005.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 17, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–16704 Filed 8–18–05; 2:43 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 041126332–5039–02; I.D. 081705F]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2005 halibut bycatch allowance specified for the trawl Pacific cod fishery category in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 18, 2005, through 2400 hrs, A.l.t., December 31, 2005.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S.

vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2005 halibut bycatch allowance specified for the trawl Pacific cod fishery category in the BSAI is 1,434 metric tons as established by the 2005 and 2006 final harvest specifications for groundfish in the BSAI (70 FR 8979, February 24, 2005).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS, has determined that the 2005 halibut bycatch allowance specified for the trawl Pacific cod fishery category in the BSAI has been caught. Consequently, NMFS is closing directed fishing for Pacific cod by vessels using trawl gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at §§ 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for Pacific cod by vessels using trawl gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 17, 2005.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 17, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–16705 Filed 8–18–05; 2:43 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 162
Tuesday, August 23, 2005

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 04–083–1]

Add Argentina to the List of Regions Considered Free of Exotic Newcastle Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations by adding Argentina to the list of regions considered free of exotic Newcastle disease. We have conducted a risk evaluation and have determined that Argentina has met our requirements for being recognized as free of this disease. This proposed action would eliminate certain restrictions on the importation into the United States of poultry and poultry products from Argentina. We would also add Argentina to the list of regions that, although declared free of exotic Newcastle disease, must provide an additional certification to confirm that any poultry or poultry products offered for importation into the United States originate in a region free of exotic Newcastle disease and that, prior to importation into the United States, such poultry or poultry products were not commingled with poultry or poultry products from regions where exotic Newcastle disease exists.

DATES: We will consider all comments that we receive on or before October 24, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once you have entered EDOCKET, click on the "View Open APHIS Dockets" link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–083–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–083–1.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Dr. David Nixon, Case Manager, Regionalization Evaluation Services, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction of various animal diseases, including exotic Newcastle disease (END). END is a contagious, infectious, and communicable disease of birds and poultry. Section 94.6 of the regulations provides that END is considered to exist in all regions of the world except those listed in § 94.6(a)(2), which are considered to be free of END.

The Government of Argentina has requested that APHIS evaluate Argentina's animal health status with respect to END and provided information in support of that request in accordance with 9 CFR part 92, "Importation of Animals and Animal Products: Procedures for Requesting Recognition of Regions."

Risk Evaluation

Using information submitted to us by the Government of Argentina through the animal health officials of the National Health and Agrifood Quality Service (El Servicio Nacional de Sanidad y Calidad Agroalimentaria, SENASA), as well as information gathered during site visits by APHIS staff to Argentina in June and December of 2003, we have reviewed and analyzed the animal health status of Argentina relative to END. The review and analysis were conducted in light of the factors identified in § 92.2, "Application for recognition of the animal health status of a region," which are used to evaluate the risk associated with importing animals or animal products into the United States from a given region. Based on the information submitted to us, we have concluded the following:

Veterinary Infrastructure

All animal disease and control programs in Argentina operate under the General Animal Health Enforcement Law (Law No. 3959/1903). Under this law, SENASA has passed several resolutions specifically pertaining to the control and surveillance of END, including SENASA's resolutions to secure Argentina's compliance with the European Union (EU) requirements for the importation of poultry. SENASA is divided into several sections, four of which focus on animal health issues. In 2003, SENASA had a budget of approximately $39 million U.S. dollars and employed 572 veterinarians.

In 2001 and 2002, SENASA was reorganized to increase the agency's quality of response to animal disease control and eradication. This reorganization, which occurred after the foot-and-mouth disease outbreak in 2001, involved centralizing authority, examining international standards and certification requirements, and increasing efficiency and transparency through internal monitoring, accountability, and increased compliance with national policies. The new structure of SENASA includes 25 regional offices and 316 field offices throughout Argentina. The regional offices are responsible for overseeing the

field offices, which monitor local prevention and control measures, census information, eradication, compliance, emergency actions, health actions, premises identification, movement controls, and recordkeeping.

In order to monitor poultry in Argentina, SENASA requires that all premises with commercial poultry register with SENASA and obtain a unique alphanumeric identifier called a RENSPA (Regestrio Nacional Sanitario de Productores Agropecuarios, National Sanitary Registry of Ag-Producers) number. The RENSPA number identifies the province, municipality, premises, and certain characteristics of the facility from which the animal came, such as facility ownership. The RENSPA number is used to maintain a database that includes census information, animal movement permit information, and the END status of the premises. SENASA reports that compliance with RENSPA registration is high. Although RENSPA registration is not specifically required for backyard poultry flocks, SENASA believes that these flocks do not pose a major threat of END as these birds are intended primarily for home consumption rather than for exportation.

RENSPA applications also must include the name of the veterinarian who serves the premises. This veterinarian is required by law to report any animal health problems occurring on the premises. If the veterinarian or the owner fails to report, the owner can be disqualified from collecting indemnity under the indemnity program explained in the "Passive Surveillance" section below. Also, a fine may be collected from either the veterinarian or the premises owner.

The results of our evaluation indicate that animal health officials in Argentina have the legal authority to enforce Federal and State regulations pertaining to END and the necessary veterinary infrastructure to carry out END surveillance and control activities.

Disease History and Surveillance

The first diagnosis of END in Argentina occurred in 1961. Since that time, there have been four additional outbreaks—one in 1966, one in 1970, and two in 1987. In 1967, the Argentine Government made END reporting mandatory. Argentina has not recorded an outbreak of END in domestic poultry flocks since October 1987; however, in 1999 a virulent strain of paramyxovirus type-1 was isolated from wild pigeons. This discovery in the wild pigeon population was not considered to be an imminent threat to commercial poultry flocks as general industry practice includes vaccinating commercial birds against END (as described below in the "Vaccination Status" section) and keeping these birds in enclosed buildings that separate them from wild birds.

The August 1987 outbreak occurred in four backyard premises and affected approximately 300 hens. This infection was discovered when unvaccinated backyard birds were at an exhibition and began to show END symptoms. Other birds at the exhibition site became infected, but the Argentine Government controlled the spread through slaughter and disinfection. The outbreak in October 1987, the origin of which is unknown, affected 180,000 commercial broiler birds housed at 9 poultry farms. In addition to slaughter and disinfection, the government also used vaccination, collection of blood samples for serum testing, necropsy of all animals dying on neighboring premises within a radius of 25 km for the following 35 days, and the application of stringent biosecurity measures such as access controls at farms and testing of wild birds.

Active Surveillance

Argentina has had an active sampling program in place since 1996. This program is evaluated yearly and modifications to the plan are based on an annual risk assessment, the prior year's test results, and practicalities of testing such as cost and personnel availability. From 1996 through 2001, SENASA biannually tested both commercial flocks and noncommercial flocks and took a large number of samples, which all were either negative for END or were positive with vaccine strains. For the 2002–2004 active surveillance program, SENASA tested two target populations. The first population consisted of noncommercial bird flocks, including imported birds, birds found in the wild, and birds in zoos and backyards. The second group covered by the surveillance program consisted of testing commercial bird flocks including heavy and light breeding grandmother and parent birds, high-yielding hens, and commercial broilers.

Currently, SENASA is working to update and expand its surveillance and control programs, including adding new standards for parent and grandparent facilities.

Passive Surveillance

SENASA has a system in place through which government officials, veterinarians, producers, and the public can notify SENASA officials of potential outbreaks. After a potential or verified outbreak has been reported, SENASA officials must immediately investigate. SENASA also has the authority to inspect suspected premises or, if a search is refused, set up a quarantine on that particular premises. SENASA can then obtain a court order to inspect the premises. Finally, SENASA has emergency response mechanisms for health and sanitary measures, as well as ante-mortem and postmortem sanitary inspection of birds for slaughter. Minimum biosecurity and hygiene standards for poultry farms and treatment of poultry waste also exist.

In addition, SENASA also compensates Argentine citizens when they report a case of END in their own flocks. Therefore, if an animal is found to have END and destroyed, the owner is entitled to indemnity for the fair market value of the animal. If an individual fails to report a case of END that is later discovered, indemnity is not paid. Although the indemnity program provides individuals with an incentive to report END, there is little communication with the public about this program and the site visit team discovered that producers were not aware of the program. Therefore, APHIS recommended that SENASA attempt to enhance public awareness of the program.

Results of our evaluation indicate that authorities in Argentina are conducting an adequate level of END surveillance to detect the disease if it were present.

Diagnostic Capabilities

In Argentina, the main laboratory conducting END testing is the central SENASA laboratory in Buenos Aires, which is supplemented by five network laboratories and the National Farming Technology Institute (Instituto Nacional de Tecnología Agropecuaria, INTA). In addition, SENASA has indicated that additional experts or staff from various organizations could assist during outbreaks. The Coordinating Department of Quarantine, Borders, and Certifications sends import/export samples to the laboratories between 1 and 3 days after the birds arrive in Argentina. The diagnostic process typically takes 15 to 20 days.

The central SENASA laboratory develops official testing protocols for the network laboratories, performs official tests of suspect END cases, conducts virus characterization studies on suspect isolates from the network laboratories, evaluates serological testing done by network laboratories, and oversees the use of avian vaccines. The laboratory has a barcoding system in place to track samples accurately and to allow for blind, unbiased testing. This

laboratory is in the final stages of a $3 million renovation and new construction project. The food sections of the central laboratory, including residues and food control, are accredited by the Argentine Accreditation Organization (Organismo Argentino de Acreditación, OAA) under International Organization for Standardization (ISO) 17025 standards. During 2005, the laboratory is considering pursuing ISO 17025 accreditation for the biological tests and analytical methods used for disease testing. Although training at this facility appears to be sporadic, the personnel assigned to the avian section are technically proficient and knowledgeable about END.

The five network laboratories were developed in 1997 to conduct virus isolation for END to meet export requirements to the EU. The network laboratories are inspected yearly and must pass an annual proficiency test involving virus isolation in samples. The five network laboratories currently are suspended from official testing until they become accredited under ISO 17025 standards, but can continue to carry out certain tests that later can be validated by the central laboratory. In addition, the current demand for END testing is low enough that all testing can be performed at the central laboratory. If an emergency were to arise and additional testing was required, the network laboratories would assist the central laboratory with such tests.

The INTA is a laboratory administered and funded separately from SENASA. The INTA provides technical services to SENASA for specific types of tests and is involved in testing wild birds for END and avian influenza virus. This lab also does all of the molecular tests needed by SENASA, which expects to perform these tests at network laboratories in the future.

APHIS concluded that the laboratory capabilities and infrastructure in Argentina are sufficient to support the END surveillance activities.

Vaccination Status

END vaccination in Argentina is mandatory for messenger pigeons only; all other END vaccinations are voluntary. SENASA estimates that approximately 80 percent of the poultry in Argentina is vaccinated based on vaccination schedules that have been put into place for production birds, breeding birds, and ornamental birds in markets and exhibitions. The 2003 site visit indicated that these schedules are identical or very similar to producers' vaccination regimens observed in farm records. This vaccination schedule leaves 20 percent of the poultry population to serve as sentinel birds along with certain broilers that are vaccinated only once in their first 14 days, which reduces their immunity to END later in life.

Although backyard domestic fowl and exhibition birds usually are not vaccinated unless they participate in exhibitions or fairs, Argentina has tested this population and the results showed that all of the birds tested were either negative for END or tested positive for a vaccination strain of END.

APHIS concluded that these vaccinated birds do not constitute a significant risk factor for introducing END into the United States.

Disease Status of Adjacent Regions

Argentina is bordered by Paraguay in the north, Bolivia in the northwest, Uruguay and Brazil in the northeast, and Chile in the west. Chile is recognized by both APHIS and Argentina as END-free. Argentina also recognizes Uruguay as END-free. Brazil and Bolivia reported END outbreaks in 2001 and 2002, respectively, and therefore are not recognized as END-free by either the United States or Argentina.

Because there have been recent END outbreaks in Brazil and Bolivia, APHIS proposes to add Argentina to the list in § 94.26 of regions that, although declared free of END, supplement their meat supply by the importation of fresh (chilled or frozen) poultry meat from regions designated in § 94.6(a) as regions where END is considered to exist, have a common land border with regions where END is considered to exist, or import live poultry from regions where END is considered to exist under conditions less restrictive than would be acceptable for importation into the United States. Therefore, poultry and poultry products from Argentina would have to meet the additional certification requirements of § 94.26 to be eligible for importation into the United States. These certification requirements are explained later in this document under the heading "Certification Requirements."

Degree of Separation From Adjacent Regions

Argentina's western and southern borders are with Chile and are composed entirely of the Andean Mountain Range. The northern border of Argentina is shared with Bolivia and Paraguay. Approximately half of the Bolivian portion of the border runs along river coastlines, while the other half has no natural barriers. The border with Paraguay is comprised mostly of rivers; however, a small portion of the border has no natural barrier. Finally, the eastern border of Argentina is shared with Uruguay and Brazil. The border with Brazil consists mostly of river coastlines, with approximately 30 km of border with no natural barriers. The border with Uruguay is composed entirely of river coastlines.

Although most of the Argentine border has adequate protection from adjacent countries through natural barriers, large areas on the borders with Bolivia and Paraguay and a small area on the border with Brazil may create the potential for END-infected animals to enter into Argentina from adjacent areas of high risk. In order to prevent this movement, effective movement controls must be in place.

Movement Controls and Biological Security

Import Controls

All importations of live animals, genetic material, animal products, and animal byproducts into Argentina are allowed only under permits issued by SENASA. In order for other countries to export poultry and poultry products to Argentina, the potential exporting country must complete a review by SENASA consisting of a questionnaire and a site visit. Based on the results of the review, SENASA officials determine the types of animals and animal products that can enter Argentina and whether certain restrictions, such as a quarantine or testing, should be applied. Argentina also has limited or banned certain types of poultry from entering the country. Import procedures differ depending on the life stage of the poultry, and records are kept for all imported materials.

Although Argentina does have a permit system, some importers attempt to bring poultry or poultry products into the country without a permit. Most of the permitting problems are associated with importation of ornamental pet birds. Commercial shipments of exotic birds are usually handled by five or six legitimate importers, all of whom are known to SENASA. That relationship enables SENASA to be aware of when permitted shipments are due to arrive; thus, when SENASA receives information concerning unscheduled shipments, it is in a better position to act on those shipments.

Export Controls

Argentina's export requirements for poultry are based in large part on Argentina's compliance with the EU standards for exporting poultry. In order for poultry to be exported, it must come directly from commercial farms that

have chemical or drug withdrawal protocols and are held to strict sanitary and vaccination rules. These farms must be registered with various organizations and are subject to inspection by a veterinarian or by his or her appointed personnel. Any poultry taken to slaughterhouses for export must be identified properly and accompanied by proper health and movement certificates. Poultry must then be slaughtered at a slaughterhouse approved for export to the particular country of destination.

SENASA does not control biosecurity at commercial facilities, which are likely to be the main source of poultry shipped to the United States. However, SENASA regulations address biosecurity standards and hygiene for avian establishments. Although these regulations do not appear to have an enforcement mechanism, compliance seems to be high. In addition, commercial birds are not likely to mix with other potentially infected birds as SENASA has indicated that Argentina does not have live markets with birds for sale for consumption. Also, in both urban and rural areas, backyard and non-commercial flocks are typically raised for home consumption only. These birds are considered unlikely to stray far from the home in rural areas because of carancho (local predator birds), and free-roaming birds in urban areas are likely to be picked up by other residents for consumption or sale.

Argentina's main export to the United States would likely be poultry meat rather than live birds. Previous experience with END in the United States suggests that the importation of live birds presents a far more likely initial exposure pathway than poultry meat or products. However, if Argentina did choose to export live birds to the United States, these birds would have to be placed in a mandatory 30-day quarantine upon their arrival. During this time, live birds would be tested for END and may be destroyed if the disease is found. The 30-day time frame exceeds the incubation period for END, making it very unlikely that birds with END would enter into the United States undetected. In addition, these birds would have to meet the additional certification requirements as described below in the "Certification Requirements" section, further ensuring that birds entering the United States would be free of END.

Given this information, APHIS did not identify any significant risk pathways to consider commercial poultry operations as a likely source for introducing END into the United States.

Movement Across Borders.

There are 45 authorized border stations in Argentina, including terrestrial stations, maritime and fluvial ports, and airports. These border stations are managed by SENASA's Quarantine, Borders, and Certifications unit. Each station is staffed by various security forces, who cooperate with SENASA under official agreements. Because these forces are the primary identifiers of illegal material, SENASA works to ensure that these individuals are trained to perform these duties. In addition, there are 394 permanent SENASA employees at border stations throughout Argentina.

For air-based transportation of poultry and poultry products, the site visit team toured two airports: Ezeiza Airport in Buenos Aires, which is the only airport through which live birds are transported, and Aeroparque Airport. Ezeiza is open 24 hours a day and has at least three to five veterinarians on staff during peak hours. If shipments arrive when the veterinarians are not present, the shipment must either wait until the veterinarians arrive or arrangements must be made in advance for a veterinarian to be present. Since 1999, Argentina has scanned all luggage entering the airports. In addition, beagle dogs have been trained to inspect luggage for both plant and animal products. To the extent possible, the dogs are scheduled to work when the riskiest flights are likely to arrive.

When passengers arrive at an Argentine airport, they first must pass through immigration where signs listing prohibited items are conspicuously posted. The beagles are used while the passengers are collecting their luggage and if a beagle identifies a bag, the bag is marked for further inspection. Passengers then proceed to customs where they must declare any items on a form provided by customs officials. The bags are then scanned and any suspicious or marked bags are inspected by hand. Any confiscated avian material is chemically treated to inactivate the END virus and is buried in a landfill. Approximately 2 tons of plant and animal material are confiscated at Ezeiza per month.

There are 21 land ports in Argentina: 6 on the border with Chile, 3 on the border with Uruguay, 6 on the border with Brazil, 3 on the border with Paraguay, and 3 on the border with Bolivia. Permanent SENASA personnel are stationed at each port along with the other officials described above. Usually, bags are searched manually; however, some of the land-based ports have scanners capable of detecting organic material for use during high traffic hours. For large shipments through Iguazú, SENASA officials must be notified 15 days in advance and can reject the shipment if the documentation is incomplete or appears to be fraudulent. All exporters and importers must be registered with SENASA, and the shipment must be accompanied by a permit. The shipment information is then entered into a database. During the November 2003 site visit, the APHIS team visited several potentially risky border stations, such as the crossings between Argentina and Bolivia. There is heavy local traffic between these ports with many individuals carrying personal food supplies between countries, which are not likely to pose a significant risk to aviculture.

Any illegal items found at border crossings are confiscated, sprayed with methylene blue or a similar solution to denature them, and incinerated. Each local office keeps records of interceptions for 2 years. A review of records at several local offices indicated that there had been no interceptions of live birds and that avian products had been limited to eggs intended for local sale across the border or small amounts of chicken meat.

After the land-based border checkpoints, there are also additional control points where vehicles, including passenger buses, are stopped and inspected. Only some of these checkpoints employ SENASA personnel, but all have some type of border surveillance personnel. Many of the border control points visited by APHIS staff have facilities to spray-treat vehicles. These points are also located on roads where there are no alternative routes into the country, therefore ensuring that all vehicles would have to pass through these stations.

For boat crossings, all of the crossings are staffed by customs officials and land forces, but not all have permanent SENASA staff. However, the workers are instructed to look for prohibited animal and plant substances.

Smuggling is also a potential problem in Argentina. The amount of smuggling fluctuates depending on the local economy and the exchange rates between neighboring countries. Additionally, much of the material smuggled through ports such as Iguazú and the Bolivian border stations is likely to be for local use instead of commercial trade and sale. In the past, SENASA officials have been able to discover illegal shipments and either destroy the animals or test them for END and release them once they were diagnosed as clean.

Officials in Argentina have the authority, procedures, and infrastructure to enforce effectively the system of permits, inspection, quarantines, and treatments that the country has in place to control animals and animal products. APHIS did not identify any specific limitations in the system that might pose an END risk to the United States.

Livestock Demographics and Marketing Practices

Aviculture is Argentina's second largest livestock production industry with 521,766 tons (over 260 million birds) of poultry meat production in 2002 and 687,653 tons (over 343 million birds) of production in 2001. The most recent census, which only covers the first months of 2003, indicate that there are over 96 million birds in Argentina, with most of the commercial poultry population (90 percent) contained in the Buenos Aires and Entre Ríos provinces. This number is expected to increase as more broilers are hatched and raised for meat production throughout the year. These numbers are taken from RENSPA, the National Livestock Census, and information gathered from the poultry industry. Argentina has been exporting meat to the EU for several years. Disease control and surveillance programs are in place for poultry that specifically target END.

Registration for farms and properties with birds fall into two categories: Commercial production farms or premises with birds. The commercial production farm category is further divided into reproduction farms, broilers, hatcheries, layers, other commercial bird farms (e.g. turkey, quail, etc.), and farms of organically raised chickens. For premises with birds, the category is divided into house birds kept mainly for consumption of meat or eggs by families, purebred birds routinely gathered at bird shows (including fighting birds, messenger pigeons, ornamental birds), and field birds produced semi-intensively for consumption by their owners.

For commercial birds, the number of birds per type of production is laid out in table 1. The commercial farms in Argentina typically are operated under a vertical integration system so that breeding flocks, incubating farms, broilers, feed mills, slaughter plants, and diagnostic laboratories all operate under the same company name. Commercial broiler production farms have an average of 4 to 5 barns, each with a bird population density of 10 to 12 birds per square meter. The birds are the same age at the farm so that when the birds are sent to slaughter, the barn is empty. Breeding farms have an average of 2 to 3 barns, each with 4 to 5 females per male and 4 to 5 female birds per square meter. Again, the birds at the farm are the same age.

APHIS did not identify any factors in this category that might pose an animal health risk to the United States if poultry or poultry products were to be imported from Argentina.

TABLE 1.—NUMBER OF BIRDS PER TYPE OF PRODUCTION

Type of bird	Number of birds
Commercial broilers	70,000,000
Heavy breeding flocks	3,300,000
High yielding hens	18,000,000
Light breeding flocks	500,000
High yielding stocking hens	4,300,000
Turkeys	125,000

Detection and Eradication of Disease

END has been effectively controlled and eradicated from commercial poultry populations in Argentina. Although END still exists in the wild pigeon population, adequate controls are in place to ensure that spread to commercial flocks does not occur. The Argentine Government also has taken precautions following the END outbreaks in the 1980s and more recent FMD outbreaks to better protect the country from the introduction of animal diseases. Given the above information, APHIS considers the likelihood of an END outbreak occurring in Argentina to be low.

Certification Requirements

As noted previously, we are proposing to add Argentina to the list of regions in § 94.26 and therefore require further certification of the END-free status of any poultry or poultry products imported into the United States from Argentina. An END-free region may be added to this list when it supplements its meat supply with imports of fresh (chilled or frozen) poultry meat from a region where END is considered to exist; has a common land border with an END-affected region; or imports live poultry from an END-affected region under conditions less restrictive than would be acceptable for importation into the United States. As previously noted, Argentina shares land borders with Brazil and Bolivia, both of which have experienced recent END outbreaks. Thus, even though we are proposing to declare Argentina free of END, there is a risk that poultry or poultry products originating in Argentina may be commingled with poultry or poultry products originating in an END-affected region.

Adding Argentina to the list of regions in § 94.26 would mean that live poultry, poultry meat and other poultry products, and ship stores, airplane meals, and baggage containing such meat or animal products originating in Argentina could not be imported into the United States unless the requirements described below were met. For all poultry and poultry products, each shipment would have to be accompanied by a certification by a full-time salaried veterinary officer of the Government of Argentina that would have to be presented to an authorized inspector at the port of arrival in the United States. The certification for live poultry would have to state that:

- The poultry have not been in contact with poultry or poultry products from any region where END is considered to exist;
- The poultry have not lived in a region where END is considered to exist; and
- The poultry have not transited through a region where END is considered to exist unless moved directly through the region in a sealed means of conveyance with the seal intact upon arrival at the point of destination.

The certification accompanying poultry meat or other poultry products would have to state that:

- The poultry meat or other poultry products are derived from poultry that meet all requirements of § 94.26 and that have been slaughtered in a region designated in § 94.6 as free of END at a federally inspected slaughter plant that is under the direct supervision of a full-time salaried veterinarian of the national government of the exporting region and that is approved to export poultry meat and other poultry products to the United States in accordance with the regulations of the U.S. Department of Agriculture's Food Safety and Inspection Service (FSIS) in 9 CFR 381.196;
- The poultry meat or other poultry products have not been in contact with poultry meat or other poultry products from any region where END is considered to exist;
- The poultry meat or other poultry products have not transited through a region where END is considered to exist unless moved directly through the region in a sealed means of conveyance with the seal intact upon arrival at the point of destination; and
- If processed, the poultry meat or other poultry products were processed in a region designated in § 94.6 as free of END in a federally inspected

processing plant that is under the direct supervision of a full-time salaried veterinarian of the Government of Argentina.

Adding Argentina to the list of regions in § 94.26 would necessitate several editorial changes to that section. Currently, § 94.26 focuses exclusively on END-free regions within Mexico and has language specifically tailored to address those regions. In order to include Argentina in § 94.26, it would be necessary to remove specific references to the Government of Mexico and replace them with more general references to the national government of the exporting region.

Conclusion

Results of our evaluation indicate that the Argentine Government has the laws, policies, and infrastructure to detect, respond to, and eliminate any reoccurrence of END.

These findings are described in further detail in a qualitative evaluation that may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Internet at *http://www.aphis.usda.gov/vs/reg-request.html* by following the link for current requests and supporting documentation. The evaluation documents the factors that have led us to conclude that commercial poultry in Argentina are END-free. Therefore, we are proposing to recognize Argentina as free of END, add that country to the list in § 94.6 of regions where END is not known to exist, and amend § 94.26 to include Argentina in the list of regions that must provide further certification of the END-free status of any poultry or poultry products exported to the United States.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Under the regulations in 9 CFR part 94, the importation into the United States of poultry and poultry products that originate in or transit any region where END exists is generally prohibited. Furthermore, even if a region is considered free of END, the importation of poultry and poultry products from that region may be restricted depending on the region's proximity to or trading relationships with countries or regions where END is present.

This proposed rule would amend the regulations by adding Argentina to the list of regions considered free of END. However, since Argentina shares borders with regions that the United States does not recognize as free of END, we are also proposing that Argentina meet additional certification requirements for live poultry and poultry products imported into the United States to ensure that the imports are free from END.

Over the past several years, Argentina's poultry industry has increased substantially as shown in table 2. Although Argentina exports eggs, which typically are destined to Denmark, the main export for Argentina is poultry meat. Argentina exports poultry meat and products to 34 countries, with Chile expected to be the largest importer. In 2003, Argentina exported $22 million of poultry meat including whole broilers (36 percent), chicken paws (30 percent), processed meat from layers (5 percent), and other products and byproducts such as wings, nuggets, burgers, offal, and breasts (29 percent). Exports for poultry meat in 2004 are projected at 70,000 tons, almost twice the amount exported in 2003. In 2005, exports are projected to reach 110,000 metric tons.

TABLE 2.—POULTRY EXPORTS, IMPORTS, AND PRODUCTION IN ARGENTINA

[In metric tons]

Year	Poultry imports	Poultry exports	Poultry production
1998	65,215	18,936	930,247
1999	55,608	17,097	982,860
2000	45,683	19,187	1,000,260
2001	26,661	21,243	993,122
2002	1,196	30,501	972,870

Source: FAOSTAT-Argentina Poultry, last accessed November 2004.

In 2003, poultry production in the United States totaled 38.5 billion pounds for a total value of $23.3 billion. Broiler meat accounted for $15.2 billion (65 percent) of this value in 2003. The remaining worth was comprised of the value of eggs ($5.3 billion), turkey ($2.7 billion), and other chicken products ($48 million). The United States is also the world's largest exporter of broilers, with broiler exports totaling 4.93 billion pounds, the equivalent of $1.5 billion, in 2003. Imports of broiler products into the United States in 2003 totaled 12 million pounds, or less than 1 percent of the domestic production.

In 2002, there were approximately 32,006 broiler and other meat producing chicken farms in the United States, as shown in table 3. Under the Small Business Administration's size standards, broiler and other meat production chicken farms with less than $750,000 in annual sales, which is the equivalent of 300,000 birds, qualify as small businesses. Given this information, about 20,949, or 64.5 percent of all broiler operations, qualify as small businesses.

TABLE 3.—NUMBER OF FARMS SELLING BROILERS AND OTHER MEAT-TYPE CHICKENS, 2002

Number sold	Farms	Number	Average sales per farm
Broilers and other meat-type chickens	32,006	8,500,313,357	$766,498
1 to 1,999	10,869	1,146,308	304
2,000 to 15,999	406	2,871,466	20,412
16,000 to 29,999	206	4,420,530	61,932
30,000 to 59,999	444	19,732,838	128,267

TABLE 3.—NUMBER OF FARMS SELLING BROILERS AND OTHER MEAT-TYPE CHICKENS, 2002—Continued

Number sold	Farms	Number	Average sales per farm
60,000 to 99,999	1,060	84,498,647	230,066
100,000 to 199,999	3,311	498,386,958	434,425
200,000 to 299,999	4,653	1,137,668,155	705,651
300,000 to 499,999	5,754	2,191,324,340	1,099,118
500,000 or more	5,303	4,560,264,115	2,481,853

Source: 2002 Census of Agriculture, Table 27.

Broiler production in the United States is concentrated in a group of States stretching from Delaware south along the Atlantic coast to Georgia, then westward through Alabama, Mississippi, and Arkansas. These States accounted for over 70 percent of broilers in the United States in 2003. The top five broiler producing States are Georgia, Arkansas, Alabama, Mississippi, and North Carolina, whose 2002 broiler sales are listed below in table 4.

TABLE 4.—NUMBER OF FARMS SELLING BROILERS IN SELECTED STATES, 2002

Number of broilers sold per farm	U.S. total	Alabama	Arkansas	Georgia	Mississippi	North Carolina	Total for top five producing States
1 to 1,999	10,869	89	79	46	104	13	331
2,000 to 59,999	1,056	20	103	49	86	101	359
60,000 to 99,999	1,060	57	199	84	97	158	595
100,000 to 199,999	3,311	385	634	25	210	539	1,793
200,000 to 499,999	10,407	1,328	1,927	1,335	883	1,284	6,757
500,000 or more	5,303	72	578	959	548	349	2,506

Source: 2002 Census of Agriculture State Data Table.

Poultry meat imported from Argentina could potentially affect the United States poultry industry. Consumers would benefit from any price decreases for poultry and poultry products, while producers would potentially be negatively affected by more competitive prices. However, the amount of poultry or poultry products that may be imported from Argentina is not expected to have a significant impact on poultry consumers or producers in the United States. In 2003, Argentina exported a total of $22 million worth of poultry and poultry products while the United States produced $15.2 billion worth of broilers. Given these numbers, any exports from Argentina are not likely to be in quantities sufficient to have a significant impact on U.S. poultry producers, and we do not anticipate that any U.S. entities, small or otherwise, would experience any significant economic effects as a result of this proposed action. It should also be noted that Argentina is not currently eligible to export poultry products to the United States under the FSIS regulations cited earlier in this document; there would, therefore, be no economic effects on U.S. entities until establishments in Argentina were approved to export poultry meat and other poultry products to the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 94.6 [Amended]

2. In § 94.6, paragraph (a)(2) would be amended by adding the word "Argentina," before the word "Australia,".

3. Section 94.26 would be amended as follows:

a. In the introductory text of the section, the first sentence would be amended by removing the words "The Mexican" and adding the words "Argentina and the Mexican" in their place.

b. In paragraph (a), the words "Government of Mexico" would be removed and the words "national Government of the exporting region" would be added in their place.

c. In paragraph (c)(1), the words "Government of Mexico" would be removed and the words "national

Government of the exporting region" would be added in their place.

d. In paragraph (c)(4), the words "Government of Mexico" would be removed and the words "national Government of the exporting region" would be added in their place.

Done in Washington, DC, this 17th day of August 2005.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 05–16689 Filed 8–22–05; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–213–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747SP, 747SR, 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 Series Airplanes

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

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

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to all Boeing Model 747SP, 747SR, 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes, that would have required modification of the escape slide/raft pack assembly and cable release sliders. This new action revises the proposed rule by incorporating new service information, which clarifies the airplanes on which certain actions must be done, and by adding a new requirement for certain airplanes. The actions specified by this new proposed AD are intended to prevent improper deployment of the escape slide/raft or blockage of the passenger/crew doors in the event of an emergency evacuation, which could result in injury to passengers or crewmembers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 19, 2005.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–213–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

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

FOR FURTHER INFORMATION CONTACT: Keith Ladderud, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6435; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–213–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–213–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to all Boeing Model 747SP, 747SR, 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes, was published as a notice of proposed rulemaking (NPRM) (hereafter referred to as the "original NPRM") in the **Federal Register** on September 10, 2003 (68 FR 53309). That NPRM would have required modification of the escape slide/raft pack assembly and cable release sliders. The original NPRM was prompted by improper escape slide/raft deployment and passenger/crew door blockage during slide deployment tests. That condition, if not corrected, could result in injury to passengers or crewmembers.

Comments

Due consideration has been given to the comments received in response to the original NPRM.

Request To Change Preamble/Add Revised Service Information

One commenter asks that Boeing Special Attention Service Bulletin 747–25–3274, Revision 2, dated August 26, 2004, be added to the first paragraph of the "Explanation of Relevant Service Information" section of the original NPRM. Revision 1 of the service bulletin was referenced in the original NPRM as the source of service information for modifying the slide/raft pack assembly. The commenter also asks that the following be added to that paragraph: "Note: Revision 2 will revise work instructions to move two airplane effectivities to a different group to reflect conversion from passenger

configuration to special freighter configuration and will add a note that no work needs to be done at Door 3 left-hand and right-hand if Boeing Service Bulletin 747–25–2666, Revision 2, dated April 24, 2003, has previously been incorporated."

The commenter asks that the term "pulley guard bracket" be changed to "cable guard bracket" in that same section and in the paragraph following "modification" of the original NPRM. The commenter provides no reason for these changes.

The commenter also asks that Boeing Special Attention Service Bulletin 747–25–3307, Revision 1, dated February 12, 2004, be added to the second paragraph of the "Explanation of Relevant Service Information" section of the original NPRM. The original issue of the service bulletin was referenced in the original NPRM as the source of service information for modifying the cable release sliders. The commenter also asks that the following be added to that paragraph: "Note: Revision 1 will add airplanes to service bulletin effectivities, combine Groups 2 and 3, and revise work instructions and Figure 2 to provide airlines with an alternate, easier modification."

The commenter asks that the phrase "of the escape slide/raft pack assembly" be changed to "of the floor-mounted upper deck slide pack assembly." The commenter provides no reason for these changes.

We acknowledge and agree with the commenter's remarks on the preamble of the original NPRM as these descriptions provide clarification; however, the "Explanation of Relevant Service Information" section is not restated in this supplemental NPRM. We have changed the term "pulley guard bracket" to "cable guard bracket" in paragraph (a)(2) of the supplemental NPRM, which is the only paragraph where the term is used. We have also changed the phrase "of the escape slide/raft pack assembly" to "of the floor-mounted upper deck slide pack assembly" in paragraph (b) of the supplemental NPRM.

Since issuance of the original NPRM, Boeing has issued, and we have reviewed, Boeing Special Attention Service Bulletin 747–25–3274, Revision 2, dated August 26, 2004; and Revision 3, dated December 16, 2004. Revision 2 contains the changes described previously by the commenter. Revision 2 also clarifies the airplanes on which certain actions must be done. Revision 3 is essentially the same as Revision 2, but the work hours and parts cost for the modification are reduced and Revision 3 provides further clarification of certain actions. Revision 3 specifies that no more work is necessary on airplanes changed as shown in Revision 2, except that certain cable assemblies must be replaced with new cable assemblies for airplanes on which Boeing Service Bulletin 747–25–2666, Revision 2, dated April 24, 2003; and Goodrich Service Bulletin 25–092, Revision 3, dated December 8, 1986 (superseded by Goodrich Service Bulletin 25–238, Revision 1, dated January 31, 2003); have been incorporated at Door 3 of the emergency exit. Service Bulletin 747–25–2666 describes procedures for installation of a one-piece ramp/slide at Door 3 of the emergency exit. Service Bulletins 25–092 and 25–238 describe procedures for modification of the escape slide raft assembly. We have added the new requirement specified in Service Bulletin 25–238 to paragraph (a)(2) of the supplemental NPRM.

In addition, as specified in Revision 3 of Service Bulletin 747–25–3274, no further action is required if corrective actions were performed in accordance with previous revisions, except as specified in paragraph 1.D., "Description", of the service bulletin. That paragraph, in part, specifies that no more work is necessary on airplanes changed per Revision 1 of the service bulletin, except airplanes RD103 or RD104 that have incorporated Service Bulletin 747–25–2258 and have stored gas upper deck slides that should be modified by the instructions for Group 1 and Group 13 airplanes, as specified in Revision 3 of Service Bulletin 747–25–3274. Therefore, we have added Revision 3 of the service bulletin for accomplishing the modification specified in paragraph (a) of this supplemental NPRM, except as specified in paragraph 1.D. of the service bulletin.

We have also reviewed Boeing Special Attention Service Bulletin 747–25–3307, Revision 1, dated February 12, 2004; and Revision 2, dated July 8, 2004. Revision 1 contains the changes described previously. Revision 2 is essentially the same as Revision 1, and specifies that no more work is necessary on airplanes changed as shown in Revision 1. We have referenced Revision 2 of the service bulletin as the appropriate source of service information for accomplishing the modification required by paragraph (b) of this supplemental NPRM.

Request To Change Parts Installation Paragraph

One commenter, the airplane manufacturer, asks that paragraph (c) of the original NPRM be changed. The commenter states that, as written, paragraph (c) would not allow installation of certain parts on any airplane after the effective date of the AD. The commenter adds that it finds the requirements in this paragraph excessively restrictive because those requirements would not allow slides to be moved from one airplane to another, or installation of an overhauled slide during the next 36 months if an old part number cable is installed. The commenter states that, since the original NPRM affects slide/raft pack assemblies rather than airplanes, installing old cables after the effective date of the AD should be restricted to include the slide/raft pack assemblies only. The commenter suggests that paragraph (c) be changed as follows: "As of the effective date of this AD, no one may install, on any slide/raft pack assembly, a pin cable assembly with a part number listed."

In light of the rationale provided by the commenter, we agree with the remark that the proposed requirements of paragraph (c) are too restrictive. Operators must comply with the requirements of this AD by the compliance time specified in paragraph (a) of the supplemental NPRM. If an operator must install an escape slide, it is their responsibility to ensure that all affected parts of that slide conform to the requirements of this supplemental NPRM by the compliance deadline. Accordingly, paragraph (c) of the proposed rule has not been included in this supplemental NPRM. (Operators should note, however, that once an airplane has been modified according to this AD, the airplane cannot be modified in any way that negates accomplishment of the actions in this AD—*i.e.*, an escape slide with a modified cable assembly cannot be replaced with an escape slide with an unmodified cable assembly.)

Request To Remove Requirement for Prior or Concurrent Modification of Cable Release Sliders

The same commenter states that it does not agree that modification/replacement of the cable release sliders on the floor-mounted upper deck escape slide (as specified in paragraph (b) of the original NPRM) warrants an AD. Boeing Special Attention Service Bulletin 747–25–3307, Revision 2, dated July 8, 2004, is referenced as the appropriate source of service information for the concurrent modification required by paragraph (b). The commenter notes that although deployment forces can be higher than normal if the modification/replacement is not accomplished, the commenter is

not aware of any non-deployment due to this condition.

We partially agree with the commenter. We agree that certain concurrent actions specified in Boeing Special Attention Service Bulletin 747–25–3307, Revision 2, are not necessary. We have determined that the concurrent modification specified in Figure 1 of the service bulletin is not required; however, the concurrent modification of the outboard cover panel, as specified in Figure 2 of the service bulletin, must be accomplished on Groups 2, 5, 6, 7, 8, 11, 12, 13, 14, and 15 airplanes. We have changed paragraph (b) of this supplemental NPRM accordingly.

Request To Change Applicability

One commenter asks that the applicability specified in the original NPRM be changed to specify a component (appliance), rather than airplanes, and suggests that the AD apply only to airplanes with floor-mounted upper deck slide pack assemblies having the part numbers identified in the referenced service information. The commenter states that the applicability specified can be misleading and has the potential to cause compliance and record-keeping errors. The commenter adds that the original NPRM should not be applicable to airplanes because the actions are required for a removable component; the component can be removed, repaired, and/or overhauled separately from the airplane, moved to another airplane, or stored until installation. The commenter notes that it operates several Model 747–100 series airplanes that do not have the affected floor-mounted upper deck slide pack assemblies installed, although the airplanes are included in the applicability. In addition, the commenter states that it operates one Model 747SR series airplane that is equipped with an affected assembly, but is not included in the effectivity specified in the referenced service information.

We do not agree with the commenter. Our general policy, when an unsafe condition results from an appliance or other item that is, or could be, installed on multiple airplane models, is that the AD is issued so that it is applicable to all of those airplane models, rather than to the item. The applicability of the original NPRM states "all" and takes precedence over the service bulletin effectivity. By making the AD applicable to the airplane models on which the appliance or other item is installed, we ensure that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While we assume that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items that are installed on its airplanes. Therefore, calling out the airplane model as the subject of the AD prevents "unknowing non-compliance" on the part of the operator.

Additionally, there have been reports of non-deployments of escape slides that were delivered by Boeing with the airplane, as well as those that were installed post-delivery by the supplemental type certification (STC) process. After reviewing the in-service incidents, we found that all of the escape slides installed per the STC used the packboards that were delivered with the airplane. We then determined that specifying the airplane model in the applicability of the NPRM instead of the escape slide itself ensures that all discrepant cable assemblies are replaced on all Model 747 escape slide packboards, regardless of which airplane the escape slide is installed on. Therefore, components on airplanes not affected would not be overlooked. We have made no change to the supplemental NPRM in this regard.

Another commenter states that in the applicability of the original NPRM, Model 747–400F series airplanes are missing. The commenter notes that the upper deck slides on Model 747–400F series airplanes are the same as the slides installed on Model 747–200 series airplanes.

Although no specific request was made, we infer that the commenter wants us to add Model 747–400F series airplanes to the applicability of the supplemental NPRM. Although the slides for Model 747–200 and 747–400F series airplanes are similar, they are not interchangeable. When the Model 747–400F series airplanes were built, the escape slides that were installed had newer cover release cables which changed the configuration; therefore, the actions specified in the supplemental NPRM are not required for Model 747–400F series airplanes. We have made no change to the supplemental NPRM in this regard.

FAA's Determination and Proposed Requirements of the Supplemental NPRM

Since a certain change, discussed above, expands the scope of the original NPRM, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this supplemental NPRM.

Changes to 14 CFR Part 39/Effect on the Original NPRM

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). These changes are reflected in this supplemental NPRM.

Cost Impact

There are approximately 592 airplanes of the affected design in the worldwide fleet. We estimate that 187 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per escape slide to accomplish the new proposed modification of the escape slide/raft pack assembly, at an average labor rate of $65 per work hour. Required parts would cost between $8,354 and $30,688 per airplane. Based on these figures, the cost impact of the modification of the escape slide/raft pack assembly proposed by this AD on U.S. operators is estimated to be between $1,586,508 and $5,762,966, or between $8,484 and $30,818 per airplane.

Should an operator be required to accomplish the overhaul of the cable release sliders, it would take approximately 2 work hours to accomplish the proposed overhaul, at an average labor rate of $65 per work hour. Required parts cost would be negligible. Based on these figures, the cost impact of the overhaul of the cable release sliders proposed by this AD on U.S. operators is estimated to be $130 per escape slide and $260 per airplane.

Should an operator be required to accomplish the replacement of the cable release sliders, it would take approximately 1 work hour to accomplish the proposed replacement, at an average labor rate of $65 per work hour. Required parts would cost approximately $2,940 per escape slide. Based on these figures, the cost impact of the replacement of the cable release sliders proposed by this AD on U.S. operators is estimated to be $3,005 per escape slide or $6,010 per airplane.

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

actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Authority for This Rulemaking

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

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket 2001–NM–213–AD.

Applicability: All Model 747SP, 747SR, 747–100, –100B, –100B SUD, –200B, –200C, –200F, and –300 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper deployment of the escape slide/raft or blockage of the passenger/crew doors in the event of an emergency evacuation, which could result in injury to passengers or crewmembers, accomplish the following:

Modification

(a) Within 36 months after the effective date of this AD: Accomplish the actions specified in paragraphs (a)(1) and (a)(2) of this AD, as applicable, in accordance with Boeing Special Attention Service Bulletin 747–25–3274, Revision 3, dated December 16, 2004. Previously accomplishing the modification in accordance with Boeing Special Attention Service Bulletin 747–25–3274, Revision 1, dated January 9, 2003; or Revision 2, dated August 26, 2004; is acceptable for compliance with paragraph (a)(1) of this AD, except as specified in paragraph 1.D, 'Description', of Revision 3 of the service bulletin.

(1) For airplanes on which the actions specified in Boeing Service Bulletin 747–25–2666, Revision 2, dated April 24, 2003; and Goodrich Service Bulletin 25–238, Revision 1, dated January 31, 2003, have been accomplished: Replace cable assemblies having part number (P/N) 69B55462–( ) with new cable assemblies having P/N 416U6004–1.

(2) For airplanes on which the modification required by paragraph (a)(1) of this AD has not been accomplished: Modify the escape slide/raft pack assembly (includes removing the slide packs, replacing the cover release pin cable assemblies with new assemblies, and removing the cable guard bracket, as applicable).

Concurrent Modification

(b) For Groups 2, 5, 6, 7, 8, 11, 12, 13, 14, and 15 airplanes: Prior to or concurrently with accomplishment of paragraph (a) of this AD, modify the outboard cover panel of the cable release sliders of the floor-mounted upper deck slide pack assembly, as specified in Figure 2 of Boeing Special Attention Service Bulletin 747–25–3307, Revision 2, dated July 8, 2004.

Alternative Methods of Compliance

(c) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on August 12, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16751 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22169; Directorate Identifier 2005–NM–094–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, and 25F Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, and 25F airplanes. This proposed AD would require replacement of the spherical accumulator for the main hydraulic system with a new cylindrical accumulator. For certain airplanes, this proposed AD would also require modification of the accumulator pressure gauge. This proposed AD is prompted by reports of the failure of two thrust reverser accumulators (which are similar to the main hydraulic system's spherical accumulator) and fatigue cracks found on four thrust reverser accumulators. We are proposing this AD to prevent failure of the spherical accumulator for the main hydraulic system, due to fatigue cracking on the threads, which could result in the loss of hydraulic power, damage to the surrounding airplane structure, and loss of airplane control. The failure of the accumulator could also result in injury to any persons in the surrounding area. The loss of hydraulic fluid could also leak onto a potential source of ignition and result in a consequent fire.

DATES: We must receive comments on this proposed AD by October 7, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- By fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–22169; the directorate identifier for this docket is 2005–NM–094–AD.

FOR FURTHER INFORMATION CONTACT: Robert Busto, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA–2005–22169; Directorate Identifier 2005–NM–094–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that website, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov*.

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov*, or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System (DMS) receives them.

Discussion

We have received a report indicating that two failures of thrust reverser accumulators occurred, and inspections have found four thrust reverser accumulators with fatigue cracks. One failure occurred during flight on a Learjet Model 25B airplane and led to an emergency landing. The second failure occurred during bench testing and resulted in injury to a person. Detailed inspections of four thrust reverser accumulators found fatigue cracks on the inner threads that hold the two halves of the accumulator together. The spherical accumulator used for the main airplane hydraulic system is similar to the spherical accumulator used for the thrust reverser hydraulic system. Therefore, these spherical accumulators may be subject to the same unsafe condition. This fatigue cracking, if not corrected, could result in the failure of the accumulator, which could cause loss of hydraulic fluid and the hydraulic systems, resulting in a loss of airplane control. The failure of the accumulator could also result in damage to the surrounding airplane structure and injury to any persons in the surrounding area. The loss of hydraulic fluid could also leak onto a potential source of ignition and result in a consequent fire.

Other Relevant Rulemaking

We have published a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 14, 2005 (70 FR 19718), applicable to Learjet Model 23, 24, 24A, 24B, 24B–A, 24D, 24D–A, 24E, 24F, 25, 25A, 25B, 25C, 25D, and 25F airplanes modified by Supplemental Type Certificate SA1731SW, SA1669SW, or SA1670SW; equipped with certain Nordam thrust reversers. That NPRM proposed to require removing the thrust reverser accumulator, and making the thrust reverser hydraulic system and the thrust reversers inoperable. The actions proposed in that NPRM are intended to prevent failure of the thrust reverser accumulators, due to fatigue cracking on the female threads, which could result in the loss of hydraulic power and damage to the surrounding airplane structure.

Relevant Service Information

We have reviewed Bombardier Alert Service Bulletin A23/24/25–29–4, Revision 1, dated January 17, 2005. The service bulletin describes procedures for replacing certain spherical accumulators with new cylindrical accumulators, and reporting accomplishment of the service bulletin to the manufacturer. Replacing the accumulators may involve replacing the supports and attachment hardware.

For certain airplanes, Bombardier Alert Service Bulletin A23/24/25–29–4 recommends prior or concurrent accomplishment of Learjet Service Kit SK23–215, dated April 4, 1966. The concurrent service bulletin describes procedures for relocating the accumulator pressure gauge.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and the Service Bulletin."

Differences Between the Proposed AD and the Service Bulletin

Although Bombardier Alert Service Bulletin A23/24/25–29–4, Revision 1, dated January 17, 2005, recommends replacing the spherical accumulator for the main hydraulic system within 25 flight hours after the receipt of the service bulletin, this proposed AD specifies a compliance time of 60 days after the effective date of the AD. In developing an appropriate compliance

time for this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the actions required by the proposed AD. In light of all of these factors, we find that a longer compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. This difference has been coordinated with Learjet.

Operators should also note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for submitting a comment sheet related to service bulletin quality and a sheet recording compliance with the service bulletin, this proposed AD would not require those actions. We do not need this information from operators.

Costs of Compliance

There are about 434 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 242 airplanes of U.S. registry. The proposed actions would take about 9 to 13 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $1,336 to $1,363 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $464,882 to $534,336, or $1,921 to $2,208 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Learjet: Docket No. FAA–2005–22169; Directorate Identifier 2005–NM–094–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by October 7, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Learjet Model 23, 24, 24A, 24B, 24B–A, 24C, 24D, 24D–A, 24E, 24F, 24F–A, 25, 25A, 25B, 25C, 25D, and 25F airplanes, certificated in any category; having serial numbers 23–003 through 23–099 inclusive, 24–100 through 24–284 inclusive, and 25–003 through 25–153 inclusive.

Unsafe Condition

(d) This AD was prompted by reports of the failure of two thrust reverser accumulators (which are similar to the main hydraulic system's accumulator) and fatigue cracks found on four thrust reverser accumulators. We are issuing this AD to prevent failure of the spherical accumulator for the main hydraulic system, due to fatigue cracking on the threads, which could result in the loss of hydraulic power, damage to the surrounding airplane structure, and loss of airplane control. The failure of the accumulator could also result in injury to any persons in the surrounding area. The loss of hydraulic fluid could also leak onto a potential source of ignition and result in a consequent fire.

Compliance

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

Replacement

(f) Within 60 days after the effective date of this AD, replace the spherical accumulator having part number (P/N) 2380025–( ) or P/N 2380167–( ) with a new cylindrical accumulator having P/N 2497202–801 in accordance with the Accomplishment Instructions of Bombardier Alert Service Bulletin A23/24/25–29–4, Revision 1, dated January 17, 2005.

Concurrent Action

(g) For airplanes having serial numbers 23–003 through 23–014 inclusive: Prior to or concurrently with the actions in Bombardier Alert Service Bulletin A23/24/25–29–4, Revision 1, dated January 17, 2005, relocate the accumulator pressure gauge in accordance with Learjet Service Kit SK23–215, dated April 4, 1966.

Parts Installation

(h) As of the effective date, no spherical accumulator having P/N 2380025–() or P/N 2380167–() may be installed on any airplane.

Previous Actions

(i) Replacements done before the effective date of this AD in accordance with Bombardier Alert Service Bulletin A23/24/25–29–4, dated August 20, 2004, are acceptable for compliance with the requirements of paragraph (f) of this AD.

No Reporting Required

(j) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, Wichita Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on August 12, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16752 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22170; Directorate Identifier 2005–NM–073–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, –212, and –231 Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A320–111, –211, –212, and –231 airplanes. This proposed AD would require, for certain airplanes, modifying the cables and access holes to the inner tank fuel pumps; and, for certain other airplanes, inspecting the fuel pump access holes and modifying the access holes, if necessary. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent chafing of the fuel pump cables, which could result in electrical arcing and possible ignition of fuel vapors and consequent explosion of the fuel tank.

DATES: We must receive comments on this proposed AD by September 22, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Include the docket number "Docket No. FAA–2005–22170; Directorate Identifier 2005–NM–073–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the Docket Management System receives them.

Discussion

The FAA has examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A320–111, –211, –212, and –231 airplanes. The DGAC advises that a design review of the electrical cables and structure around the access holes to the inner tank fuel pumps revealed that cables could be damaged by chafing against sharp edges of the fuel pump access holes. This condition, if not prevented, could result in electrical arcing and possible ignition of fuel vapors and consequent explosion of the fuel tank.

Relevant Service Information

Airbus has issued, for certain Model A320–111, –211, and –231 airplanes, Service Bulletin A320–28–1008, Revision 1, dated April 10, 1989, which describes procedures for modifying the cables and access holes to the inner tank fuel pumps. The modification includes chamfering the edges of the fuel pump access holes, applying protective material to the chamfered areas, installing backshells to the cable connectors, and securing the cables to the backshells.

Airbus has also issued, for certain Model A320–211, –212, and –231 airplanes, Service Bulletin A320–28–1054, dated August 23, 1993, which describes procedures for performing a visual inspection for correct radius of the fuel pump access holes and, as applicable, modifying the fuel pump access holes. The modification includes chamfering the edges of all access holes to the inner tank fuel pumps and applying protective material to the chamfered areas. The service bulletin also describes procedures for reporting all findings to Airbus.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

The DGAC mandated accomplishment of the service bulletins and issued French airworthiness directive F–2005–031, dated February 16, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously, except as discussed under "Difference Between Service Information and the Proposed AD."

Difference Between French Airworthiness Directive and the Proposed AD

The applicability of French airworthiness directive F–2005–031 excludes airplanes that accomplished Airbus Service Bulletin A320–28–1008, Revision 1, in service and airplanes that accomplished Airbus Service Bulletin A320–28–1054 in service. However, we have not excluded those airplanes from the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in those service bulletins. This requirement would ensure that the actions specified in the service bulletins and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

Difference Between Service Information and the Proposed AD

Although Airbus Service Bulletin A320–28–1054 describes procedures for reporting all findings to Airbus, this proposed AD would not require this report. The FAA does not need this information from operators.

Clarification of Inspection Terminology

While Airbus Service Bulletin A320–28–1054 specifies a "visual inspection," this proposed AD would require a "general visual inspection" to avoid any confusion about the proper type of inspection. We have included a definition of this type of inspection in the proposed AD.

Costs of Compliance

This proposed AD would affect about 17 airplanes of U.S. registry. The proposed actions would be performed at an average labor rate of $65 per work hour, and any needed parts would be supplied from operator inventory.

For about 7 U.S.-registered airplanes subject to Airbus Service Bulletin A320–28–1008, Revision 1, dated April 10, 1989, the proposed modification would take about 3 work hours. Based on these figures, the estimated cost of this proposed modification for U.S. operators is $1,365, or $195 per airplane.

For about 10 U.S.-registered airplanes subject to Airbus Service Bulletin A320–28–1054, dated August 23, 1993, the proposed inspection would take about 1 work hour. Based on these figures, the estimated cost of this proposed inspection for U.S. operators is $650, or $65 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2005–22170; Directorate Identifier 2005–NM–073–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by September 22, 2005.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A320–111, –211, –212, and –231 airplanes, certificated in any category, that have not received Airbus Modification 21088 or 21999 in production; and airplanes that have received Airbus Modification 21088 in production and have manufacturer's serial number 91 to 113 inclusive and 140 to 189 inclusive.

Unsafe Condition

(d) This AD results from fuel systems reviews conducted by the manufacturer. We are issuing this AD to prevent chafing of the fuel pump cables, which could result in electrical arcing and possible ignition of fuel vapors and consequent explosion of the fuel tank.

Compliance

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

Inspection and Modification of Fuel Pump Access Holes

(f) Within 58 months after the effective date of this AD, perform the actions required by paragraph (f)(1) or (f)(2) of this AD, as applicable.

(1) For airplanes that have not received Airbus Modification 21088 or 21999 in production: Modify the cables and access holes to the inner tank fuel pumps, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1008, Revision 1, dated April 10, 1989.

(2) For airplanes that have received Airbus Modification 21088 in production and have manufacturer's serial number 91 to 113 inclusive and 140 to 189 inclusive: Perform a general visual inspection for the correct radius of the fuel pump access holes and modify the access holes, if necessary, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–28–1054, dated August 23, 1993. Do any applicable repairs before further flight.

Note 1: For the purposes of this AD, a general visual inspection is: "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 ensure visual access to all 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."

No Reporting Requirement

(g) Although Airbus Service Bulletin A320–28–1054, dated August 23, 1993, describes procedures for reporting inspection findings to Airbus, this AD does not require such a report.

Alternative Methods of Compliance (AMOCs)

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

Related Information

(i) French airworthiness directive F–2005–031, dated February 16, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on August 11, 2005.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16753 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–42–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF34 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines. That AD currently requires a onetime inspection, and if necessary replacing certain fan disks for electrical arc-out indications. That AD also reduces the life limit of certain fan disks. This proposed AD would require the same actions and adds one disk part number (P/N) and serial number (SN) to the affected fan disks. This proposed AD results from an error in the first part number and serial number listed in Table 1 of the original AD. We are proposing this AD to prevent rupture of the fan disk due to cracks that initiate at an electrical arc-out, which could result in an uncontained failure of the engine.

DATES: We must receive any comments on this proposed AD by October 24, 2005.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–42–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from GE Aircraft Engines, 1000 Western Avenue, Lynn, MA 01910; Attention: CF34 Product Support Engineering, Mail Zone: 34017; telephone (781) 594–6323; fax (781) 594–0600.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7148; fax 781–238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2000–NE–42–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to

you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

Examining the AD Docket

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

Discussion

On May 7, 2001, the FAA issued AD 2001–10–13, Amendment 39–12229 (66 FR 27017, May 16, 2001). That AD requires a onetime inspection, and if necessary replacing certain fan disks for electrical arc-out indications. That AD also reduces the life limit of certain fan disks. That AD resulted from a report of a crack that was found during a visual inspection as part of routine engine maintenance. That condition, if not corrected, could result in rupture of the fan disk due to cracks that initiate at an electrical arc-out, which could result in an uncontained failure of the engine.

Actions Since AD 2001–10–13 Was Issued

Since we issued that AD, we discovered that the first fan disk part number and the first fan disk serial number listed in Table 1, Fan Disks that Require Removal Based on Blended Callouts are incorrect. This proposed AD would correct those numbers. In all other respects, the proposed AD remains the same as AD 2001–10–03.

Relevant Service Information

We have reviewed and approved the technical contents of GE Aircraft Engines (GEAE) Alert Service Bulletin (ASB) CF34–BJ 72–A0088, Revision 1, dated October 30, 2000; and ASB CF34–AL 72–A0103, dated August 4, 2000. These ASB's provide procedures for inspections of certain disks for electrical arc-out indications, and if necessary, replacement of the disk with a serviceable disk.

Differences Between the Proposed AD and the Service Information

Although fan disk part number (P/N) 5922T01G02 is not specified by ASB CF34–BJ 72–A0088, Revision 1, dated October 30, 2000, fan disk P/N 5922T01G02 is subject to the requirements specified in this AD.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require requires an inspection of fan disks, P/N's 5921T18G01, 5921T18G09, 5921T18G10, 5921T54G01, 5922T01G02, 5922T01G04, 5922T01G05, 6020T62G04, 6020T62G05, 6078T00G01, 6078T57G01, 6078T57G02, 6078T57G03, 6078T57G04, 6078T57G05, and 6078T57G06, for electrical arc-out indications and, if necessary, replacement of the fan disk with a serviceable disk. This AD would also require replacing certain fan disks with blended callouts and listed by P/N and serial number (SN) in this AD before achieving a new reduced life limit. The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

We estimate that one General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engine of U.S. registry would be affected by this proposed AD. We also estimate that it would take approximately six work hours per engine to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $140,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $140,390.

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2000–NE–42–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–12229 FR 27017, May 16, 2001, and by adding a new airworthiness directive to read as follows:

General Electric Company: Docket No. 2000–NE–42–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by October 24, 2005.

Affected ADs

(b) This AD supersedes AD 2001–10–03, Amendment 39–12229.

Applicability

(c) This AD applies to General Electric Company (GE) CF34–1A, –3A, –3A1, –3A2, –3B, and –3B1 turbofan engines. These engines are installed on, but not limited to, Bombardier, Inc. Canadair airplane models CL–600–2A12, –2B16, and –2B19.

Unsafe Condition

(d) This AD results from a report of a crack that was found during a visual inspection as part of routine engine maintenance. We are issuing this AD to prevent rupture of the fan disk due to cracks that initiate at an electrical arc-out, which could result in an uncontained failure of the engine,

Compliance

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

Removal of Certain Fan Disks From Service

(f) On disk P/N's 5921T18G01, 5921T18G09, 5921T18G10, 5921T54G01,

5922T01G02, 5922T01G04, 5922T01G05, 6020T62G04, 6020T62G05, 6078T00G01, 6078T57G01, 6078T57G02, 6078T57G03, 6078T57G04, 6078T57G05, and 6078T57G06, that are listed by P/N and serial number (SN) in the following Table 1 of this AD and that have less than 8,000 cycles-since-new (CSN) on the effective date of this AD, replace fan disk P/N's before accumulating 8,000 CSN:

TABLE 1.—FAN DISKS THAT REQUIRE REMOVAL BASED ON BLENDED CALLOUTS

Disk part No.	Disk serial No.
6078T57G02	GAT6306N
6078T00G01	GAT3860G
6078T57G02	GAT1924L
5922T01G04	GAT9599G
6078T57G04	GEE05831

TABLE 1.—FAN DISKS THAT REQUIRE REMOVAL BASED ON BLENDED CALLOUTS—Continued

Disk part No.	Disk serial No.
6078T57G04	GEE06612
6078T57G04	GEE06618
6078T57G04	GEE06974
6078T57G04	GEE06980
6078T57G05	GEE143FY
6078T57G05	GEE1453G
6078T57G05	GEE14452
6078T57G05	GEE145NA
6078T57G04	GEE08086
6078T57G04	GEE09287
6078T57G04	GEE09337
6078T57G05	GEE12720
6078T57G05	GEE14214
6078T57G05	GEE142YT
6078T57G05	GEE146GT

(g) For disks with SN's listed in Table 1 of this AD that have 8,000 CSN or greater on the effective date of this AD, replace the disk within 30 days after the effective date of this AD.

Inspection of All Other Fan Disks

(h) Inspect all other fan disks, P/N's 5921T18G01, 5921T18G09, 5921T18G10, 5921T54G01, 5922T01G02, 5922T01G04, 5922T01G05, 6020T62G04, 6020T62G05, 6078T00G01, 6078T57G01, 6078T57G02, 6078T57G03, 6078T57G04, 6078T57G05, and 6078T57G06 in accordance with paragraphs 3.A.(1) through 3.E.(2) of the Accomplishment Instructions of Alert Service Bulletin (ASB) CF34–BJ 72–A0088, Revision 1, dated October 30, 2000 or paragraphs 3.A.(1) through 3.A.(2)(f) of the Accomplishment Instructions of ASB CF34–AL 72–A0103, dated August 4, 2000. Use the compliance times specified in the following Table 2:

TABLE 2.—FAN DISK INSPECTION COMPLIANCE TIMES

Fan disk operating CSN	Inspect by
(1) Fewer than 8,000 CSN or the effective date of this AD	Before accumulating 8,000 CSN or by the next hot section inspection after the effective date of this AD, whichever occurs earlier.
(2) 8,000 CSN or greater on the effective date of this AD	Within 120 days after the effective date of this AD.

Definitions

(i) For the purposes of this AD, the following definitions apply:

(1) A serviceable fan disk is defined as a fan disk that has been inspected as specified in paragraph (h) of this AD and is not listed in Table 1 of this AD.

(2) Cycles-since-new for fan disk P/N's 5922T01G04 or 5922T01G05 is defined as total cycles accrued since new as P/N 6078T57G02 or 6078T57G03, added to total cycles accrued after modification from P/N 6078T57G02 or 6078T57G03.

Alternative Methods of Compliance

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.Special Flight Permits

Related Information

(k) None.

Issued in Burlington, Massachusetts, on August 17, 2005.

Richard Noll,

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

[FR Doc. 05–16709 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20712; Directorate Identifier 2005–CE–15–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company, Model 390, Premier 1 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Raytheon Aircraft Company (Raytheon), Model 390, Premier 1 airplanes. For certain airplanes, this proposed AD would require you (unless already done) to replace the plastic cover over the air conditioning motor module with a metallic cover and modify the air conditioning compressor motor module electromagnetic interference-radio frequency interference (EMI–RFI) filter located under the cover and reidentify the module part number. For all airplanes, the proposed AD would limit future installations of the cover for the air conditioner and the air conditioning compressor motor module. This proposed AD results from reports that the plastic cover over the air conditioning motor module was found melted or burned and that the overheating of the EMI–RFI filter assembly located under the cover caused this damage. We are issuing this proposed AD to prevent the melting or burning of the plastic cover. The burning of the plastic cover could result in a fire.

DATES: We must receive any comments on this proposed AD by October 21, 2005.

ADDRESSES: Use one of the following to submit comments on this proposed AD:

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Raytheon Aircraft Company, PO Box 85,

Wichita, Kansas 67201–0085; telephone: (800) 625–7043.

To view the comments to this proposed AD, go to *http://dms.dot.gov*. The docket number is FAA–2005–20712; Directorate Identifier 2005–CE–15–AD.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, ACE–119W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4139; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, "FAA–2005–20712; Directorate Identifier 2005–CE–15–AD" at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2005–20712; Directorate Identifier 2005–CE–15–AD. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov*. The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? The FAA has received reports that the plastic cover over the air conditioning motor module for certain Raytheon Aircraft Company (Raytheon), Model 390, Premier 1 airplanes was found melted or burned. The overheating of the electromagnetic interference-radio frequency interference (EMI–RFI) filter assembly located under the plastic cover caused this damage.

Raytheon has developed two partial fixes that together remedy the problem. In February 2005, Raytheon implemented a partial fix to the problem with a service bulletin for the replacement of the plastic cover with a manufactured or a field fabricated metal cover. Raytheon, in June 2005, issued a service bulletin for the modification of the EMI–RFI filter assembly.

What is the potential impact if FAA took ho action? The burning of the plastic cover could result in a fire.

Is there service information that applies to this subject? Raytheon has issued:

—*Service Bulletin No. SB 21–3715, dated February 2005:* Includes procedures for replacing the plastic cover over the air conditioning motor module with a metallic cover (part number ((P/N) 390–555015–0001) and doing the field fabrication of the metallic cover (P/N 390–555015–0001); and

—*Service Bulletin No. SB 21–3733, dated June 2005:* This Raytheon service bulletin includes Enviro Systems Inc. Service Bulletin No. SB05–101, Revision B, dated April 27, 2005. These service bulletins include procedures for doing the modification of the air conditioning compressor motor module EMI–RFI filter and reidentifying the module part number.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. For this reason, we are proposing AD action.

What would this proposed AD require? This proposed AD would require you to:

—Replace the plastic cover over the air conditioning motor module with a metallic cover (P/N 390–555015–0001) for certain airplanes;

—Modify the air conditioning compressor motor module EMI–RFI filter and reidentify the module part number for certain airplanes; and

—Limit future installations of the cover for the air conditioner and the air conditioning compressor motor module for all airplanes.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 100 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? We estimate the following costs to do this proposed replacement of the plastic cover with a new manufactured metallic cover (P/N 390–555015–0001, or FAA-approved equivalent part number) that you buy:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work hour × $65 = $65	$600	$665	$66,500

We estimate the following costs to do the field fabrication of the metallic cover (P/N 390–555015–0001) if you choose not to buy a new metallic cover and the proposed labor for the replacement of the plastic cover:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
16 work hour × $65 = $1,040	$20	$1,060	$106,000

We estimate the following costs to modify the air conditioning compressor motor module EMI–RFI filter and reidentify the module part number:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
2 work hours × $65 = $130	$600	$730	$73,000

Authority for This Rulemaking

What authority does FAA have for issuing this rulemaking action? Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

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

Regulatory Findings

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed AD:

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

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

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

We prepared a summary of the costs to comply with this proposed AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket FAA–2005–20712; Directorate Identifier 2005–CE–15–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company: Docket No. FAA–2005–20712; Directorate Identifier 2005–CE–15–AD

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by October 21, 2005.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected By This AD?

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

(1) *Group 1:* Raytheon Aircraft Company, Model 390, Premier 1 Airplanes, serial numbers RB–1, RB–4 through RB–101, RB–103 through RB–119, and RB–121, that have not replaced the plastic cover over the compressor motor module with a metallic one (part number (P/N) 390–555015–0001, or FAA-approved equivalent part number).

(2) *Group 2:* Raytheon Aircraft Company, Model 390, Premier 1 Airplanes, serial numbers RB–1, RB–4 through RB–101, RB–103 through RB–119, and RB–121, that have installed the metallic cover (P/N 390–555015–0001, or FAA-approved equivalent part number).

(3) *Group 3:* Raytheon Aircraft Company, Model 390, Premier 1 Airplanes, serial numbers RB–120 and RB–122 through RB–129.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports that the plastic cover over the air conditioning motor module was found melted or burned and that the overheating of the electromagnetic interference-radio frequency interference (EMI–RFI) filter assembly located under the cover caused this damage. The actions specified in this AD are intended to prevent the melting or burning of the plastic cover. The burning of the plastic cover could result in a fire.

What Must I Do To Address This Problem?

(e) *What actions must I do to address this problem for Group 1 airplanes?* To address this problem for Group 1 airplanes, you must do the following:

Actions	Compliance	Procedures
(1) *Air Conditioning Motor Module Cover Replacement:* Replace the plastic cover over the air conditioning motor module with a new or fabricated metallic cover. You may use Raytheon part number (P/N) 390–555015–0001.	Within 30 days after the effective date of this AD, unless already done.	Follow Raytheon Aircraft Company Service Bulletin No. SB 21–3715, dated February 2005.
(2) *Air Conditioning Compressor Motor Module EMI–RFI Filter Modification:* Modify the air conditioning motor module EMI–RFI filter and reidentify the module part number with a P/N 390–385026–0003 module.	Within 30 days after the effective date of this AD, unless already done.	Follow Raytheon Aircraft Company Service Bulletin No. SB 21–3733, dated June 2005; and Enviro Systems Inc. Service Bulletin No. SB05–101, Revision B, dated April 27, 2005.
(3) *Future Installations—Cover for Air Conditioner:* You must only install a metal cover over the air conditioning motor module. This is mandatory equipment.	As of the effective date of this AD	Follow Raytheon Aircraft Company Service Bulletin No. SB 21–3715, dated February 2005.
(4) *Future Installations—Air Conditioning Compressor Motor Module:* Do not install any compressor motor module, P/N 390–385026–0001.	As of the effective date of this AD	Not Applicable.

(f) *What actions must I do to address this problem for Group 2 airplanes?* To address this problem for Group 2 airplanes, you must do the following:

Actions	Compliance	Procedures
(1) *Air Conditioning Compressor Motor Module EMI–RFI Filter Modification:* Modify the air conditioning motor module EMI–RFI filter and reidentify the module part number with a P/N 390–385026–0003 module.	Within 60 days after the effective date of this AD, unless already done.	Follow Raytheon the Aircraft Company Service Bulletin No. SB 21–3733, dated June 2005; and Enviro Systems Inc. Service Bulletin No. SB05–101, Revision B, dated April 27, 2005.
(2) *Future Installations—Cover for Air Conditioner:* You must only install a metal cover over the air conditioning motor module. This is mandatory equipment.	As of the effective date of this AD	Follow Raytheon Aircraft Company Service Bulletin No. SB 21–3715, dated February 2005.
(3) *Future Installations—Air Conditioning Compressor Motor Module:* Do not install any compressor motor module, P/N 390–385026–0001.	As of the effective date of this AD	Not Applicable.

(g) *What actions must I do to address this problem for Group 3 airplanes?* To address this problem for Group 3 airplanes, you must do the following:

Actions	Compliance	Procedures
(1) *Air Conditioning Compressor Motor Module EMI–RFI Filter Modification:* Modify the air conditioning motor module EMI–RFI filter and reidentify the module part number with a P/N 390–385026–0003 module.	Within 60 days after the effective date of this AD, unless already done.	Follow Raytheon Aircraft Company Service Bulletin No. SB 21–3733, dated June 2005; and Enviro Systems Inc. Service Bulletin No. SB05–101, Revision B, dated April 27, 2005.
(2) *Future Installations—Cover for Air Conditioner:* You must only install a metal cover over the air conditioning motor module. This is mandatory equipment.	As of the effective date of this AD	Follow Raytheon Aircraft Company Service Bulletin No. SB 21–3715, dated February 2005.
(3) *Future Installations—Air Conditioning Compressor Motor Module:* Do not install any compressor motor module, P/N 390–385026–0001.	As of the effective date of this AD	Not Applicable.

May I Request an Alternative Method of Compliance?

(h) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Philip Petty, Aerospace Engineer, ACE–119W, Wichita ACO, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4139; facsimile: (316) 946–4107.

May I Get Copies of the Documents Referenced in This AD?

(i) To get copies of the documents referenced in this AD, contact Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, S.W., Nassif Building, Room PL–401,

Washington, DC, or on the Internet at *http://dms.dot.gov*. The docket number is Docket No. FAA–2005–20712; Directorate Identifier 2005–CE–15–AD.

Issued in Kansas City, Missouri, on August 16, 2005.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16708 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Planned Modification of the Lambert-St. Louis International Airport Class B Airspace Area; MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; notice of public meetings.

SUMMARY: This document announces two fact-finding informal airspace meetings to solicit information from airspace users, and others, concerning a proposal to modify the Class B airspace area at the Lambert-St. Louis International Airport terminal area, St. Louis, Missouri. The proposed modifications are a result of the new runway (11/29) project underway at Lambert-St. Louis International Airport. Additionally, the proposed modifications are intended to enhance traffic flow management and ensure that all instrument procedures are contained within Class B airspace. The FAA is holding these meetings to provide interested parties an opportunity to present recommendations and comments on the proposal. All comments received during these meetings will be considered prior to any issuance of a notice of proposed rulemaking.

DATES: These informal airspace meetings will be held on Wednesday, October 19, 2005, from 4 p.m.–6 p.m. and 7 p.m.–9 p.m.; and Thursday, October 20, 2005, from 7 p.m.–9 p.m. Comments must be received on or before October 27, 2005.

ADDRESSES: On Wednesday, October 19, 2005, the meetings will be held at the Chesterfield City Hall, 690 Chesterfield Parkway West, Chesterfield, MO 63017. On Thursday, October 20, 2005, the meeting will be held at the Holiday Inn-Collinsville, 1000 Eastport Drive, Collinsville, IL 62234.

Comments: Send comments on the proposal to: David Sapadin, Manager, Airspace and Procedures, by e-mail at *david.m.sapadin@faa.gov* or by fax to (847) 294–7457.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Barrett, St. Louis TRACON (T–25), 22 Research Court, St. Charles, MO, 63304; telephone: (314) 890–1040.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) These meetings will be informal in nature and will be conducted by one or more representatives of the FAA Central Region. A representative from the FAA will present a formal briefing on the planned modification of the Class B airspace area at the Lambert-St. Louis International Airport. Participants will be given an opportunity to deliver comments or make a presentation. Only comments concerning the plan to modify the Lambert-St. Louis International Airport, Class B airspace area will be accepted.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter. These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(d) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present an original and two copies (3 copies total) to the presiding officer. There should be additional copies of each handout available for other attendees.

(e) These meetings will not be formally recorded.

Agenda for the Meetings

—Sign-in.

—Presentation of Meeting Procedures.

—FAA explanation of the proposed Class B modifications.

—Public Presentations and Discussions.

—Written comment turn-in.

—Closing Comments.

Issued in Washington, DC, August 16, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–16743 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22100 Airspace Docket No. 05–AEA–16]

Proposed Amendment to Class E Airspace; Binghampton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking

SUMMARY: This notice proposes to amend the Class E airspace area in the Binghampton, NY area. The development of multiple area navigation (RNAV) Standard Instrument Approach Procedures (SIAP) for numerous airports within the Binghampton, NY area with approved Instrument Flight Rules (IFR) operations and the resulting overlap of designated Class E–5 airspace have made this proposal necessary. The proposal would correct the name of the airport and update the Airport Reference Point (ARP). The proposal would consolidate the Class E–5 airspace designations for six airports in the Binghampton area and result in the rescission of five separate Class E–5 descriptions through separate rulemaking action. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before September 22, 2005.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2005–22100/ Airspace Docket No. 05–AEA–16 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address. An information docket may also be examined during normal business hours at the office of the Director, Eastern Terminal Operations, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace

Specialist, Airspace and Operations, ETSU–520, Eastern Terminal Service Unit, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. FAA–2005–22100/Airspace Docket No. 05–AEA–16". The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both the docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA Office of Rulemaking, (202) 267–9677 to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace within the Binghamton, NY area. The proposal would consolidate the following airport Class E–5 airspace designations into the Binghamton, NY designation: Cortland, NY, Cortland County-Chase Field Airport (N03); Ithaca, NY, Tompkins County Airport (ITH); Elmira, NY, Elmira/Corning Regional Airport (ELM); Endicott, NY, Tri-Cities Airport (CZG); and Sayre, PA, Robert Parker Hospital Heliport. This action would result in the rescission of five Class E–5 designations under a separate docket. The affected airspace would subsequently be incorporated into the Binghamton, NY description. The airspace will be defined to accommodate the approaches and contain IFR operations to and from those airports. This change would have no impact on aircraft operations since the type of airspace designation is not changing. Furthermore, the IFR approach procedures for the individual airports within the are would not be affected. Class E airspace designations for airspace areas extending upward from 700 ft. or more above the surface are published in Paragraph 6005 of FAA Order 7400.9M, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—[AMENDED]

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

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

§ 71.1 [Amended]

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

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

* * * * *

AEA NY E5 Binghamton, NY (Revised)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 41°53′35″N., long 75°56′07″W., to lat. 41°52′45″N., long 76°55′49″W., to lat. 42°10′28″N., long 77°10′21″W., to lat. 42°45′20″N., long 76°39′27″W., to lat. 42°43′35″N., long 76°07′32″W., to lat. 42°15′10″N., long 75°40′40″W., to the point of beginning.

* * * * *

Issued in Jamaica, New York, on August 17, 2005.

John G. McCartney,

Acting Area Director, Eastern Terminal Operations.

[FR Doc. 05–16741 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2005–22047; Airspace Docket No. 05–ANM–10]

RIN 2120–AA66

Proposed Revision of Federal Airway V–343; MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to extend Federal Airway V–343 from the Bozeman; MT Very High Frequency Omni-directional Range/Tactical Air Navigation (VORTAC) to the initial approach fix for the Area Navigation (RNAV) runway 15 approach to the Bert Mooney Airport (BTM), MT. Specifically, the FAA is proposing this action to enhance the management of air traffic arrivals at BTM.

DATES: Comments must be received on or before October 7, 2005.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC

20590–0001. You must identify the FAA Docket No. FAA–2005–22047 and Airspace Docket No. 05–ANM–10 at the beginning of your comments. You may also submit comments through the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2005–22047 and Airspace Docket No. 05–ANM–10) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2005–22047 and Airspace Docket No. 05–ANM–10." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, Washington, 98055–4056.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

On June 29, 2005, the Salt Lake City Air Route Traffic Control Center (ARTCC) requested Federal Airway V–343 be extended to accommodate arriving instrument air traffic at BTM. This action responds to this request.

Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to modify Federal Airway V–343 by extending the airway from the Bozeman, MT, VORTAC to the initial approach fix for the RNAV runway 15 approach to the BTM, MT.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–343 (Revised)

From Dubios, ID; Bozeman, MT, INT Bozeman, MT, 302°T/284°M and Whitehall, MT, 342°T/324°M Radials.

* * * * *

Issued in Washington, DC, on August 16, 2005.

Edith V. Parish,

Acting Manager, Airspace and Rules.

[FR Doc. 05–16748 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2005–22143]

RIN 2127–AG51

Federal Motor Vehicle Safety Standards; Roof Crush Resistance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: As part of a comprehensive plan for reducing the serious risk of rollover crashes and the risk of death and serious injury in those crashes, this document proposes to upgrade the agency's safety standard on roof crush resistance in several ways. First, we are proposing to extend the application of

the standard to vehicles with a Gross Vehicle Weight Rating (GVWR) of 4,536 kilograms (10,000 pounds) or less. Second, we are proposing to increase the applied force to 2.5 times each vehicle's unloaded weight, and to eliminate an existing limit on the force applied to passenger cars. Third, we are proposing to replace the current limit on the amount of roof crush with a new requirement for maintenance of enough headroom to accommodate a mid-size adult male occupant.

Because the impacts of this rulemaking would affect and be affected by other aspects of the comprehensive effort to reduce rollover-related injuries and fatalities, we are also seeking comments on some of those other aspects.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than November 21, 2005.

ADDRESSES: You may submit comments [identified by DOT Docket Number NHTSA–2005–22143] by any of the following methods:

- Web site: *http://dms.dot.gov*. Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

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

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

FOR FURTHER INFORMATION CONTACT: For technical issues: Ms. Amanda Prescott, Office of Vehicle Safety Compliance, NVS–224, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–5359. Fax: (202) 366–3081. e-mail: *Amanda.Prescott@nhtsa.dot.gov*.

For legal issues: Mr. George Feygin, Attorney Advisor, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–5834. Fax: (202) 366–3820. E-mail: *George.Feygin@nhtsa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Executive Summary and Overview

As part of a comprehensive plan for reducing the risk of death and serious injury from rollover crashes, this notice proposes to upgrade Federal Motor Vehicle Safety Standard (FMVSS) No. 216, *Roof Crush Resistance*. This standard, which seeks to reduce deaths and serious injuries resulting from crushing of the roof into the occupant compartment as a result of ground contact during rollover crashes, currently applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a GVWR of 2,722 kilograms (6,000 pounds) or less. The standard requires that when a large steel test plate is forced down onto the roof of a vehicle, simulating contact with the ground in rollover crashes, the vehicle roof structure must withstand a force equivalent to 1.5 times the unloaded weight of the vehicle, without the test plate moving more than 127 mm (5 inches). Under S5 of the standard, the application of force is limited to 22,240 Newtons (5,000 pounds) for passenger cars.

Recent agency data show that nearly 24,000 occupants are seriously injured and 10,000 occupants are fatally injured in approximately 273,000 non-convertible light vehicle rollover crashes that occur each year. In order to identify how many of these occupants might benefit from this proposal, the agency analyzed real-world injury data in order to determine the number of occupant injuries that could be attributed to roof intrusion. The agency examined only front outboard occupants who were belted, not fully ejected from their vehicles, whose most severe injury was associated with roof contact, and whose seating position was located below a roof component that experienced vertical intrusion as a result of a rollover crash. NHTSA estimates that there are about 807 seriously and approximately 596 fatally injured occupants that fit these criteria. The agency believes that some of these

occupants would benefit from this proposal.

To better address fatalities and injuries occurring in roof-involved rollover crashes, we are proposing to extend the application of the standard to vehicles with a GVWR of up to 4,536 kilograms (10,000 pounds), and to strengthen the requirements of FMVSS No. 216 by mandating that the vehicle roof structures withstand a force equivalent to 2.5 times the unloaded vehicle weight, and eliminating the 22,240 Newtons (5,000 pounds) force limit for passenger cars. Further, we are proposing a new direct limit on headroom reduction, which would replace the current limit of test plate movement. This new limit would prohibit any roof component from contacting a seated 50th percentile male dummy under the application of a force equivalent to 2.5 times the unloaded vehicle weight. For vehicles built in two or more stages, the agency is proposing an option of certifying to the roof crush requirements of FMVSS No. 220, "School bus rollover protection," instead of FMVSS No. 216. Finally, in response to several petitions, we reexamined the current testing procedures and are proposing certain modifications to the vehicle tie-down procedure and test plate positioning for raised or altered roof vehicles.

Consistent with the agency's continuing effort to reduce rollover-related injuries and fatalities, this document requests additional comments on certain other countermeasures that could further this initiative. Specifically, we ask for comments related to seat belt pretensioners that could limit vertical head excursion in a rollover event.

The agency used two alternative methods to estimate the benefits of this proposal. Under the first alternative, we estimate that this proposal would prevent 793 non-fatal injuries and 13 fatalities. Under the second alternative, we estimate that this proposal would prevent 498 non-fatal injuries and 44 fatalities. The annual equivalent lives saved are estimated at 39 and 55, respectively.

The estimated average cost in 2003 dollars, per vehicle, of meeting the proposed requirements would be $10.67 per affected vehicle. Added weight from design changes is estimated to increase lifetime fuel costs by $5.33 to $6.69 per vehicle. The cost per year for the vehicle fleet is estimated to be $88–$95 million. The cost per equivalent life saved is estimated to range from $2.1 to $3.4 million.

II. Background

A. Current Performance Requirements

FMVSS No. 216 currently applies to passenger cars, multipurpose passenger vehicles (MPVs), trucks, and buses [1] with a GVWR of 2,722 kilograms (6,000 pounds) or less. The standard requires that the "roof over the front seat area" [2] must withstand a force equivalent to 1.5 times the unloaded weight of the vehicle. For passenger cars, this force is limited to a maximum of 22,240 N (5,000 pounds). Specifically, the vehicle's roof must prevent the test plate from moving more than 127 mm (5 inches) in the specified test.

To test compliance, a vehicle is secured on a rigid horizontal surface, and a steel rectangular plate is angled and positioned on the roof to simulate vehicle-to-ground contact over the front seat area. This plate is used to apply the specified force to the roof structure. Currently, no test device is used to simulate an occupant in the front seat area.

In order to simulate vehicle-to-ground contact, the plate is tilted forward at a 5-degree angle, along its longitudinal axis, and rotated outward at a 25-degree angle, along its lateral axis, so that the plate's outboard side is lower than its inboard side. The edges of the test plate are positioned based on fixed points on the vehicle's roof.

For vehicles with conventional roofs, the forward edge of the plate is positioned 254 mm (10 inches) forward of the forwardmost point on the roof, including the windshield trim. This same position is required for vehicles with raised [3] or altered [4] roofs, unless the initial point of contact with the plate is rearward of the front seat area. In those instances, the plate is moved forward until its rearward edge is tangent to the rear of the front seat area.

[1] For simplicity, this notice will refer to MPVs, trucks, and buses collectively as light trucks.

[2] The roof over the front seat area means the portion of the roof, including windshield trim, forward of a transverse plane passing through a point 162 mm rearward of the seating reference point of the rearmost front outboard seating position.

[3] "Raised roof" means, with respect to a roof, which includes an area that protrudes above the surrounding exterior roof structure, that protruding area of the roof.

[4] "Altered roof" means the replacement roof on a motor vehicle whose original roof has been removed, in part or in total, and replaced by a roof that is higher than the original roof. The replacement roof on a motor vehicle whose original roof has been replaced, in whole or in part, by a roof that consists of glazing materials, such as those in T-tops and sunroofs, and is located at the level of the original roof, is not considered to be an altered roof.

B. Previous Rulemaking, Petitions, and October 2001 Request for Comments Concerning Performance Requirements

1. Extension of Roof Crush Standard to Light Trucks

In an effort to reduce deaths and injuries resulting from roof crush into the passenger compartment area in rollover crashes, the agency established FMVSS No. 216, "Roof crush resistance." Specifically, the agency sought to address the strength of roof structures located over the front seat area of passenger cars. Compliance with the standard was first required on September 1, 1973.

On April 17, 1991, NHTSA published a final rule amending FMVSS No. 216 to extend its application to MPVs, trucks, and buses with a GVWR of 2,722 kilograms (6,000 pounds) or less.[5] The final rule adopted the same requirements and test procedures as those applicable to passenger cars, except for the 22,240 Newton (5,000 pound) limit on the applied force. Compliance with the final rule was required on September 1, 1994.

2. Plate Positioning Procedure

Subsequently, NHTSA published a final rule (1999 final rule) responding to several petitions for rulemaking seeking to revise the test plate positioning procedure.[6] Prior to the 1999 final rule, the test plate was positioned based on initial point of contact with the roof. After establishing the initial point of contact, the test plate was moved forward until its forwardmost edge was positioned 254 mm (10 inches) in front of the initial point of contact. For certain vehicles with aerodynamically sloped roofs, this procedure resulted in the test plate being positioned rearward of the roof over the front seat area.[7] Consequently, the plate did not apply the force in the location contemplated by the standard, *i.e.*, over the front occupants. In some instances, the test plate was positioned such that the edge of the plate was in contact with the roof, which resulted in excessive and unrealistic deformation during testing. Similar problems occurred in testing vehicles with raised or altered roofs.

The 1999 final rule addressed the difficulty in testing aerodynamically sloped roofs by specifying that the test plate be positioned 254 mm (10 inches) forward of the forwardmost point of the roof (including the windshield trim). This ensured that the leading edge of

[5] See 56 FR 15510.

[6] See 64 FR 22567 (April 27, 1999).

[7] Examples of these vehicles include model year 1999 Ford Taurus and Dodge Neon.

the plate did not contact the roof and that the test plate applied the force over the front seat area.

Certain vehicles with raised or altered roofs experienced plate positioning difficulties similar to those in vehicles with aerodynamically sloped roofs because the initial contact point on the roof occurred not over the front seat area, but on the raised rear portion of the roof. Consequently, the 1999 final rule provided for a secondary test procedure intended for vehicles with raised or altered roofs. Under this new test procedure, the test plate is moved forward until the rearward edge is tangent to the transverse vertical plane located at the rear of the roof over the front seat area.

On June 11, 1999, the Recreational Vehicle Industry Association (RVIA) and Ford Motor Company (Ford) submitted petitions for reconsideration to amend the 1999 final rule.[8] Petitioners argued that the secondary plate positioning test procedure produced rear edge plate loading onto the roof of some raised and altered roof vehicles that caused excessive deformation uncharacteristic of real-world rollover crashes. Specifically, petitioners argued that positioning the test plate such that the rear edge of the plate is at the rearmost point of the front occupant area resulted in stress concentration, which produced excessive deformation and even roof penetration. Petitioners argued that this type of loading is uncommon to real-world rollovers. Consequently, petitioners asked the agency to reconsider adopting the secondary plate positioning procedure for raised or altered roof vehicles.[9] The agency responds to these petitions for reconsideration in Section VIII(B) of this document.

3. Upgrade of Performance Requirements

On May 6, 1996, the agency received a petition for rulemaking from Hogan, Smith & Alspaugh, P.C. (Hogan).[10] Hogan argued that the current static requirements in FMVSS No. 216 bear no relationship to real-world rollover crash conditions and therefore should be replaced with a more realistic test such as the inverted vehicle drop test defined in the Society of Automotive Engineers Recommended Practice J996 (SAE J996), "Inverted Vehicle Drop Test Procedure." The petitioner also requested that NHTSA require "roll cages" to be standard in all cars. NHTSA granted this petition on January 8, 1997, believing that the inverted drop test had merit for further agency consideration. The agency addresses the issues raised in this petition in Section VIII(A) of this document.

On October 22, 2001, NHTSA published a Request for Comments (RFC) to assist in an upgrade of FMVSS No. 216 and in addressing issues raised by the Hogan petition requesting that the agency adopt dynamic testing.[11] In the RFC, the agency posed questions related to (1) current FMVSS No. 216 test requirements and procedures; (2) the viability of introducing dynamic testing; and (3) ways to limit headroom reduction. The agency received over 50 comments from the public. The agency used the information gathered from these responses in preparing this NPRM. A summary of comments is provided in Section VI of this document.

C. Consumer Information on Rollover Resistance

In 1991, Congress instructed NHTSA to assess rollover occupant protection as a part of the Intermodal Surface Transportation Efficiency Act (ISTEA). ISTEA required the agency to initiate rulemaking to address the injuries and fatalities associated with rollover crashes. In response to that mandate, NHTSA published an advance notice of proposed rulemaking (ANPRM) that summarized statistics and research in rollover crashes, sought answers to several questions about vehicle stability and rollover crashes, and outlined possible regulatory and other approaches to reduce rollover fatalities.[12] NHTSA also published a report to Congress that detailed the agency's efforts on rollover occupant protection.[13]

In 1994, the agency proposed a new consumer information regulation to require that passenger cars and light multipurpose passenger vehicles and trucks be labeled with information about their resistance to rollover.[14] However, after issuing the notice of proposed rulemaking, Congress directed NHTSA not to issue a final rule on vehicle rollover labeling until the agency had reviewed a study by the National Academy of Sciences (NAS) on how to most effectively communicate motor vehicle safety information to consumers.[15]

After the agency reviewed the NAS study, we issued a Request for Comments proposing to use Static Stability Factor to indicate rollover risk in single-vehicle crashes, as a part of NHTSA's New Car Assessment Program (NCAP). That program provides consumers with vehicle safety information, including crash test results, to aid consumers in their vehicle purchase decisions.[16] In 2001, the agency issued a final decision to use the Static Stability Factor to indicate rollover risk in single-vehicle crashes and to incorporate the new rating into NCAP.[17]

Section 12 of the Transportation Recall, Enhancement, Accountability and Documentation (TREAD) Act of November 2000 mandated that NHTSA develop a dynamic rollover resistance test for the purposes of aiding consumer information. On October 14, 2003, NHTSA modified the New Car Assessment Program to include dynamic rollover tests.[18] NHTSA's rollover resistance rating information is available at *http://www.nhtsa.dot.gov/ncap/*.

D. Development of Comprehensive Plan

In 2002, the agency formed an Integrated Project Team (IPT) to examine the rollover problem and make recommendations on how to reduce rollovers and improve safety when rollovers nevertheless occur. In June 2003, based on the work of the team, the agency published a report entitled, "Initiatives to Address the Mitigation of Vehicle Rollover."[19] The report recommended improving vehicle stability, ejection mitigation, roof crush resistance, as well as road improvement and behavioral strategies aimed at consumer education.

III. Overall Rollover Problem and the Agency's Comprehensive Response

This proposal to upgrade our safety standard on roof crush resistance is one part of a comprehensive agency plan for reducing the serious risk of rollover crashes and the risk of death and serious injury when rollover crashes do occur.

A. Overall Rollover Problem

Rollovers are especially lethal crashes. While rollovers comprise just 3% of all light passenger vehicle crashes, they account for almost one-

[8] See Docket Nos. NHTSA–99–5572–3 & NHTSA–99–5572–2, respectively at: *http://dms.dot.gov/search/searchFormSimple.cfm*.

[9] On January 31, 2000, the agency published a partial response to petitions delaying application of the new secondary plate positioning testing procedure until October 25, 2000. See 65 FR 4579.

[10] See Docket No. NHTSA–2005–22143.

[11] See 66 FR 53376.

[12] See 57 FR 242 (January 3, 1992).

[13] See Docket Number NHTSA 1999–5572–35.

[14] See 59 FR 33254 (June 28, 1994).

[15] See 65 FR 34998 at 35001 (June 1, 2000).

[16] See 65 FR 34998 (June 1, 2000).

[17] See 66 FR 3388 (January 12, 2001).

[18] See 68 FR 59250.

[19] See Docket Number NHTSA 2003–14622–1.

third of all occupant fatalities in light vehicles, and more than 60 percent of occupant deaths in the SUV segment of the light vehicle population.[20]

Rollover fatalities are strongly associated with the following factors: A single vehicle crash (83 percent), a rural crash location (60 percent), a high-speed (55 mph or higher) road (72 percent), nighttime (66 percent), off-road tripping/tipping mechanism (60 percent), young (under 30 years old) driver (46 percent), male driver (73 percent), alcohol-related (40 percent), and/or speed-related (40 percent).[21]

The agency previously estimated that approximately 64 percent of about 10,000 occupants fatally injured in rollovers each year are injured when they are either partially or completely ejected during the rollover. Approximately 53 percent of the fatally injured are completely ejected, and 72 percent are unbelted.[22] Most of the fatally injured are ejected through side windows[23] or side doors.[24] Those who are not ejected, including belted occupants, are fatally injured as a result of impact with the vehicle interior.

Approximately 273,000 non-convertible light vehicles were towed after a police-reported rollover crash each year. Of these 273,000 light vehicle rollover crashes, 223,000 were single-vehicle rollover crashes. Previous agency data indicate that in ninety-five (95) percent of single-vehicle rollover crashes, the vehicles were tripped, either by on-road mechanisms such as potholes and wheel rims digging into the pavement or by off-road mechanisms such as curbs, soft soil, and guardrails.[25] Eighty-three (83) percent of single-vehicle rollover crashes occurred after the vehicle left the roadway.[26] Five (5) percent of single vehicle rollovers were untripped rollovers. They occurred as a result of tire and/or road interface friction.

NHTSA estimates that 23,793 serious injuries[27] and 9,942 fatalities occur in 272,925 non-convertible light duty vehicle[28] rollover crashes each year. In evaluating the risks of fatalities and serious injuries associated with rollover crashes, NHTSA has concluded that rollover crashes involving light duty vehicles present a higher risk of injury compared to frontal, side, and rear impacts.[29]

In arriving at our conclusions, NHTSA used (1) the Fatality Analysis Reporting System (FARS) from 1997 through 2002 to determine the annual average number of fatalities in non-convertible light duty vehicles, and (2) the National Automotive Sampling System Crashworthiness Data System (NASS–CDS) from 1997 through 2002 to determine the annual average number of seriously injured survivors of towaway crashes. These estimates were combined to produce the results in Table 1.[30]

TABLE 1.—RISK OF FATALITY AND SERIOUS INJURY TO OCCUPANTS OF NON-CONVERTIBLE LIGHT VEHICLES INVOLVED IN A TOWAWAY CRASHES BY CRASH TYPE

[NASS–CDS & FARS 1997–2002]

Crash type	Total occupants	Fatalities	Percent of occupants fatally injured	Fatal and serious injuries	Percent of occupants fatally or seriously injured
Rollover	467,120	9,942	2.1	33,735	7.2
Frontal Impact	2,786,378	12,480	0.4	58,031	2.1
Side Impact	1,218,068	7,932	0.6	29,964	2.5
Rear Impact	414,711	1,029	0.2	2,338	0.6

The estimates in Table 1 show that compared to other crash events, such as frontal, side, and rear impacts, rollover crashes present a greater risk of fatal or serious injury. However, the higher injury risks in rollover crashes may largely result from greater likelihood of full ejection from the vehicle, compared to other crash modes. Further, younger drivers, who may be more likely to become involved in rollovers, might also be less likely to use a safety restraint.[31]

Accordingly, to refine further the injury risk estimates more relevant to this proposal, we examined the rollover injury risks experienced by belted vehicle occupants, and vehicle occupants that had not been fully ejected. Although the injury risk estimates for belted occupants are lower, they remain higher for rollover crashes than for other crash modes.

[20] See Automotive News World Congress, "Meeting the Safety Challenge" Jeffrey W. Runge, M.D., Administrator, NHTSA, January 14, 2003, page 3, 4; (*http://www.nhtsa.dot.gov/nhtsa/announce/speeches/030114Runge/AutomotiveNewsFinal.pdf*); see also The Honorable Jeffrey W. Runge, M.D., Administrator, NHTSA, before the Committee on Commerce, Science, and Transportation. U.S. Senate, February 26, 2003; (*http://www.nhtsa.dot.gov/nhtsa/announce/testimony/SUVtestimony02–26–03.htm*); see also IPT Rollover Report at *http://www-nrd.nhtsa.dot.gov/vrtc/ca/capubs/IPTRolloverMitigationReport/* (Page 7).

[21] See *id.* at 8.

[22] See IPT Rollover Report at *http://www-nrd.nhtsa.dot.gov/vrtc/ca/capubs/IPTRolloverMitigationReport/* (Page 5).

[23] Status of NHTSA's Ejection Mitigation Research,). Stephen Duffy, Transportation Research Center, Inc., SAE Government/Industry Meeting, May 10, 2004, slide 2, *http://www-nrd.nhtsa.dot.gov/pdf/nrd-01/SAE/SAE2004/EjectMitigate_Duffy.pdf*.

[24] See IPT Rollover Report at *http://www-nrd.nhtsa.dot.gov/vrtc/ca/capubs/IPTRolloverMitigationReport/* (Page 12).

[25] See *id.* at 6. Tripped rollovers result from a vehicle's sideways motion, as opposed to its forward motion. When sideways motion is suddenly interrupted, for example, when a vehicle is sliding sideways and its tires on one side encounter something that stops them from sliding, the vehicle may roll over. Whether or not the vehicle rolls over in that situation depends on its speed in a sideways direction (lateral velocity). By measuring certain vehicle dimensions, it is possible to calculate each make/model's theoretical minimum lateral sliding velocity for this type of rollover to occur.

[26] See *id.*

[27] Abbreviated Injury Scale (AIS) 3 to 5.

[28] We refer to vehicles with GVWR less than or equal to 4,536 kilograms (10,000 pounds) as light duty vehicles.

[29] Injury risk is measured by the ratio of fatal and serious injuries to the number of occupants involved in towaway crashes.

[30] NASS–CDS estimates have been adjusted to account for cases with unknown or missing data.

[31] For younger drivers and rollovers, see William Deutermann, "Characteristics of Fatal Rollover Crashes," DOT HS 809 438, April 2002 (*http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/Rpts/2002/809–438.pdf*). For younger occupants and seat belt use, see Donna Glassbrenner, "Safety Belt Use in 2003," DOT HS 809 729, May 2004 (*http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/Rpts/2004/809729.pdf*).

TABLE 2.—RISKS OF FATALITY AND SERIOUS INJURY TO NOT FULLY EJECTED OCCUPANTS AND BELTED OCCUPANTS OF NON-CONVERTIBLE LIGHT VEHICLES INVOLVED IN A TOWAWAY CRASH BY CRASH TYPE

[NASS–CDS and FARS 1997 to 2002]

Crash type	Percent of not fully ejected occupants fatally injured (regardless of belt use)	Percent of not fully ejected occupants fatally or seriously injured (regardless of belt use)	Percent of belted occupants fatally injured (regardless of ejection status)	Percent of belted occupants fatally or seriously injured (regardless of ejection status)
Rollover	1.1	4.3	0.7	3.5
Frontal Impact	0.4	2.0	0.3	1.4
Side Impact	0.6	2.3	0.5	1.9
Rear Impact	0.2	0.5	0.1	0.3

B. Agency's Comprehensive Response

The agency has published a comprehensive plan to reduce rollover related fatalities and injuries. It is clear that the most effective way to reduce deaths and injuries in rollover crashes is to prevent the rollover crash from occurring. Countermeasures to help reduce rollover occurrence include:

- Providing consumers with information to make informed decisions when purchasing vehicles. The agency's New Car Assessment Program provides information on rollover risk predictions for light vehicles. Starting with the 2004 model year, NHTSA is making risk predictions that are based both on the vehicle's static stability factor and its performance in the agency's dynamic (fishhook) test.
- Continued research and development of advanced vehicle technologies, such as electronic control systems, road departure warnings and rollover sensors. For example, preliminary data indicates that electronic stability control systems appear effectively to reduce the occurrence of single-vehicle crashes.[32] Vehicle manufacturers continue to develop and deploy such technologies.
- Continued focus on the enforcement of laws discouraging impaired driving and compliance with speed limits and other safe driving behavior. As noted above, rollovers often involve speed (40%) and/or alcohol (40%), and tend to be associated with younger (46%), male (73%) drivers.

Countermeasures are also needed to mitigate injuries and fatalities when rollovers do occur. Such countermeasures include:

- Continued focus on ejection mitigation measures, such as side curtain airbags and rollover sensors. Such technologies are increasingly made available to the vehicle buying public. The agency will continue collaborative research efforts and, if appropriate, will establish regulations to ensure their continued deployment in the vehicle fleet.
- Enhancing other aspects of occupant protection, such as door retention (FMVSS 206), occupant restraints (FMVSS 208) and roof crush (FMVSS 216). For example, advanced safety belt systems incorporating pretensioners may help keep occupants from impacting the roof structure during a rollover.
- The continued enactment of primary safety belt laws and a continued focus on the enforcement of such laws. Safety belt use is a critical feature of reducing rollover-related fatalities and injuries. Approximately 75 percent of the people killed or injured in single-vehicle rollovers are unbelted. Twenty-nine states have yet to enact primary belt laws. Of those, twenty-one states report safety belt use below the national average of 80 percent.[33]

All of these countermeasures must work together to help create a driving environment in which rollovers can be avoided and rollover-related fatalities and injuries minimized. States legislatures, the enforcement community (including police officers, prosecutors and judges), vehicle makers and their suppliers and the driving public all play critical parts in eliminating the 10,000 rollover-related fatalities suffered each year. Government also plays a role in ensuring that safety requirements are mandated when the benefits of doing so are established. This proposal to upgrade our roof crush standard is only one such effort by the agency to address the rollover hazard.

IV. The Role of Roof Intrusion in the Rollover Problem

A. Rollover Induced Vertical Roof Intrusion

The agency has examined data on vehicle rollovers resulting in roof damage.[34] This information was derived from NASS–CDS (1997 to 2002). Vertical roof intrusion is recorded in NASS–CDS when it exceeds 2 cm (0.8 inches).

Using the NASS–CDS data from 1997 to 2002, we conclude that out of the total of 272,925 light duty vehicle rollovers in towaway crashes, 220,452 rolled more than one-quarter turn.[35] The 52,473 vehicles that experienced only a one-quarter turn were excluded from the analysis because one-quarter turn rollovers usually do not result in vertical roof intrusion since they do not experience roof-to-ground contact. We found that out of the 220,452 vehicles that rolled more than one-quarter turn, 175,253 experienced vertical intrusion of some roof component. We estimate that in 82 percent (142,954) of these cases, the most severe roof intrusion occurred over the front seat positions. Approximately 92 percent of the fatally or seriously injured belted occupants who were not fully ejected were in front seats.

In addition, NHTSA examined how vertical roof intrusion relates to a vehicle's body type and GVWR. We compared passenger cars, light trucks currently subject to the standard, and light trucks with a GVWR greater than 2,722 kilograms (6,000 pounds) but less than or equal to 4,536 kilograms (10,000 pounds). The estimates in Table 3 show that light trucks not subject to the current standard experienced patterns of roof intrusion which were slightly greater than vehicles already subject to the requirements of FMVSS No. 216. Further, the heavier vehicles above 2,722 kilograms (6,000 pounds) experienced a greater maximum vertical roof intrusion.

[32] Dang, Jennifer, "Preliminary Results Analyzing the Effectiveness of Electronic Stability Control (ESC) Systems," DOT HS 809 790, September 2004. Several recent studies in Japan and Europe also indicate that ESC systems reduce single vehicle crashes. However, the samples of vehicles equipped with these systems were small. See also, C.M. Farmer "Effect of electronic stability control," Traffic Injury Prevention 5:4 (317–25).

[33] See *http://www.nhtsa.dot.gov/people/injury/airbags/809713.pdf.*

[34] Roof damage is measured by the maximum degree of vertical intrusion into the vehicle by a roof component (A-pillar, B-pillar, roof, roof side rail, windshield header, and backlight header).

[35] A quarter turn occurs when the vehicle tips over from the upright position onto either of its sides.

TABLE 3.—PERCENT OF VEHICLES INVOLVED IN ROLLOVER CRASHES (MORE THAN ONE QUARTER-TURN) BY DEGREE OF VERTICAL ROOF INTRUSION

[1997–2002 NASS–CDS and 2002 Polk National Vehicle Population Profile (NVPP)]

Maximum vertical roof intrusion	Passenger cars (percent)	Light trucks subject to FMVSS No. 216 (percent)	Light trucks with GVWR > 2,722 and ≤ 4,536 Kg (percent)
No Intrusion	23,071 (23)	17,805 (19)	14,322 (17)
3 to 7 cm	22,219 (22)	19,264 (20)	1,499 (6)
8 to 14 cm	22,285 (22)	12,354 (13)	5,122 (21)
15 to 29 cm	25,260 (25)	31,184 (33)	10,487 (42)
30 to 45 cm	4,810 (5)	12,225 (13)	2,107 (8)
46 cm or more	2,334 (2)	2,695 (3)	1,253 (5)
Total	100,075 (100)	95,586 (100)	24,791 (100)
Average Amount of Intrusion	92.4 mm	111.3 mm	150.5 mm
Total Number of Vehicles	220,452		

B. Occupant Injuries in Rollover Crashes Resulting in Roof Intrusion

In addition to examining the risk of injuries associated with rollover events, and the prevalence of roof intrusions resulting from rollover, the agency examined actual occupant injuries and fatalities resulting from roof intrusions that occurred after the vehicle rolled more than one-quarter turn or end-over-end. Some occupants sustaining these injuries could potentially benefit from upgrading the roof crush resistance requirements.

Again, the agency limited this injury analysis to belted occupants who were not fully ejected from their vehicles. In order to determine the number of occupant injuries that could be attributed to roof intrusion, the injury data were further limited to only front outboard occupants.[36] Further, NHTSA excluded rollover crashes producing roof intrusion as a result of a collision with a fixed object such as a tree or a pole. Using NASS–CDS (1997—2002) data, NHTSA estimates that 4 percent of vehicles involved in rollovers collided with fixed objects in a way that caused roof damage. The agency excluded these vehicles in assessing potential benefits of this proposal because we found that roof damage observed from fixed object collisions was often catastrophic in nature and exhibited different deformation patterns than roof-to-ground impacts due to the localization of the force. The agency believes that this proposal is not likely to have appreciable benefits for these types of collisions. Finally, the occupant MAIS injury must have resulted from contact with a roof component.[37]

Our refined analysis shows that annually, there are an estimated 807 seriously and 596 fatally injured belted occupants (1,403 total) involved in rollovers resulting in roof intrusion that suffered MAIS injury from roof contact. The rollover injury distributions according to belt use, MAIS source, and roof intrusion is illustrated in Figure 1. Thus, although the number of serious and fatal injuries resulting from rollovers is very high, the number of occupants who could potentially benefit from upgraded roof crush resistance requirements is considerably more limited. However, despite the relatively small number of rollover occupants who may directly benefit from this proposal, the agency believes that roof crush resistance is an integral part of the occupant protection system, necessary to ensure benefits can be obtained from designing other rollover mitigation tools (such as padding and the restraint system) to provide better protection against injuries resulting from rollover. We note that seriously and fatally injured occupants who had a non-MAIS roof contact injury may also derive some benefit from decreased roof intrusion.

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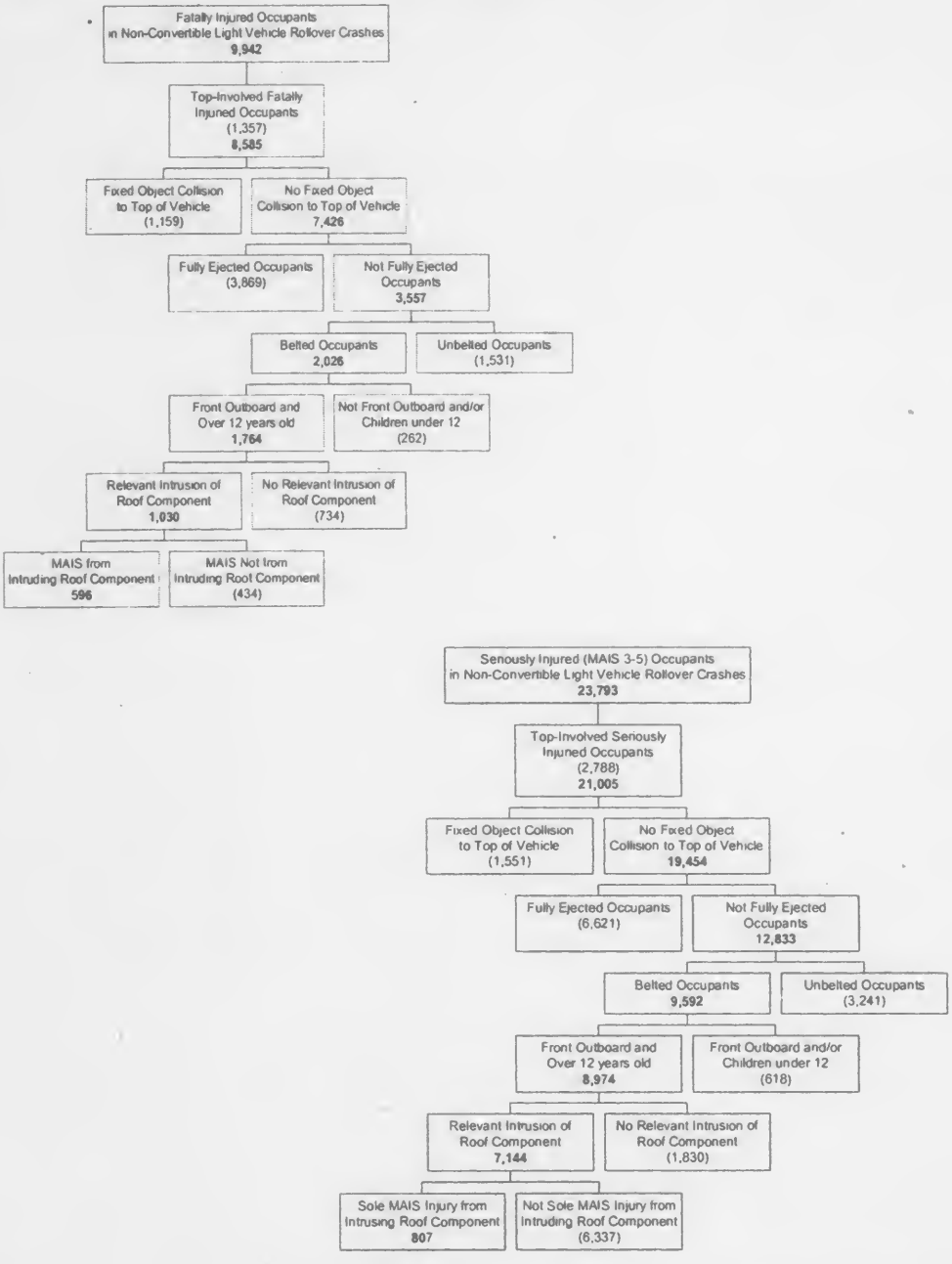
[36] We excluded rear outboard belted occupants because FMVSS No. 216 requires that the roof over the front seat area withstand the applied force. As previously stated, in 82 percent of relevant crashes, the most severe roof intrusion occurred over the front seat position. Further, we lacked the headroom data necessary to estimate potential benefits to rear seat occupants.

[37] MAIS injury is the most severe (maximum AIS) injury for the occupant.

Figure 1. Population Affected by this Proposal.



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V. Previous Rollover and Roof Crush Mitigation Research

Prior to issuing the October 2001 RFC, NHTSA conducted a research program to examine potential methods for improving the roof crush resistance performance requirements. This program included vehicle testing and analytical research.

A. Vehicle Testing

The agency vehicle testing program has consisted of: (1) Full vehicle dynamic rollover testing; (2) inverted vehicle drop testing; and (3) comparing inverted drop testing to a modified FMVSS No. 216 test.

The agency conducted over 25 full-scale dynamic rollover tests to evaluate roof integrity and failure modes in rollover crashes. These tests were expected to produce severe roof intrusion in order to help the agency investigate possible roof crush countermeasures and compare roof strengths. NHTSA designed a rollover test cart that was similar to the dolly rollover cart (as defined in FMVSS No. 208, "Occupant crash protection"), and vertically elevated it 1.2 meters.

Pneumatic cylinders were used to initiate the vehicle's angular momentum. However, these test conditions proved so severe it was difficult to identify which vehicles had better performing roof structures and which had the worse performing roof structures.[38] Due to severity of roof crush and demonstrated lack of repeatability of results, this test procedure did not provide a reliable performance measure for roof crush resistance. Based on these tests, the agency determined that the development of an improved roof crush standard based on dynamic rollover testing was not feasible, so we proceeded to investigate alternatives.

NHTSA then evaluated the inverted drop test procedure based on the SAE J996 procedure. Previous research had suggested that the inverted drop test produced deformation patterns similar to those observed in real-world crashes.[39] NHTSA conducted a series of inverted drop tests and concluded that they were not necessarily better than quasi-static tests in representing vehicle-to-ground interaction occurring during rollover. Further, the inverted drop test procedure was significantly more difficult to conduct because it required a cumbersome procedure for suspending and inverting the vehicle. The agency concluded that the quasi-static test procedure is simpler and produces more repeatable results.

Further, the agency found that both the inverted drop and quasi-static tests produced loading and crush patterns comparable to those of the dynamic rollover test.[40] Although the roof crush loading sequence in real-world crashes differs from that of the quasi-static procedure, we determined that the roof crush patterns observed in quasi-static tests provide a good representation of the real-world roof deformations. This finding, coupled with the better consistency and repeatability of the quasi-static procedure, led the agency to conclude that the quasi-static procedure provides a suitable representation of the real-world dynamic loading conditions, and the most appropriate one on which to focus our upgrade efforts.

[38] Several identical vehicles with different levels of roof reinforcement were subjected to the test. Accordingly, we expected to observe some variability in roof performance.

[39] Michael J. Leigh and Donald T. Willke, "Upgraded Rollover Roof Crush Protection: Rollover Test and NASS Case Analysis," Docket NHTSA–1996–1742–18, June 1992; and Glen C. Rains and Mike Van Voorhis, "Quasi Static and Dynamic Roof Crush Testing," DOT HS 808–873, 1998.

[40] "Rollover Roof Crush Studies," Contract DTNH22–92–D–07323, 1993.

B. Analytical Research

In 1994, NHTSA conducted an analytical study to explore the relationship between roof intrusion and the severity of occupant injury. To determine the extent of the correlation between roof intrusion and occupant injury, the agency conducted a comparative study using NASS–CDS.[41]

The study evaluated two sets of belted occupants involved in rollover events to determine if headroom reduction was related to the risk of head injury in rollover crashes. One set of occupants had received head injuries from roof contact, the second set of occupants had not.

We observed the following: (1) Headroom reduction (pre-crash versus post-crash) of more than 70 percent substantially increased the risk of head injury from roof contact; (2) as the severity of the injury increased, the percentage of cases with no remaining headroom increased; (3) when the intrusion exceeded the original headroom, the percentage of injured occupants was 1.8 times the percentage of uninjured occupants; and (4) the average percent of headroom reduction for injured occupants was more than twice that of uninjured occupants. In sum, the agency believes that there is a relationship between the amount of roof intrusion and the risk of injury to belted occupants in rollover events.

C. Latest Agency Testing and Analysis

1. Vehicle Testing

Recently, the agency conducted roof crush tests to ascertain roof strength of more recent model year (MY) vehicles.

First, the agency conducted testing on ten vehicles equipped with string potentiometers to measure the relationship between external plate movement and available occupant headroom.[42] All ten vehicles withstood an applied force of 1.5 times the unloaded vehicle weight before the occupant headroom was exhausted. Six out of ten vehicles attained a peak force greater than 2.5 times the unloaded vehicle weight before the occupant headroom was exhausted. The detailed summary and analysis of testing and simulation research is contained in the document entitled "Roof Crush Research: Load Plate Angle Determination and Initial Fleet Evaluation."[43]

Subsequently, NHTSA conducted further testing on another set of ten vehicles with a seated 50th percentile Hybrid III dummy.[44] All ten vehicles withstood an applied force of 1.5 times the unloaded vehicle weight before the occupant headroom was exhausted.[45] Seven out of ten vehicles exceeded an applied force of 2.5 times the unloaded vehicle weight before the occupant headroom was exhausted. One vehicle, a Subaru Forester, withstood an applied force of 4.0 times the unloaded vehicle weight before the occupant headroom was exhausted.

The agency also tested 10 vehicles as a part of NHTSA's compliance program.[46] These vehicles were tested in a manner similar to the 20 vehicles described above. However, these vehicles were only crushed to approximately 127 mm (5 inches) of plate displacement. The data gathered from these tests were useful in evaluating the roof crush performance of the fleet under the current requirements, which is discussed in greater detail in other sections of this notice.[47]

2. Revised Tie-Down Testing

As previously discussed, in 1999, the agency issued a final rule revising the test plate positioning procedures.[48] In response to the NPRM which preceded the 1999 final rule, Ford commented that different laboratories employ various methods to secure the vehicle for FMVSS No. 216 testing. Ford stated that the initial point of contact of the test plate varied between laboratories, which resulted in different roof crush resistance. Ford attributed the variation in initial contact point to the variation in tie-down methodologies.[49] In response to the Ford comment, the agency indicated it would address the variability in tie-down procedures separately.[50]

[41] Kanianthra, Joseph and Rains, Glen, "Determination of the Significance of Roof Crush on Head and Neck Injury to Passenger Vehicle Occupants in Rollover Crashes," SAE Paper 950655, Society of Automotive Engineers, Warrendale, PA, 1994.

[42] 1st group of vehicles: MY2002 Dodge Ram 1500, MY2002 Toyota Camry, MY2002 Ford Mustang, MY2002 Honda CRV, MY2002 Ford Explorer, MY2001 Ford Crown Victoria, MY2001 Chevy Tahoe, MY1999 Ford E–150, MY1998 Chevy S10 Pickup, and MY1997 Dodge Grand Caravan.

[43] See Docket Number NHTSA–2005–22143.

[44] 2nd group of vehicles: MY2003 Ford Focus, MY2003 Chevy Cavalier, MY2003 Subaru Forester, MY2002 Toyota Tacoma, MY2001 Ford Taurus, MY2003 Chevy Impala, MY2002 Nissan Xterra, MY2003 Ford F–150, MY2003 Ford Expedition, and MY2003 Chevy Express 15-passenger van.

[45] See Docket Number NHTSA–2005–22143.

[46] Compliance group of vehicles: MY2003 Mini Cooper, MY2003 Mazda 6, MY2003 Kia Sorento, MY2003 Chevrolet Trailblazer, MY2003 Ford Windstar, MY2004 Honda Element, MY2004 Chrysler Pacifica, MY2004 Land Rover Freelander, MY2004 Nissan Quest, and MY2004 Lincoln LS.

[47] See Docket Number NHTSA–2005–22143.

[48] See 64 FR 22567 (April 27, 1999).

[49] See Docket 94–097–N02–010.

[50] See 64 FR 22567 at 22576 (April 27, 1999).

The tie-down procedure was evaluated as part of the vehicle testing discussed in Section V(C)(1). While some of the vehicles used for testing were previously converted to sled bucks as a method to restrain vehicle motion, the agency does not consider converting vehicles into sled bucks to be a viable tie-down procedure. Two different methods of securing vehicles were explored. The first method secured the vehicle using rigidly attached vertical supports and chains. The second method used only rigidly attached vertical supports.

Based on the test results, the agency believes that both methods sufficiently restrain vehicle motion. The agency is proposing to adopt the second tie-down method using only rigidly attached vertical supports. Eliminating the use of chains prevents any pre-test stress resulting from tightening of chains. The agency believes that this method may result in a more consistent location of the initial contact point of the test plate. The details on the tie-down procedure testing, including photographs and relevant data, please see the docket.

VI. Summary of Comments in Response to the October 2001 Request for Comments

NHTSA received over fifty comments in response to the October 2001 RFC. The comments were submitted by vehicle manufacturers, trade associations, consumer advocacy groups, and individuals. Specific comments are addressed in Section VII of this document. Below is a summary of comments in response to the October 2001 RFC.

The agency received several comments in favor of retaining the current FMVSS No. 216 requirements and rejecting a dynamic testing alternative. First, the Alliance of Automobile Manufacturers (Alliance), DaimlerChrysler (DC), General Motors (GM), and Biomech, Inc. (Biomech), suggested that there are not any data to suggest that stronger roofs would reduce severity of injuries in rollover crashes. Second, Nissan North America, Inc. (Nissan) and Ford suggested that the current test procedure is the most appropriate one from the standpoint of repeatability of test conditions and results.

By contrast, NHTSA received several comments opposing the current quasi-static test procedure. Advocates for Highway Safety (Advocates) and Public Citizen stated that the current test procedure does not accurately measure vehicle roof strength and impact response in real-world rollover crashes. Therefore, the commenters suggested that the agency adopt a fully dynamic rollover test procedure.

The Alliance, GM, DC and Biomech stated that there are not any data to support extending application of FMVSS No. 216 to heavier vehicles, which, they believe, have significantly different rollover characteristics. By contrast, Consumers Union (CU), Public Citizen and several individual commenters supported extending application of the standard to vehicles with a GVWR of 4,536 kilograms (10,000 pounds) because of the widespread use of heavier sport utility vehicles for family transportation. These commenters also expressed their concerns about the rollover propensity of passenger vans.

CU, Public Citizen, and Safety Analysis and Forensic Engineering (SAFE) suggested that a modified load plate size and position would better replicate the typical location and concentration of forces in a rollover event. However, DC and Biomech stated that further changes to the current load plate size and position would not appreciably reduce injuries and might lead to unintended compliance and enforcement problems.

Center for Injury Research recommended that NHTSA include a sequential test of both sides of the vehicle roof at a roll angle of 50-degrees since the existing FMVSS No. 216 ensures reasonable strength only on the near side of the roof.

With regard to the force application requirement, Ford and Nissan stated that the current level of 1.5 times the unloaded vehicle weight is a sufficient test requirement. However, Public Citizen, Carl Nash, and Hans Hauschild recommended an increased load and application rate to replicate the dynamic forces occurring in a rollover event.

Public Citizen, CU and several individual commenters suggested that FMVSS No. 216 testing should be conducted without the windshield and/or side glazing because glazing materials often break during the first quarter turn and provide virtually no support to the roof structure in subsequent turns.

With respect to a direct headroom reduction limit, Ford, Nissan, GM, DC and Biomech stated that there is not any indication that limiting headroom reduction can offer quantifiable benefits for either belted or unbelted occupants. Specialty Equipment Marketers Association (SEMA) expressed concern that any proposed headroom regulation would create a substantial problem for aftermarket manufacturers of sunroofs, moon roofs and other roof-mounted accessories. Public Citizen, Nash and other individual commenters suggested that a minimum headroom clearance requirement should be established because real-world data indicate that roof crush is directly related to head and neck injuries.

Finally, NHTSA received several comments suggesting that the agency adopt new requirements to minimize occupant excursion in rollover crashes and require vehicles to have rollover sensors. Additionally, we received comments from DC, Biomech, and Ford suggesting that the agency develop a biofidelic rollover test dummy or at least modify the Hybrid III.

VII. Agency Proposal

Based on available information, including long-term and more recent agency research, the assessment of crash and injury statistics, and evaluation of comments in response to the October 2001 RFC, the agency has tentatively concluded that FMVSS No. 216 should be upgraded in order to mitigate serious and fatal injuries resulting from rollover crashes. Specifically, NHTSA is proposing to:

- Extend the application of the standard to MPVs, trucks, and buses with a GVWR greater than 2,722 kilograms (6,000 pounds), but not greater than 4,536 kilograms (10,000 pounds).
- Allow vehicles manufactured in two or more stages, other than chassis-cabs, to be certified to the roof crush requirements of FMVSS No. 220, instead of FMVSS No. 216.
- Clarify the definition and scope of exclusion for convertibles.
- Require that vehicles subject to the standard withstand the force of 2.5 times their unloaded vehicle weight.
- Eliminate the 22,240 Newton maximum force limit for passenger cars.
- Replace the current plate movement limit with a new direct limit on headroom reduction, which would prohibit any roof component or the test plate from contacting the 50th percentile male Hybrid III dummy seated in either front outboard designated seating position.
- Revise the vehicle tie-down procedure to minimize variability in testing.
- Revise the test device positioning to minimize variability in testing.

A. Proposed Application

1. MPVs, Trucks and Buses with a GVWR of 4,536 Kilograms (10,000 pounds) or Less

Currently, FMVSS No. 216 applies to passenger cars and to MPVs, trucks and buses with a GVWR of 2,722 kilograms (6,000 pounds) or less. However, it does

not apply to school buses, convertibles, and vehicles that conform to the rollover test requirements in S5.3 of FMVSS No. 208.

As discussed in Section II(B), the agency amended FMVSS No. 216 on April 17, 1991 by extending application of the standard to include MPVs, trucks, and buses with a GVWR of 2,722 kilograms (6,000 pounds) or less. The agency sought to ensure that those vehicles offered a level of roof crush protection comparable to that offered by passenger cars.

Prior to the 1991 final rule, NHTSA proposed to extend the application of the standard up to the GVWR of 4,536 kilograms (10,000 pounds) or less. However, because of concerns regarding the feasibility of this proposal, the agency adopted a more limited extension and indicated it would investigate this issue further before conducting further rulemaking.[51]

As previously discussed in Section IV(A), recent data indicate that a significant number of serious and fatal injuries occur during rollovers of light trucks with a GVWR between 2,722 kilograms (6,000 pounds) and 4,536 kilograms (10,000 pounds). Based on these injury data and the responses to the October 2001 RFC, the agency is once again proposing to extend the application of the standard to include light trucks with a GVWR up to 4,536 kilograms (10,000 pounds).

In comments on the October 2001 RFC, the Alliance, DC, GM, and Biomech all stated that there are little or no data to support extending the application of the standard to 4,536 kilograms (10,000 pounds). In contrast, CU, Public Citizen, and several individual commenters stated that the weight limit should be raised up to 4,536 kilograms (10,000 pounds) GVWR due to widespread use of sports utility vehicles for family transportation and their concerns regarding rollover risks associated with 15-passenger vans.

A significant percentage of light trucks are not yet subject to the requirements of FMVSS No. 216. Specifically, Polk New Vehicle Registration data show that out of a total of 8,800,000 new light trucks registered in 2003, more than 44 percent (3,900,000) had a GVWR between 2,722 kilograms (6,000 pounds) and 4,536 kilograms (10,000 pounds), and therefore are not subject to current requirements of FMVSS No. 216. Given that the data in Table 3 show a greater average roof crush for heavier light trucks, the agency believes that this fleet data suggest the need to regulate a greater percentage of light trucks traveling on U.S. highways.

In addition, sales of new light trucks with a GVWR of 2,722 kilograms (6,000 pounds) to 4,536 kilograms (10,000 pounds) GVWR have been increasing rapidly. According to Polk New Vehicle Registry, the number of new registrations has increased from 2.3 million for model year 1997 to 3.5 million for model year 2001.[52] That number represents 21 percent of the total number of light duty vehicles sold in the United States in 2001. With the increasing sales volume of "heavier" light trucks, the number of passenger-carrying vehicles not subject to the requirements of FMVSS No. 216 is increasing every year.

Also, we note that analysis of recent safety data shows that a significant number of serious and fatal injuries occur during rollovers in light trucks with a GVWR between 2,722 kilograms (6,000 pounds) and 4,536 kilograms (10,000 pounds). Specifically, 412 belted, not fully ejected occupants are killed or seriously injured every year in light trucks with a GVWR between 2,722 kilograms (6,000 pounds) and 4,536 kilograms (10,000 pounds) involved in rollover crashes resulting in roof intrusion. Among these 412 fatally or seriously injured occupants, we estimate that 129 could potentially benefit from upgraded roof crush resistance requirements because they suffered their most severe (MAIS) injury from roof contact.

Further, the number of light trucks with a GVWR between 2,722 kilograms (6,000 pounds) and 4,536 kilograms (10,000 pounds) involved in a fatal rollover increased from 1,187 in 1997 to 1,589 in 2001.

DC and other commenters also argued that larger vehicles have a higher ratio of height-to-width, which tends to produce less intrusion in rollover crashes. However, no data were provided to support their argument. In addition, Table 3 shows that 55 percent of light trucks with a GVWR between 2,722 kilograms (6,000 pounds) and 4,536 kilograms (10,000 pounds) that were involved in rollover crashes experienced at least 15 cm (5.9 inches) of vertical roof intrusion. At the same time, only 49 percent of light trucks with a GVWR of less than 2,722 kilograms (6,000 pounds) and 32 percent of passenger vehicles experienced similar intrusion levels. Because the likelihood of roof intrusion exceeding 15 cm (5.9 inches) is relatively similar among the three groups of vehicles (and actually slightly higher for heavier light trucks), these data do not suggest a lesser risk of roof contact to occupants of light trucks with a GVWR between 2,722 kilograms (6,000 pounds) and 4,536 kilograms (10,000 pounds) in rollovers than to occupants of lighter vehicles.

Our research indicates that many vehicles with a GVWR between 2,722 kilograms (6,000 pounds) and 4,536 kilograms (10,000 pounds) would comply with current roof crush requirements of FMVSS No. 216. The agency recently conducted roof crush testing on six vehicles with a GVWR over 2,722 kilograms (6,000 pounds).[53] All six vehicles met the requirements of the current standard.[54] We anticipate that the compliance burdens associated with the proposed roof strength requirements would be similar for vehicles with a GVWR between 2,722 kilograms (6,000 pounds) and 4,536 kilograms (10,000 pounds) as for those lighter vehicles already subject to the requirements of FMVSS No. 216.

Finally, we are cognizant that increasing roof crush resistance requirements could potentially add weight to the roof and pillars, thereby increasing the vehicle center of gravity (CG) height and rollover propensity.[55] NHTSA examined the potential effects of a more stringent roof crush requirement on vehicle rollover propensity. In Appendix A to the Preliminary Regulatory Impact Analysis (PRIA), the agency estimated the change in the CG height for two vehicles[56] with a finite element model that was used to evaluate possible design changes and costs associated with this proposal. NHTSA then analyzed six additional vehicles to provide a more representative estimate of potential impacts. Our analysis indicates that the potential CG height increases[57] were very small; *i.e.*, within the tolerance of what can be physically measured.

We also note that, in addition to structural integrity of the vehicle, other new vehicle design considerations affecting the handling and stability of the vehicle, such as vehicle track width, suspension system, and placard tire pressure, have a commensurate or even greater influence on rollover propensity.

[51] See 56 FR 15510 (April 17, 1991).

[52] *http://www.polk.com/products/new_vehicle_data.asp.*

[53] The six vehicles were: MY 1999 Ford E–150, MY 2001 Chevrolet Tahoe, MY 2002 Dodge Ram, MY 2003 Ford F–150, MY 2003 Ford Expedition, and MY 2003 Chevy Express.

[54] See Docket Number NHTSA–2005–22143.

[55] NHTSA estimates that about one third of all vehicles would require changes to meet the proposed standard.

[56] MY 1998 Dodge Neon and MY 1999 Ford E–150

[57] Less than 1 mm for the Neon, and less than 2 mm for the F–150.

An expanded discussion of the potential impacts is included in the PRIA.

Further, previous NHTSA research evaluated four Nissan vehicles modified for increased roof strength.[58] The CG height for each modified vehicle varied between 25 mm above and 25 mm below the baseline vehicle. We also note that the CG height varied by more than 6 mm even between two similar baseline vehicles. This data further supports the agency's findings that increases in the roof structural strength will not have a physically measurable influence on the CG height, and that influence on CG is commensurate with other vehicle design characteristics and production variations.

For the foregoing reasons, the agency proposes to extend the application of FMVSS No. 216 to MPVs, trucks and buses with a GVWR of 4,536 kilograms (10,000 pounds) or less.

2. Vehicles Manufactured in Two or More Stages

For vehicles manufactured in two or more stages,[59] other than vehicles incorporating chassis-cabs,[60] we are proposing giving their manufacturers the option of certifying them to either the existing roof crush requirements of FMVSS No. 220, *School Bus Rollover Protection*, or the proposed new roof crush requirements of FMVSS No. 216. FMVSS No. 220 uses a horizontal plate, instead of the angled plate of Standard No. 216.

Multi-stage vehicles are aimed at a variety of niche markets, most of which are too small to be serviced economically by single stage manufacturers. Some multi-stage vehicles are built from chassis-cabs that have intact roof designs. Others are built from less complete vehicles and are designed to service particular needs—often necessitating the addition by the final stage manufacturer of its own roof or occupant compartment. In considering requirements applicable to this segment of the motor vehicle market, the agency must consider a number of principles.

First, the mandate in the Vehicle Safety Act that the agency consider whether a proposed standard is appropriate for the particular type of motor vehicle for which it is prescribed is intended to ensure that consumers are provided an array of purchasing choices and to preclude standards that will effectively eliminate certain types of vehicles from the market. See *Chrysler Corporation* v. *Dept. of Transportation*, 472 F.2d 659,679 (6th Cir. 1972) (agency may not establish a standard that effectively eliminates convertibles and sports cars from the market). Second, the agency may not provide exemptions for single manufacturers beyond those specified by statute. See *Nader* v. *Volpe*, 320 F. Supp. 266 (D.D.C. 1970), motion to vacate affirmance denied, 475 F.2d 916 (DC Cir. 1973). Finally, the agency must provide adequate compliance provisions applicable to final stage manufacturers. Failing to provide these manufacturers with a means of establishing compliance would render a standard impracticable as to them. See *National Truck Equipment Association* v. *National Highway Traffic Safety Administration*, 919 F.2d 1148 (6th Cir. 1990) ("NTEA").

One of the traditional ways in which the agency has handled compliance issues associated with multi-stage vehicles has been simply to exclude from the scope of the standard all vehicles, single-stage as well as multi-stage, within the upper GVWR range of light vehicles, typically from 8,500 pounds GVWR to 10,000 pounds GVWR. Many of the multi-stage vehicles manufactured for commercial use cluster in that GVWR range.[61]

The agency traditionally took this approach because the agency historically was of the view that it could not subject vehicles built in multiple-stages to any different requirements than those built in a single-stage. That was because the agency had construed 49 U.S.C. 30111(b)(3), which instructs the agency to "consider whether a proposed standard is reasonable, practicable, and appropriate for the particular type of motor vehicle . . . for which it is prescribed," as precluding such an approach.

In reaching that conclusion, the agency had focused on a comment in the Senate Report:

> In determining whether any proposed standard is "appropriate" for the particular type of motor-vehicle * * * for which it is prescribed, the committee intends that the Secretary will consider the desirability of affording consumers continued wide range of choices in the selection of motor vehicles. Thus it is not intended that standards will be set which will eliminate or necessarily be the same for small cars or such widely accepted models as convertibles and sports cars, so long as all motor vehicles meet basic minimum standards. Such differences, of course, would be based on the type of vehicle rather than its place of origin or any special circumstances of its manufacturer.

Focusing on the last sentence of that passage, the agency had concluded that the number of stages in which a vehicle was built was a "special circumstance[s] of its manufacturer," (see, *e.g.*, 60 FR 38749, 38758, July 28, 1995), rather than considering a multi-stage vehicle to be a "type of vehicle." But see *NTEA* (at 1151) (Noting the agency's regulation defining "incomplete vehicle" as "as assemblage consisting as a minimum, of frame and chassis structure, power train, steering system, suspension system, and braking system, to the extent that those systems are to be part of the completed vehicle that requires further manufacturing operations * * * to become a completed vehicle. 49 CFR 568.3 (1989)."

We have reconsidered our historical view in light of relevant case law and our experience with the compliance difficulties imposed on final stage manufacturers. We note that the language we had previously considered to be a limitation does not appear in the statutory text. Nothing in the statutory text implies that Congress intended that incomplete vehicles not be deemed a vehicle type subject to special consideration during the regulatory process. We believe the sentence found in the Senate Report was intended to avoid regulatory distinctions based on manufacturer-specific criteria (such as place of production or manner of importation). This is consistent with the Court's conclusion in *Nader* v. *Volpe*, supra, that the agency cannot give exemptions to particular manufacturers beyond those provided by the statute.

We also had overlooked the existence of relevant physical attributes of multi-stage vehicles. Most multi-stage vehicles have distinct physical features related to their end use. Especially in the context of the difficulties of serving niche markets, the physical limitations of incomplete vehicles can adversely affect the ability of multi-stage manufacturers

[58] "Design Modification for a 1989 Nissan Pick-up—Final Report," DOT HS 807 925, NTIS, Springfield, Virginia, 1991.

[59] Vehicles manufactured in two or more stages are assembled by several independent entities with the "final stage" manufacturer assuming the ultimate responsibility for certifying the completed vehicle.

[60] Under 49 CFR 567.3, chassis-cab means an incomplete vehicle, with a completed occupant compartment, that requires only the addition of cargo-carrying, work-performing, or load-bearing components to perform its intended functions.

[61] As the Court noted in NTEA (at 1158): "The Administration could meet the needs of final-stage manufacturers in many ways. It could exempt from the steering column displacement standard all commercial vehicles or all vehicles finished by final-stage manufacturers. It could exempt those vehicles for which a final-stage manufacturer cannot pass through the certification from the incomplete vehicle manufacturers. It could change the pass through regulations. It could reexamine the issue and prove that final-stage manufacturers can conduct engineering studies, and then provide in the regulation that such studies exceed the capacities of final-stage manufacturers."

to design safety performance into their completed vehicles.

Further, as previously applied, our interpretation limits our ability to secure increases in safety. Excluding all vehicles within a given GVWR range from a safety requirement because of the possible compliance difficulties of some of those vehicles means not obtaining the safety benefits of that requirement for any of those vehicles. Likewise, applying less stringent requirement to all of those vehicles because of multi-stage considerations would also entail a loss of safety benefits.

It would be perverse to conclude that Vehicle Safety Act permits us to exclude all vehicles within a certain GVWR range primarily based on the compliance difficulties of multi-stage vehicles within that range, but not to exclude only the multi-stage vehicles within that range, thus enabling consumers to obtain the safety benefits of regulating the other vehicles within that weight range.

In the context of this rulemaking, we believe it appropriate to consider incomplete vehicles, other than those incorporating chassis-cabs, as a vehicle type subject to different regulatory requirements. We anticipate that final stage manufacturers using chassis cabs to produce multi-stage vehicles would be in position to take advantage of "pass-through certification" of chassis cabs, and therefore do not propose including such vehicles in the category of those for whom this optional compliance method is available.

Thus, we are proposing to allow final stage manufacturers to certify non-chassis-cab vehicles to the roof crush requirements of FMVSS No. 220, as an alternative to the requirements of FMVSS No. 216. We decided to propose this approach instead of excluding most multi-stage vehicles by proposing to exclude all vehicles with a GVWR above 8,500 pounds. The latter approach would have excluded some vehicles, *e.g.*, 15-passenger vans and vehicles built from chassis-cabs, that we tentatively conclude should be subject to the proposed upgraded requirements of FMVSS No. 216.

The requirements in FMVSS No. 220 have been effective for school buses, but we are concerned that they may not be as effective for other vehicle types. As noted above, the FMVSS No. 216 test procedure results in roof deformations that are consistent with the observed crush patterns in the real world for light vehicles. Because of this, NHTSA's preference would be to use the FMVSS No. 216 test procedure for light vehicles. However, this approach would fail to consider the practicability problems and special issues for multi-stage manufacturers.

In these circumstances, NHTSA believes that the requirements of FMVSS No. 220 appear to offer a reasonable avenue to balance the desire to respond to the needs of multi-stage manufacturers and the need to increase safety in rollover crashes. Several states already require "para-transit" vans and other buses, which are typically manufactured in multiple stages, to comply with the roof crush requirements of FMVSS No. 220. These states include Pennsylvania, Minnesota, Wisconsin, Tennessee, Michigan, Utah, Alabama, and California. NHTSA tentatively concludes that these state requirements show the burden on multi-stage manufacturers for evaluating roof strength in accordance with FMVSS No. 220 is not unreasonable, and applying FMVSS No. 220 to these vehicles would ensure that there are some requirements for roof crush protection where none currently exist.

3. Convertibles

Currently, convertibles are excluded from the requirements of FMVSS No. 216. FMVSS No. 216 does not define the term "convertibles." However, S3 of 49 CFR 571.201 defines "convertibles" as vehicles whose A-pillars are not joined with the B-pillars (or rearmost pillars) by a fixed, rigid structural member. In a previous rulemaking, NHTSA stated that "open-body type vehicles"[62] are a subset of convertibles and are therefore excluded from the requirements of FMVSS No. 216.[63]

However, NHTSA has reassessed its position with respect to "open-body type vehicles." Specifically, we believe that we were incorrect in stating that "open-body type vehicles" were a subset of convertibles because some open-body type vehicles do not fall under the definition of convertibles in S3 of FMVSS No. 201. For example, a Jeep Wrangler has a rigid structural member that connects the A-pillars to the B-pillars. The Jeep Wrangler is an "open-body type vehicle" because it has a removable compartment top, but it does not fall under the definition of convertibles because its A-pillars are connected with the B-pillars through the structural member.

The agency believes that "open-body type vehicles" such as the Jeep Wrangler are capable of offering roof crush protection over the front seat area. Accordingly, the agency proposes to limit the exclusion from the requirements of FMVSS No. 216 to only those vehicles whose A-pillars are not joined with the B-pillars, thus providing consistency with the definition of a convertible in S3 of FMVSS No. 201. To clarify the scope of the exemption for convertible vehicles, we are proposing to add the definition of convertibles contained in S3 of 49 CFR 571.201 to the definition section in FMVSS No. 216.

The agency seeks comments on the following:

1. The number of vehicle lines that fall under the definition of "open-body type vehicles," but do not fall under the definition of convertibles.

2. The roof crush performance of open-body type vehicles that do not fall under the definition of convertibles.

3. The feasibility of requiring that open-body type vehicles meet FMVSS No. 216.

B. Proposed Amendments to the Roof Strength Requirements

1. Increased Force Requirement

Currently, FMVSS No. 216 requires that the lower surface of the test plate not move more than 127 mm (5 inches), when it is used to apply a force equal to 1.5 times the unloaded weight of the vehicle to the roof over the front seat area. For passenger cars, the applied force cannot exceed 22,240 Newtons (5,000 pounds). As a result, passenger cars that have an unloaded weight above 1,512 kilograms (3,333 pounds) are, in effect, tested to a less stringent requirement than other passenger cars and light trucks under the current standard.[64] Based on the agency analysis of crash data, as well as comments in response to the October 2001 RFC, NHTSA is proposing to require that the roof over the front seat area withstand the force increase equal to 2.5 times the unloaded weight of the vehicle, and to eliminate the 22,240 Newton (5,000 pound) force limit for passenger cars.

Increase Applied Force to 2.5 Times the Unloaded Vehicle Weight

NHTSA believes that FMVSS No. 216 could protect front seat occupants better if the applied force requirement reduced the extent of roof crush occurring in real world crashes. That is, the increased applied force requirement would lead to stronger roofs and reduce the roof crush severity observed in real world crashes. We observed that in many real-world rollovers, vehicles subject to the

[62] An open-body type vehicle is a vehicle having no occupant compartment top or an occupant compartment top that can be installed or removed by the user at his convenience. See Part 49 CFR 571.3.

[63] See 56 FR 15510 (April 17, 1991).

[64] 5,000 pounds ÷ 1.5 = 3,333 pounds.

requirements of FMVSS No. 216 experienced vertical roof intrusion greater than the test plate movement limit of 127 mm (5 inches). Specifically, from the 1997–2002 NASS–CDS data, we estimate that 32 percent of passenger cars and 49 percent of light trucks with a GVWR under 2,722 kilograms (6,000 pounds) exceed 150 mm (5.9 inches) of vertical roof intrusion. Further, 55 percent of light trucks with a GVWR greater than 2,722 kilograms (6,000 pounds) and less than or equal to 4,536 kilograms (10,000 pounds) exceed 150 mm (5.9 inches) of vertical roof intrusion.[65] Based on these data, we have tentatively concluded that the test force should be increased.

Accordingly, NHTSA is proposing to increase the applied force requirement to 2.5 times[66] the unloaded vehicle weight in order to better protect vehicle occupants by reducing the amount of roof intrusion in rollover crashes. The agency believes that reduction in roof intrusion would better protect vehicle occupants.

Public Citizen and several individual commenters on the October 2001 RFC suggested that NHTSA require a vehicle to withstand an applied force of 3.0 to 3.5 times the unloaded vehicle weight in order to better replicate dynamic forces occurring in rollover crashes. Carl Nash suggested that the agency propose a new requirement that the roof must sustain 1.5 times vehicle's GVWR before 127 mm (5 inches) of plate movement and sustain a force that does not drop more than 10 percent during the test. After the force of 1.5 times the GVWR has been achieved, the force should be increased to 2.5 times the vehicle's GVWR without any further roof deformation.

In response to these comments, the agency notes that it previously conducted a study (Rains study)[67] that measured peak forces generated during quasi-static testing under FMVSS No. 216 and under SAE J996 inverted drop testing. In the Rains study, nine quasi-static tests were first conducted. The energy absorption was measured and used to determine the appropriate corresponding height for the inverted drop conditions. Six of the vehicles were then dropped onto a load plate. The roof displacement was measured using a string potentiometer connected between the A-pillar and roof attachment and the vehicle floor. The peak force from the drop tests was limited to only the first 74 mm (3 inches) of roof crush because some of the vehicles rolled and contacted the ground with the front of the hood. Similarly, the peak quasi-static force was limited during the first 127 mm (5 inches) of plate movement. This report showed that for the nine quasi-static tests, the peak force-to-weight ratio ranged from 1.8 to 2.5. Six of these vehicle models were dropped at a height calculated to set the potential energy of the suspended vehicle equal to the static tests. For these dynamic tests, the peak force-to-weight ratio ranged from 2.1 to 3.1. In sum, the agency concluded that 2.5 was a good representation of the observed range of peak force-to-weight ratio.

The agency believes that manufacturers will comply with this standard by strengthening reinforcements in roof pillars, by increasing the gauge of steel used in roofs or by using higher strength materials. The agency estimates that 32 percent of all current passenger car and light truck models will need changes to meet the 2.5 load factor requirement.

The agency has tentatively concluded that 2.5 constitutes a load factor appropriate to enhance roof crush performance. As described above, roof crush performance is but one of several measures necessary to reduce rollover related fatalities and injuries. Continued improvements in driver behavior, combined with advanced technologies such as electronic stability control systems and lane departure warnings will further reduce those fatalities and injuries.

Further, NHTSA's New Car Assessment Program (NCAP) provides a strong incentive for manufacturers to design vehicles that will attain favorable Static Stability Factors (representing the relatively numerous tripped rollovers) and that will perform well in the dynamic maneuver (representing the relatively few untripped rollovers), as well as meeting the minimum load factor of 2.5.

Safety Analysis and Forensic Engineering (SAFE) and Syson-Hille and Associates argued that solely attaining the peak force is not a useful indicator of roof crush resistance performance because the peak forces often drop significantly due to breaking glass and other structural failures. They recommend an energy absorption requirement in order to prevent roof collapse after initial peak forces are attained. The agency has not previously considered adding an energy absorption requirement to FMVSS No. 216 and would have to conduct significant additional analysis in order to evaluate the energy absorption requirement and determine appropriate parameters for testing. Accordingly, the agency is not proposing an energy absorption requirement in this document. Nevertheless, the agency would welcome comments on energy absorption test described by SAFE and Syson-Hille.

Eliminate 22,240 Newton Force Limit for Passenger Cars

At the inception of the standard, some passenger cars were not subjected to the full requirements of the standard, which mandated the roof over the front seat area to withstand the force of 1.5 times the unloaded vehicle weight. For passenger cars, this force was limited to 22,240 Newtons (5,000 pounds). That meant that heavier passenger cars were not tested at 1.5 times their unloaded vehicle weight. In fact, every passenger car weighing more than 1,512 kg (3,333 pounds) was subjected to less stringent requirements. The purpose of this limit was to avoid making it necessary for manufacturers to redesign large cars that could not meet the full roof strength requirements of the standard.[68] At the time, the agency believed that requiring larger passenger cars to comply with the full (1.5 times the unloaded vehicle weight) requirement would be unnecessary because heavy passenger cars had lower rollover propensity. However, as explained below, the agency tentatively concludes that occupants of passenger cars weighing more than 1,512 kg (3,333 pounds) are sustaining rollover-related injuries and therefore require the same level of roof crush protection as other vehicles subject to the standard.

While passenger car rollover propensity is lower than it is for light trucks, these vehicles can and do experience rollover crashes. Recent crash data indicate that this is just as true for passenger cars with unloaded vehicle weight of over 1,512 kg (3,333 pounds), as it is for cars with lower unloaded vehicle weights. Specifically, out of an annually estimated 6,274 seriously or fatally injured belted and not fully ejected occupants of passenger cars involved in rollovers resulting in roof intrusion, an estimated 1,460 (23 percent) were in passenger cars that had an unloaded vehicle weight of over 1,512 kg (3,333 pounds). Further, corporate average fuel economy (CAFE) data have shown that from 1991 to 2001, the average weight of passenger cars has

[65] Table 3 shows the percent of roof-involved rollover vehicles with particular degrees of vertical roof intrusion by vehicle body type.

[66] NHTSA's rationale for selecting a factor of 2.5 is discussed below in the response to public comments about the appropriate level of the factor

[67] Glen C. Rains and Mike Van Voorhis, "Quasi Static and Dynamic Roof Crush Testing," DOT HS 808–873, 1998.

[68] See 54 FR 46276.

increased more than 7 percent.[69] This trend suggests that more passenger cars are being subjected to less stringent roof crush resistance requirements each year. Based on these data, the agency believes that occupants of passenger vehicles with unloaded vehicle weight of over 1,512 kg (3,333 pounds) should be afforded the same level of roof crush protection that is being offered by lighter passenger cars and light trucks.

In addition, we note that the manufacturers already produce heavier passenger cars that exceed the current requirements of the standard. Recently, the agency tested several passenger cars with an unloaded weight of near or over 1,512 kilograms (3,333 pounds). The roof of each vehicle withstood the force of at least 1.5 times the unloaded vehicle weight. For example, MY 2002 Ford Crown Victoria with an unloaded vehicle weight of 1,788 kilograms (3,942 pounds) withstood an applied force of almost 2 times the unloaded vehicle weight (3671 kilograms (8,093 pounds)) before 127 mm (5 inches) of plate movement was attained. A MY 2004 Lincoln LS with an unloaded vehicle weight of 1,663 kilograms (3,666 pounds) withstood an applied force of slightly greater than 2.5 times (4,290 kilograms, (9,458 pounds)) the unloaded vehicle weight before 127 mm (5 inches) of plate movement was attained.

2. Headroom Requirement

The current standard requires that the lower surface of the test device not move more than 127 mm (5 inches) under the specified applied force. The purpose of the requirement is to limit the amount of roof intrusion into the occupant compartment. However, the agency now believes that the 127 mm (5 inch) limit is not the most effective way to ensure that front seat area occupants are protected from roof intrusion into the occupant compartment. Specifically, we are concerned that this requirement does not provide adequate protection to front outboard occupants of vehicles with a small amount of occupant headroom and may impose a needless burden on vehicles with a large amount of occupant headroom. For example, in a full size van with a substantial amount of pre-crush headroom, the 127 mm (5 inch) plate movement limit ensures that the collapsed portion of the roof would not contact the front seat occupants. However, in a low roofline sports vehicle, the 127 mm (5 inch) plate movement limit might allow the crushed portion of the roof to contact the head of an average size front seat occupant.

Therefore, the agency is proposing a more direct limit on headroom reduction that would prohibit any roof component from contacting a seated 50th percentile male dummy under the application of a force equivalent to 2.5 times the unloaded vehicle weight. This direct headroom reduction limit would ensure that motorists receive an adequate level of roof crush protection regardless of the type of vehicle in which they ride.

In response to the October 2001 RFC, Ford, Nissan, GM, DC, and Biomech commented that real-world data indicate that it is not possible to estimate quantifiable benefits of headroom reduction limits. However, Ford also suggested that reducing the roof/pillar deformation might benefit belted occupants if it results in the occupant not contacting the roof.

In contrast, Public Citizen and numerous individual commenters asserted that a minimum headroom clearance requirement should be established because they believe that roof crush is related to head and neck injury. Nash stated that limiting the extent and character of roof intrusions can virtually eliminate the risks of serious head and neck injury to restrained occupants in rollover crashes. Nash suggested that NHTSA define headroom reduction limits by using a 50th percentile dummy seat in the front outboard seat. Public Citizen and several other commenters suggested that the standard contain an occupant survival space/non-encroachment zone, which would not be intruded upon during the test, using a 95th percentile dummy.

The 95th percentile Hybrid III male dummy has not been incorporated into 49 CFR Part 572, *Anthropomorphic Test Devices,* and is not yet available for compliance purposes. When the dummy is available, the agency will consider whether it is appropriate to propose using this dummy for compliance testing.

To help evaluate the value of a minimum headroom requirement, NHTSA performed statistical analysis and published its findings in a report entitled, "Determining the Statistical Significance of Post-Crash Headroom for Predicting Roof Contact Injuries to the Head, Neck, or Face during FMVSS No. 216 Relevant Rollovers."[70] This report examined the effect of post-crash headroom (defined as the vertical distance from the top of the occupant's head to the top of the roof liner over the occupant's head after rollover) on injuries to the head, neck, or face from contact with a roof component. We examined light duty vehicles that rolled more than one-quarter turn to the side or end-over-end and did not collide with fixed objects. The vehicle occupants were adults who were belted and seated in the front outboard seats and who were not ejected. Based on this report, the agency estimates that 14 percent of the non-ejected, belted occupants sitting in the two front outboard seats suffered a roof contact injury to the head, neck, or face, and 0.1 percent died as a result of such an injury.

The agency analyzed crash data using two sets of headroom measurement parameters from NCAP/FMVSS No. 208 frontal testing and CU testing. Using NCAP/FMVSS No. 208 headroom measurement parameters, we estimate that 9 percent of occupants with post-crash headroom above the top of their head experienced roof contact injuries to the head, neck, or face, compared to 34 percent for occupants with post-crash headroom below the top of their head. Using CU vehicle headroom measurement parameters, we estimate that 10 percent of occupants with post-crash headroom above the top of their head experienced roof contact injuries to the head, neck, or face, compared to 32 percent for occupants with post-crash headroom below their head. After conducting bivariate and multivariate analyses, we conclude that positive post-crash headroom (residual space over the occupant's head after the rollover) reduced the likelihood of suffering a roof contact injury to the head, neck, or face. This real world data shows quantifiable benefits of limiting headroom reduction.

As previously stated, the agency is proposing to prohibit any roof component or the test device from contacting a seated 50th percentile male Hybrid III dummy under the specified applied force. However, the agency is concerned that there may be some low roofline vehicles[71] in which the 50th percentile Hybrid III dummy would have relatively little available headroom when positioned properly in the seat. That is, we are concerned that, in some limited circumstances, the headroom between the head of a 50th percentile male dummy and the roof liner is so small that even minimal deformation resulting from the application of the required force would lead to test failure. Accordingly, NHTSA requests comments on whether any additional or substitute requirements would be

[69] *http://www.nhtsa.dot.gov/cars/rules/CAFE/NewPassengerCarFleet.htm.*

[70] See Docket Number NHTSA–2005–22143.

[71] Ford GT, Lamborghini Gallardo.

appropriate for low roofline vehicles in order to make the standard practicable.

The agency believes that many vehicles subject to the current requirements of FMVSS No. 216 would meet the proposed limit on headroom reduction. In the recent tests of 20 vehicles of various types and sizes in which the roofs were crushed to 254 mm (10 inches) of displacement, thirteen vehicles had remaining headroom under an applied force of 2.5 times the unloaded vehicle weight. These thirteen vehicles were randomly distributed through the various vehicle types. Based on these tests, the agency believes that vehicle manufacturers are capable of complying with the proposed headroom requirements. In response to the concerns expressed by SEMA with respect to installation of sunroofs and moon roofs, we note that one of the tested vehicles was a Nissan Quest equipped with a Sky View™ glass-paneled roof consisting of a sunroof and two separate glass panels. This vehicle withstood the force of up to 2.8 times the unloaded vehicle weight with 3 inches of displacement.

Finally, in conjunction with the proposed headroom requirement, NHTSA is proposing to create a definition for "roof component," which is similar to the definition found in the NASS–CDS. Specifically, a "roof component" would include the A-pillar, B-pillar, front header, rear header, roof side rails, roof, and all the corresponding interior trim. Due to vast variations in roof designs, the agency proposes a "no-contact" requirement for all roof components, as opposed to only the actual roof structure. The agency requests comments on the proposed definition.

C. Proposed Amendments to the Test Procedures

1. Retaining the Current Test Procedure

To test compliance, the vehicle is secured on a rigid horizontal surface, and a steel rectangular plate is angled and positioned on the roof to simulate vehicle-to-ground contact over the front seat area. This plate is used to apply the specified force to the roof structure.

Plate position and angle. In response to the October 2001 RFC, the agency received several suggestions regarding the current quasi-static test procedure. Specifically, CU suggested establishing a new plate position, for which the specific application points would be (1) the top of the A-pillar; (2) the top of the rear most pillar, either the B-pillar on a pickup, C-pillar on sedans or the D-pillar on station wagons, SUVs or minivans; and (3) the horizontal and vertical axes at the center of the roof side, usually about the top of the B-pillar. CU and several individual commenters recommended that a more representative plate angle should be 45-degrees for vehicles with a taller, narrower body configuration. SAFE stated that the roll angle should be increased in an attempt to simulate the translational effect of the vehicle traveling across the ground.

In response, NHTSA reviewed NASS–CDS crash data to examine roof deformation patterns and compare real-world roof damage to compliance tests.[72] The agency also compared its findings to the previous study on roof deformation patterns.[73] The agency evaluated the damage to the A- and B-pillars, roof rails and roof plane of the vehicles. Based on the NASS–CDS crash data, we believe that the current test procedure is capable of applying loads resulting in crush patterns consistent with those that occur in the real world.

To further validate the crush patterns of the current FMVSS No. 216 compliance test, the agency evaluated previous tests that compared deformation patterns of multiple inverted drop tests to the quasi-static test procedure at different levels of crush. The tests showed a correlation in deformation patterns, and this correlation increased as the crush levels became more severe.

The agency also evaluated a previous dynamic guardrail test to compare deformation patterns of a dynamic test procedure to the current quasi-static test. A guardrail initiated a dynamic rollover on a 1989 Nissan pickup truck. The resulting rollover produced one roof-to-ground impact. The agency recorded the intrusion levels throughout the area of the vehicle roof. The deformation pattern and intrusion magnitudes of the dynamic rollover were compared to a static crush test of the same vehicle model. The resulting comparison plot showed good linear correlation between the two deformations.[74]

NHTSA also conducted a finite element modeling study to examine the effect of using alternative roll and pitch angles for the current FMVSS No. 216 test procedure.[75] A model of a 1998 Dodge Caravan was used to simulate extended FMVSS No. 216 tests for approximately 127 mm (5 inches) of plate motion using a variety of roll and pitch angles. The simulations predicted that the Caravan roof would attain similar amounts of deformation at a lower force level using 10-degree pitch and 45-degree roll (10–45) application angles compared to the current 5-degree pitch and 25-degree roll (5–25) application angles. In addition, a 1998 Chevrolet S10 pickup model was analyzed in subsequent simulations, but led to less conclusive results.

The results of the finite element modeling study were sufficiently encouraging to conduct a series of modified FMVSS No. 216 tests. Two tests were conducted on Dodge Caravan, Chevrolet S10, and 2002 Ford Explorer vehicles using both the current 5–25 degree application angles as well as using modified 10–45 degree application angles. Each test was conducted until 254 mm (10 inches) of load plate movement was achieved.

The roof damage produced by the two test configurations was generally similar. The tests using 10–45 degree application angles had some additional lateral damage. However, the damage was localized near the roof side rail and did not extend laterally to the midline of the vehicle. The force distribution applied to the front and back of the load plate changed considerably between the two test configurations. The test configuration using the 10–45 degree application angles applied almost all of the force to the forward ram located near the front of the load plate. Comparatively, the 5–25 configuration applied only two-thirds of the force to the front ram. Based on the similarity of the post-test damage patterns and general force levels, the agency concluded that there was not sufficient reason to propose a change in the load plate configuration at this time.

Testing without windshield and/or side windows in place. Public Citizen, CU, and several individual commenters stated that the quasi-static test should be conducted without the windshield and/or side glass. The comments stated that the glass usually breaks after the first quarter-turn, resulting in virtually no support to the roof on subsequent rollovers, and that the roof crush severity substantially increases after the integrity of the windshield is breached.

The agency believes that windshields provide some structural support to the roof even after the windshield breaks because the force-deflection plots in some of the recent test vehicles (*e.g.*, Ford Explorer, Ford Mustang, Toyota Camry, Honda CRV) show little or no drop in force level after the windshield

[72] See Docket Number NHTSA–1999–5572–95.

[73] Michael J. Leigh and Donald T. Willke, "Upgraded Rollover Roof Crush Protection: Rollover Test and NASS Case Analysis," Docket NHTSA–1996–1742–18, June 1992.

[74] See Docket No. NHTSA–2005–22143.

[75] "Roof Crush Research: Load Plate Angle Determination and Initial Fleet Evaluation." Docket No. NHTSA–2005–22143.

integrity was compromised.[76] Further, examination of real-world rollover crashes indicates that the windshield rarely separates from the vehicle, and therefore, does provide some crush resistance. Because NHTSA believes that the vehicle should be tested with all structural components that would be present in a real-world rollover crash, we decline to propose testing without the windshield or other glazing.

Near and far side testing. NHTSA received comments from Public Citizen and the Center for Injury Research regarding near and far side testing.[77] The comments stated that vehicle occupants on the far side of the rollover have a much greater risk of serious injury than occupants on the near side. Therefore, the comments suggested that NHTSA require that both sides of the same vehicle withstand the force equal to 2.5 times the unloaded vehicle weight. That is, after the force is applied to one side of the vehicle, the vehicle is then repositioned and the force is applied on the opposite side of the roof over the front seat area. Public Citizen cited a recent paper by researchers at Delphi Automotive and Saab, which compared the injury risk depending on the seating position of an occupant relative to the direction of the rollover crash.[78] From this study, Public Citizen concluded that belted, non-ejected occupants on the far side suffer 12 times the risk of serious injuries compared to belted, non-ejected occupants on the near side of the rolling vehicle.

In response, NHTSA conducted six tests (2 Lincoln LS, Ford Crown Victoria, Chrysler Pacifica, Nissan Quest, Land Rover Freelander), in which both sides of the vehicle roof were crushed. Using the current FMVSS No. 216 test plate angles, the first side was crushed up to approximately 100 mm (4 inches) of plate movement. The test plate motion compromised the windshield structure in each vehicle. The similar procedure was performed on the opposite side of the vehicle. However, the crush was extended up to 254 mm (10 inches) of plate movement. Detailed reports for these tests are available in the NHTSA docket.[79]

In summary, the first and second side force deflection curves track similarly for the Pacifica and Quest. For the Crown Victoria, the first and second side force curves tracked similarly except between 50–90 mm of crush. During that portion of the curve, the local peak was reduced 17 percent on the second side. However, after 90 mm, the second side force curve tracked similarly to the previously tested Crown Victoria[80] that was crushed to 254 mm (10 inches) of plate movement. For the Freelander, the second side force curve showed an increase in force over the first side, starting at approximately 40 mm of plate movement. As a result, the local peak force was increased by approximately 20 percent on the second side. In contrast, the second side force curve of the Lincoln LS showed a decrease in force starting at approximately 40 mm of plate movement. As a result, the local peak force was decreased by approximately 20 percent on the second side.

To evaluate the repeatability of the tests, the agency performed the identical test procedure on a second Lincoln LS. For the second LS test, both the first and second side force curves tracked similarly to the curves of the first LS test up to approximately 40 mm. However, the local peak for the first side was slightly lower than the first test and the local peak for the second side was slightly higher than the first test on the second side. As a result, the difference in the local peak force between the first and second side was approximately 10 percent.

In conclusion, the agency believes that some vehicles may have weakened or strengthened far side roof structures as a result of a near side impact. However, based on the few vehicles tested, NHTSA does not have enough information to make a decision on the merits of testing both sides of the roof over the front seat area. The agency plans to conduct further research before it proposes rulemaking action in this area.

On July 26, 2004, JP Research, Inc. submitted an evaluation of the Delphi Automotive and Saab research paper (Delphi research paper)[81] relied upon by Public Citizen.[82] JP Research discussed the paper with one of the principal authors and verified that the paper contained errors. Previously, Public Citizen concluded that belted, non-ejected occupants on the far side suffer 12 times the risk of serious injuries compared to belted, non-ejected occupants on the near side of the rolling vehicle. However, as a result of correcting the errors, the ratio changes from 12 to 1, to between 2.4 and 1.

In preparing this document, NHTSA analyzed NASS–CDS (1997 to 2002) data to evaluate the Delphi research paper with respect to merits of testing both sides of the roof over the front seat area. The analysis included belted front outboard adults who were not fully ejected in a manner similar to the Delphi research paper, but it further restricted the analysis to vehicles that rolled only two to four quarter turns to the side. We estimate the risk of a serious injury, defined as a maximum AIS injury of 3 or greater, to be 29 seriously injured persons per 1000 "far side" occupants and 30 seriously injured persons per 1000 "near side" occupants for a ratio of about 1 to 1. Based on this analysis, the agency believes that there is no significant increase in risk for far side belted, non-ejected occupants.

In summary, NHTSA continues to believe that the quasi-static test procedure is repeatable and capable of simulating real-world rollover deformation patterns. Based on the deformation patterns observed in NASS–CDS cases, finite element modeling, and various controlled vehicle testing, the agency believes that changing the test plate angle is not necessary. Further, the agency believes that the vehicle should be tested with all structural components that would be present in a real-world rollover crash, and therefore we decline to propose testing without the windshield or other glazing. Finally, the agency plans to further evaluate the safety need for testing both sides of the roof over the front seat area on the same vehicle, before proposing such a requirement.

2. Dynamic Testing

In response to the October 2001 RFC, we received several comments suggesting that the agency adopt some form of dynamic testing of roof crush resistance. Specifically, CU and Stilson Consulting urged the agency to adopt dynamic testing to replicate better the influence of variable crush patterns and vehicle dynamic elements that occur in real-world crashes. Further, Hans Hauschild, Hogan, Donald Slavik, and Coben and Associates suggested that NHTSA adopt the SAE J996 inverted drop test because it better replicates real-world rollover dynamics.

The Alliance argued that dynamic testing was unrepeatable. DC and Biomech stated that they have not

[76] See id.

[77] Near side is the side toward which the vehicle begins to roll and far side is the trailing side of the roll.

[78] Parenteau, Chantal, Madana Gopal, David Viano. "Near and Far-Side Adult Front Passenger Kinematics in a Vehicle Rollover." SAE Technical Paper 2001–01–0176, SAE 2001 World Congress, March 2001.

[79] See Docket Number NHTSA–2005–22143.

[80] "Roof Crush Research: Load Plate Angle Determination and Initial Fleet Evaluation." Docket No. NHTSA–2005–22143.

[81] Parenteau, Chantal, Madana Gopal, David Viano. "Near and Far-Side Adult Front Passenger Kinematics in a Vehicle Rollover." SAE Technical Paper 2001–01–0176, SAE 2001 World Congress, March 2001.

[82] See Docket Number NHTSA–1999–5572–93.

evaluated dynamic rollover testing and do not know what injury criteria might be appropriate for assessing dynamic performance. NTEA stated that the benefits of adopting dynamic roof crush testing are unclear. Further, NTEA stated that dynamic rollover testing was neither economically nor technologically feasible.

GM, DC, and Biomech stated that inverted drop testing is not repeatable and cannot accurately represent real-world rollovers. Further, Ford stated that the drop test does not represent the multi-axis, real-world condition with respect to time duration of impact, and does not replicate centrifugal forces on the occupant because the velocity of roof rail impact with the ground in a rollover is a function of the vehicle's roll rate, translational velocity and vertical velocity. Public Citizen asserted that the SAE J996 inverted drop test does not accurately reproduce the lateral sliding forces present in a rollover crash. Carl Nash stated that the inverted drop test can be useful, but does not properly simulate the lateral friction forces that are typical in rollovers on the road.

Based on research discussed in Section V(A) NHTSA believes that the inverted drop test does not replicate real-world rollovers better than the current quasi-static method of testing. Further, the inverted drop test does not produce results as repeatable as the quasi-static method. Specifically, NHTSA believes that the drop test would not apply a consistent directional force among tested vehicles because of the vehicle roll that is introduced after the initial roof impact. Depending on the geometry of the roof and hood, vehicles may experience different load paths as they roll onto its hood or front-end structure.

Advocates for Highway Safety (Advocates) suggested that the agency consider adopting a series of tests for ensuring adequate roof strength. Specifically, Advocates suggested adopting a test similar to the FMVSS No. 208 dolly test. Donald Friedman stated that NHTSA should consider using the FMVSS No. 208 dolly test for research. By contrast, the Alliance, GM, Nissan, Ford, and DC stated that the FMVSS No. 208 dolly test is not repeatable and does not emulate the dynamics of real-world rollover crashes. Further, the test was not developed to predict roof crush performance. Hauschild suggested that the FMVSS No. 208 dolly test, while appropriate for evaluating occupant retention for belted and unbelted occupants, would not be appropriate for evaluating roof strength. Slavik and Syson-Hille asserted that the FMVSS No. 208 dolly test is useful for examining potential occupant kinematics in rollovers, but may not be feasible for pass/fail regulatory purposes due to resultant variability in roof impacts and intrusion.

The FMVSS No. 208 dolly test was originally developed only as an occupant containment test. The test was not developed to evaluate the loads on specific vehicle components. The agency believes this test lacks sufficient repeatability to serve as a structural component compliance requirement.

Biomech Inc. suggested that the agency consider using the Controlled Rollover Impact System (CRIS) device [83] because it overcomes the shortcomings of drop testing (lack of roll and translational velocity-limiting time exposure of roof-to-ground contact) by incorporating important test parameters (roll angle, vertical and horizontal velocities and pitch and yaw of the vehicle). Ford believes that the CRIS is able to create repeatable dynamic rollover impact simulations for the first roof-to-ground impact. By contrast, SAFE and several other individual comments suggested that the conclusions drawn from the CRIS tests [84] mischaracterize the real-world rollover dynamics because the tests were designed to support the hypothesis that roof crush does not cause occupant injuries.

The agency believes the CRIS device is helpful in understanding occupant kinematics during rollover crashes. However, NHTSA believes that the device does not provide the level of repeatability needed, because the CRIS test is repeatable only up to the initial contact with ground. After initial roof impact, the CRIS test allows the vehicle to continue rolling, resulting in an unrepeatable test condition.

Lastly, NHTSA received several comments regarding the Jordan Rollover System (JRS) test device. The JRS device rotates a vehicle body structure on a rotating apparatus ("spit") while the road surface moves along the track and contacts the roof structure. Public Citizen and the Center for Injury Research believe that the JRS test can be conducted with dummies that demonstrate whether vehicle roof performance meets objective injury and ejection criteria for belted and unbelted occupants.

Although the agency is open to further investigating the JRS test, we have no data regarding the repeatability of dummy injury and roof intrusion measurements. In addition to data on repeatability, NHTSA would need further information on its performance measures, practicability, and relevance to real-world injuries.

In summary, NHTSA is not proposing a dynamic test procedure at this time. As previously stated, the agency believes that the current test procedure is repeatable and capable of simulating real-world rollover deformation patterns. Further, the agency is unaware of any dynamic test procedures that provide a sufficiently repeatable test environment.

3. Revised Tie-Down Procedures

Based on recent testing described in Section V(C), NHTSA is proposing to revise the vehicle tie-down procedure in order to improve test repeatability. Specifically, the agency is proposing to specify that the vehicle be secured with 4 vertical supports welded or fixed to both the vehicle and the test fixture. If the vehicle support locations are not metallic, a suitable epoxy or an adhesive could be used in place of welding. Under the proposal, the vertical supports would be located at the manufacturers' designated jack points. If the jack points are not sufficiently defined, the vertical supports would be located between the front and rear axles on the vehicle body or frame such that the distance between the fore and aft locations is maximized. If the jack points are located on the axles or suspension members, the vertical stands would be located between the front and rear axles on the vehicle body or frame such that the distance between the fore and aft locations is maximized. All non-rigid body mounts would be made rigid to prevent motion of the vehicle body relative to the vehicle frame.

The agency believes this method of securing the vehicle would increase test repeatability. Welding the support stands to the vehicle would reduce testing complexity and variability of results associated with the use of chains and jackstands. In addition, the agency believes that using the jacking point for vertical support attachment is appropriate because the jacking points are designed to accommodate attachments and withstand certain loads without damaging the vehicle.

In previous comments to the Docket, Ford suggested that vehicle overhangs should be supported by jackstands in

[83] The CRIS consists of a towed semi-trailer, which suspends and drops a rotating vehicle from a support frame cantilevered off the rear of the trailer.

[84] Moffatt, E.A., Cooper, E.R., Croteau, J.J., Orlowski, K.F., Marth, D.R., and Carter, J.W. "Matched-Pair Impacts of Rollcaged and Production Roof Cars Using the Controlled Rollover Impact System (CRIS)," Society of Automotive Engineers, 2003-01-0172, Detroit, Michigan, 2003.

order to minimize vehicle distortion.[85] However, the agency does not believe that it is necessary to support the vehicle overhangs. In fact, supporting the vehicle overhangs with jackstands could distort the shape of the vehicle prior to testing.

4. Plate Positioning Procedure

Currently, the standard contains two test plate positioning procedures. The primary procedure applies to most vehicles. It places the midpoint of the forward edge of the lower surface of the test device within 10 mm (0.4 inches) of the transverse vertical plane 254 mm (10 inches) forward of the forwardmost point on the exterior surface of the roof. The secondary procedure applies to multipurpose passenger vehicles and buses with raised or altered roofs, at the option of the manufacturer. It places the midpoint of the rearward edge of the lower surface of the test device within 10 mm (0.4 inches) of the transverse vertical plane located at the rear of the roof over the front seat area.

The agency is proposing to specify the primary test procedure for all vehicles. The agency believes that this test plate positioning procedure produces repeatable and reliable means for testing roof strength. The agency believes that the secondary plate positioning test procedure produces rear edge plate loading onto the roof of some raised and altered roof vehicles that cause excessive deformation uncharacteristic of real-world rollover crashes. Because an optimum plate position cannot be established for all roof shapes, the testing of some raised and altered roof vehicles will result in loading the roof rearward of the front seat area. However, NHTSA believes that this is preferable to edge contact because edge contact produces localized concentrated forces upon the roof typically resulting in excessive shear deformation of a small region. In some circumstances, the plate will essentially punch through the sheet metal instead of loading the structure. The agency believes that removing the secondary plate position would also make vehicle testing more objective and practicable. Accordingly, the agency proposes to eliminate the secondary positioning procedure.

VIII. Other Issues

A. Agency Response to Hogan Petition

As previously discussed, on May 6, 1996, the agency received a petition for rulemaking from Hogan.[86] The petitioner claimed that the test requirements of FMVSS No. 216 bear no relationship to real-world rollover crash conditions, and therefore, should be replaced with a more realistic test such as inverted drop test. On January 8, 1997, NHTSA granted this petition, believing that the inverted drop test had merit for further agency consideration.

After careful evaluation of the issues presented by the Hogan petition, the agency has decided against adopting the inverted drop test or other dynamic test procedures because we believe that these tests are not better than the current quasi-static test in replicating real-world rollover crash conditions.

The agency fully discussed alternatives to the current quasi-static test in Section VII(C)(1), (2). First, NHTSA conducted a series of inverted drop tests and concluded that the tests were not better than quasi-static tests in representing vehicle-to-ground interaction occurring during rollover, and were more difficult to conduct because they require suspending and inverting the vehicle.[87] Second, NHTSA conducted dynamic rollover tests and observed that dynamic testing created test conditions so severe it was difficult to discriminate between good and bad performing roof structures, and that the occupant kinematics and roof crush during dynamic rollover were unrepeatable. The agency is unaware of any dynamic test procedures that provide a sufficiently repeatable test environment. Finally, we believe quasi-static testing adequately represent real world dynamic deformation patterns occurring in rollovers.

For the reasons discussed above and in Section VI(C)(1), NHTSA is withdrawing the open rulemaking on the Hogan petition. Instead, the agency proposes to adopt the new roof strength requirements discussed elsewhere in this document.

B. Agency Response to Ford and RVIA Petition

On June 11, 1999, Ford[88] and RVIA[89] submitted petitions for reconsideration to the April 27, 1999, final rule (64 FR 22567), which established the primary and secondary test plate positioning procedures specified in S7.3 and S7.4, respectively. Petitioners argued that the secondary plate positioning test procedure produced rear edge plate loading onto the roof of some raised and altered roof vehicles that caused excessive deformation uncharacteristic of real-world rollover crashes. Specifically, petitioners argued that positioning the test plate such that the rear edge of the plate is at the rearmost point of the front occupant area resulted in stress concentration, which produced excessive deformation and roof penetration. Petitioners stressed that this type of loading is uncommon to real-world rollovers. Consequently, petitioners asked the agency to reconsider adopting the secondary plate positioning procedure for raised or altered roof vehicles. Ford also provided computer analysis that showed non-distributed loading near the edge plate contact when the secondary plate position was used.

As discussed in Section VII(C)(4), the agency is proposing to eliminate the secondary test procedure (49 CFR § 571.216, S7.4) and to require that all vehicles subject to FMVSS No. 216 use the primary test procedure in S7.3. Specifically, all vehicles would be tested such that the midpoint of the forward edge of the lower surface of the test plate is within 10 mm (0.4 inches) of the transverse vertical plane 254 mm (10 inches) forward of the forwardmost point on the exterior surface of the roof.

C. Request for Comments on Advanced Restraints

In evaluating the effectiveness of seat belt restraints in mitigating rollover-related injury, NHTSA developed a rollover test device, the "rollover restraints tester" (RRT).[90] RRT was used to simulate rollover conditions and evaluate the effectiveness of: (1) Typical 3-point lap and shoulder belt system; (2) D-ring[91] adjustments, (3) belt pretensioners; (4) integrated seats;[92] and (5) inflatable tubular torso restraint (ITTR) in preventing occupant excursion in a rollover event.[93]

Following testing, we arrived at the following conclusions: (1) The maximum head excursion was much higher during the test (when dummy was upside down in the restraint), compared to static pre- and post-test head excursion measurements; (2) raising the D-ring decreased the dummy head vertical and horizontal excursion

[85] See Docket Number 94–097–N02–010.

[86] See Docket No. 2005–22143.

[87] For more details on the inverted drop test evaluation please see Section VII(C)(1), and Glen C. Rains and Mike Van Voorhis, "Quasi Static and Dynamic Roof Crush Testing," DOT HS 808–873, 1998.

[88] Docket No. NHTSA–99–5572–2 (*http://dmses.dot.gov/docimages/pdf37/57806_web.pdf*).

[89] Docket No. NHTSA–99–5572–3 (*http://dmses.dot.gov/docimages/pdf39/62547_web.pdf*).

[90] See *http://www-nrd.nhtsa.dot.gov/pdf/nrd-01/Esv/esv16/98S8W34.PDF*.

[91] D-ring is the upper anchorage of the three-point seat belt assembly.

[92] An integrated seat is a seat that includes the seat belt mechanism and assembly in the seat instead of on the B-pillar.

[93] Rains, Glen C., *et al.*, "Evaluation of Restraints Effectiveness in Simulated Rollover Conditions," 16th International Technical Conference on the Enhanced Safety of Vehicles, 98–S8–W–34, Windsor, Canada, 1998.

in both 3-point lap and shoulder belt system and ITTR; (3) compared to conventional seats, the integrated seat significantly reduced occupant excursion; (4) initiating belt pretensioners before testing the integrated seat (thus simulating pre-rollover activation of the pretensioners) provided additional benefit; and (5) compared to a conventional lap and shoulder seat belt system, the ITTR more effectively restrained the vertical and longitudinal excursion of the dummy.

In addition to the agency testing, several other studies indicate that pretensioned restraint systems can reduce the amount of vertical head excursion compared to the typical 3-point lap and shoulder belt system.[94] By contrast, a Nissan study showed that the maximum occupant injury values in rollovers did not decrease for occupants with activated pretensioners, compared to occupants without pretensioners.[95]

In response to the October 2001 RFC, we received several suggestions with respect to enhancing occupant protection in rollover crashes by means of using better seat belts. Slavik suggested amending FMVSS Nos. 208 and 209 to require the use of pretensioners that activate in rollovers before the vehicle rolls 90-degrees, and retractors that lock and remain locked for at least five seconds after the pretensioner is fired. Syson-Hille and Associates stated that NHTSA should continue its efforts to increase seat belt use rates, and consider amending FMVSS Nos. 208, 209, and 210 to ensure that belts provide enhanced occupant protection and remain fastened in rollover crashes.

On August 7, 2003, NHTSA met with representatives of the Automotive Occupant Restraints Council (AORC) to discuss seat belt technologies that have the potential for improving occupant protection in rollover crashes.[96] AORC made a presentation entitled, "Seat Belt Technologies Improving Occupant Protection in Rollover." In the presentation, AORC discussed several seat belt technologies including pretensioning systems, electric retractors, inflatable seat belts, and four-point harnesses.

Since advanced restraints have the potential for contributing to the comprehensive effort to reduce rollover-related injuries and fatalities, the agency would like comments on the following issues:

1. Could requiring advanced restraints systems on vehicles significantly reduce head excursion and decrease occupant injury values in rollovers?
2. Which kinds of advanced restraints systems are the most effective at minimizing vertical occupant excursion during rollovers?
3. What is the current state of technology with respect to pretensioning systems that are capable of activating in a rollover event as well as other crash modes? What are the associated costs?
4. What procedures would be appropriate for testing performance of advanced seat belt systems? At what values should the pretension sensor activate?
5. What would be an appropriate limit for the force exerted by a pretensioning system on an occupant and how would it be measured?

IX. Benefits

The agency examined the relationship between injuries in rollover crashes and the amount of post-crash headroom and found a statistically significant relationship between injury rates and instances in which the roof intruded below the occupant's normal seating height. The injury patterns were less serious in cases in which roof intrusion did not encroach on the pre-crash headroom of the occupant; i.e., when the deformed roof structure did not intrude below the top of the seated occupant's head.

Using two alternative analytical approaches, the agency prepared two estimates of safety benefits resulting from the proposed roof crush resistance upgrade. The second approach was developed to cure shortcomings in the first approach.

Under the first approach, the agency analyzed specific cases of actual injuries and fatalities involving belted occupants that were not fully ejected during rollovers. Using FARS and NASS–CDS databases, we analyzed only those cases in which the roof intrusion occurred over the injured occupant's seat, and the MAIS was in fact caused by roof contact with the occupant. We sought to estimate how an injured or killed occupant in each specific case might have benefited from a stronger roof structure. The agency believes that this estimate is conservative since limiting roof crush might also benefit those occupants who have roof crush related injuries that are not MAIS. That is some occupants are injured as a result of roof crush, but their most severe injury resulted from something other than roof crush.

Based on the first approach, the agency estimates that the proposed requirements would prevent 13 fatalities and 793 non-fatal injuries. We estimate 39 annual equivalent lives saved.

We note, however, that because we narrowed the case sample to reflect specific crash characteristics, the agency has a very limited sample of relevant cases at its disposal. Further, some of the relevant cases within that sample lacked some data elements, resulting in data gaps. At the same time, certain individual cases were assigned very large sample weight by the NASS–CDS database. This distorted the overall profile of relevant injuries (case weight spikes). As a result, the agency believes that the characteristics of this limited sample may not accurately represent the full benefits resulting from the proposed roof crush resistance upgrade.

Under the second approach, the agency again examined the same injury cases discussed in the first approach. However, in evaluating actual crashes, the agency noted that post-crash negative headroom[97] measurements available from FARS and NASS–CDS databases were related to occupant's actual height. For example, the amount of post-crash headroom in a vehicle occupied by a taller person would be different from post-crash headroom of the same vehicle occupied by a shorter person.

To better estimate how this proposal would benefit occupants of varying heights, the agency assumed that the probability of occupant height in each actual relevant rollover case would be equal to the national distribution of occupant heights. That is, an occupant of any size might have been involved in a crash that fits the agency's case criteria. We calculated the odds of the occupant in each case being of a height to benefit from the proposed requirements. This calculation differed for each rollover case based on amount of actual roof intrusion and vehicle design. As a result, the agency was able to use a more refined case sample to estimate the benefits of the proposed requirements. We were able to estimate how any occupant would benefit from stronger roofs in each actual crash case.

[94] Pywell, James *et al.*, "Characterization of Belt Restraint Systems in Quasi-Static Vehicle Rollover Tests," SAE Paper 973334, Society of Automotive Engineers, Warrendale, PA, 1997; and Moffatt, Edward *et al.*, "Head Excursion of Seat Belted Cadaver, Volunteers and Hybrid III ATD in a Dynamic/Static Rollover Fixture," SAE Paper 973347, Society of Automotive Engineers, Warrendale, PA, 1997.

[95] Hare, Barry *et al.*, "Analysis of Rollover Restraint Performance with and without Seat Belt Pretensioner at Vehicle Trip," SAE Paper 2002–01–0941, Society of Automotive Engineers, Warrendale, PA, 2002.

[96] See Docket Number NHTSA 2003–14622–10.

[97] Negative headroom means post-crash headroom that is below the occupant's seated height.

This approach minimized case weight spikes inherent to the first approach used to estimate potential benefits of this proposal.

Under the second approach, the agency estimates that the proposed requirements would prevent 44 fatalities and 498 non-fatal injuries. We estimate 55 equivalent lives saved annually.

We note however, that the second approach assumes a random relationship between the height of drivers and the headroom in vehicles that they purchase. The agency believes that the relationship between vehicle headroom and occupant size is insignificant in most cases. It is likely that taller drivers adjust the seat positions to prevent uncomfortable proximity to the roof.

The agency requests comments on both approaches for estimating benefits of this proposal. A more detailed discussion of the estimated benefits associated with this proposal are in the PRIA.

X. Costs

The agency estimates that upgrading the roof crush resistance standard would result in annual fleet costs of $88 to $95 million. The total fleet cost is based on structural changes and impacts on fuel economy. The average cost of strengthening the roof structure of vehicles that do not meet the proposed requirements is estimated to be $10.67 per vehicle, with an annual fleet cost of $58.6 million. We estimate that approximately 32 percent of the current vehicle fleet would need improvements to meet the proposed upgraded requirements. The average fuel economy impact cost is estimated to be $5.33 to $6.69 per vehicle, with an annual fleet cost of $29.4 to $36.9 million.

We estimated the structural costs using finite element vehicle modeling in which various components of two vehicles that do not meet the proposed requirements were upgraded until the two vehicles met the proposed requirements, and roof crush tests of twenty recent model year vehicles. The two vehicles were a 1998 Plymouth Neon passenger car, and a 1999 Ford E–150 van. The initial baseline crush tests of the Neon and Ford E–150 showed that each vehicle could withstand a roof crush force of about 1.9 times its unloaded weight. Neither vehicle would comply with the proposed requirements because the roof over the front seat area cannot withstand a force of 2.5 times the unloaded vehicle weight.

Through an iterative process, improvements were reflected within the finite element model until the Neon and E–150 could withstand a roof crush force of about 20 percent greater than 2.5 times their vehicle weight.[98]

We estimate the price increase for the purchaser (consumer cost) to improve the Neon roof strength to 2.5 times the unloaded vehicle weight with a 20 percent compliance margin to be $3.02, and the consumer cost to improve the E–150 roof strength to 2.5 times the unloaded vehicle weight with a 20 percent compliance margin to be $29.66.[99] Further, we estimated the average cost of strengthening the roof structure of vehicles that do not meet the proposed requirements to be $10.67.[100]

In addition to finite element vehicle modeling, the agency tested a representative sample of 20 recent model year vehicles to estimate what percentage of the overall fleet already complies with the proposed requirements. Based on the current sales data, these 20 vehicles represent a current vehicle fleet population of approximately 5.9 million vehicles. Seven of the 20 vehicles tested by the agency failed the proposed roof crush resistance requirements. The seven failing vehicles represent a vehicle fleet population of approximately 1.9 million. The cost of upgrading these 1.9 million vehicles would be $20.3 million.

We estimate that 17 million new vehicles would be subject to the proposed requirements. Accordingly, before accounting for weight gain implications, we estimate the total fleet cost to be $58.6 million (17 million ÷ 5.9 million × $20.3 million).

Additionally, the changes made to increase roof strength may require heavier materials and or reinforcements that could increase the weight of the vehicle. This weight increase may adversely affect the vehicle's fuel economy and thus increase the amount of fuel it consumes over its lifetime. We estimate that the average weight gain necessary to upgrade the roof crush resistance of the vehicle fleet of 17 million vehicles is 0.6 lbs per vehicle. We estimate that this added weight would result in additional fuel expenditures in the amount of $29.4 to $36.9 million per year, resulting in the total annual fleet costs of $88 to $95 million ($58.6 + $29.4) or ($58.6 + $36.9).[101]

XI. Lead Time

NHTSA proposes that the manufacturers be required to comply with the new requirements for FMVSS No. 216 on and after the first September 1 that occurs more than three years (36 months) after the issuance of the final rule. Based on recent agency testing, the agency estimates that 68 percent of the current fleet already complies with the proposed roof strength requirements. Accordingly, the proposed roof strength requirements would not necessitate fleet-wide roof structure changes. NHTSA believes that vehicle manufacturers have engineering and manufacturing resources that would enable vehicles to meet the new requirements three years after the publication of the final rule. We request comments on the lead time necessary to comply with the proposal requirements.

XII. Request for Comments

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 in your comments. Your comments must not be more than 15 pages long.[102] We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES.** 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" or "Help/Info" to obtain instructions for filing the document electronically. If you are submitting comments electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and

[98] The agency assumes that manufacturers would design their vehicles so that they can meet a standard with a 20% compliance margin in order to address production and performance variability concerns. Vehicle manufacturers normally include compliance margins in their vehicle designs to assure that each vehicle could pass the applicable test requirements. In this case, a safety margin of 20 percent would require that vehicles withstand applied force of 3 times the unloaded vehicle weight (1.2 × 2.5).

[99] These improvements include changes in the material strength (steel gage, for example) of various vehicle components.

[100] The consumer cost average estimate was weighted for relative roof strength of different vehicles and corresponding sales volumes.

[101] For details on the fuel economy impacts, please see the PRIA.

[102] See 49 CFR 553.21.

copy certain portions of your submissions.[103]

Please note that pursuant to the Data Quality Act, in order for substantive data to be relied upon and used by the agency, it must meet the information quality standards set forth in the OMB and DOT Data Quality Act guidelines. Accordingly, we encourage you to consult the guidelines in preparing your comments. OMB's guidelines may be accessed at *http://www.whitehouse.gov/omb/fedreg/reproducible.html.* DOT's guidelines may be accessed at *http://dmses.dot.gov/submit/DataQualityGuidelines.pdf.*

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, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation.[104]

Will the Agency Consider Late Comments?

We 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, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted By Other People?

You may read the materials placed in the docket for this document (*e.g.*, the comments submitted in response to this document by other interested persons) by going to the street address given above under **ADDRESSES.** The hours of the Docket Management System (DMS) are indicated above in the same location.

You may also read the materials on the Internet. To do so, take the following steps:

(1) Go to the Web page of the Department of Transportation DMS (*http://dms.dot.gov/search/searchFormSimple.cfm*).

(2) On that page type in the five-digit docket number cited in the heading of this document. After typing the docket number, click on "search."

(3) On the next page ("Docket Search Results"), which contains docket summary information for the materials in the docket you selected, scroll down and click on the desired materials. You may download the materials.

XIII. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. The Office of Management and Budget reviewed this rulemaking document under E.O. 12866, "Regulatory Planning and Review." This rulemaking action has been determined to be significant under Executive Order 12866 and the DOT Policies and Procedures because of Congressional and public interest. This rulemaking action is not economically significant because the estimated yearly costs do not exceed $100 million. The total estimated recurring fleet cost for all changes proposed by this document is $88 to $95 million. NHTSA is placing in the public docket a PRIA describing the costs and benefits of this rulemaking action.[105] The costs and benefits are also summarized in Sections IX and X above. We estimate that, if adopted, this proposal would result in 13–44 fewer fatalities and 498–793 fewer non-fatal injuries each year.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed rules on small businesses, small organizations and small governmental jurisdictions. I have considered the possible effects of this rulemaking action under the Regulatory Flexibility Act and certify that it would not have a significant economic impact on a substantial number of small entities.

Under 13 CFR 121.201, the Small Business Administration (SBA) defines small business (for the purposes of receiving SBA assistance) as a business with less than 750 employees. Most of the manufacturers of recreation vehicles, conversion vans, and specialized work trucks are small businesses that manufacture vehicles in two or more stages. Some of these manufacturers produce vehicles that would be subject to the proposed requirements, as their GVWR is less than or equal to 10,000 pounds. While the number of these small businesses potentially affected by this proposal is substantial, the economic impact upon these entities will not be significant for the following reasons:

1. As indicated in Section VII(A)(2), we are proposing to allow vehicles manufactured in two or more stages (other than chassis-cabs), to certify to the roof crush requirements of FMVSS No. 220, instead of FMVSS No. 216. This aspect of our proposal will afford significant economic relief to small businesses because some of them are already required by the States to certify to the requirements of FMVSS No. 220. Thus, the proposal would not require additional expenditure by these small businesses.

2. Small businesses using chassis cabs would be in position to take advantage of "pass-through certification," and therefore, are not expected to incur any additional expenditures.

3. We believe that some of the vehicles manufactured by these small businesses already comply with the proposed requirements.[106]

In addition to small businesses that manufacture vehicles in two or more stages, there are four manufacturers of passenger cars that are small businesses.[107] All of these manufacturers could be affected by the proposed requirements. However, the economic impact upon these entities will not be significant for the following reasons.

1. While the average cost for roof crush resistance upgrades was estimated at approximately $12 per vehicle, the cost of upgrading the roof structures of

[103] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text.

[104] *See* 49 CFR Part 512.

[105] *See* Docket No. NHTSA–2005–22143.

[106] As discussed in Section X above, 68% of the current fleet meets the proposed requirements.

[107] Avanti, Panoz, Saleen, Shelby.

passenger cars is lower because we believe that this cost is a function of weight of the vehicle. For example, the cost of upgrading the roof structure of Dodge Neon, a passenger vehicle, was estimated at $3.

2. The agency believes that a cost increase of $3 to $12 would not have a significant economic impact upon small businesses that manufacture passenger cars because these costs can be passed onto the consumer. This increase would represent, at most, less than one-half of one tenth of a percent of the least expensive vehicle manufactured by the four entities.[108]

3. We believe that some of the vehicles manufactured by these small businesses already comply with the proposed requirements.[109]

4. Some of the vehicles manufactured by these small businesses are convertibles not subject to this proposal.

C. National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment. Upgrading the roof crush resistance standard may impact the weight of the vehicles subject to that standard and consequently result in the reduced fuel economy for these vehicles. However, the agency believes that the resulting impact on environment will be insignificant. A full discussion of fuel economy implications is in the PRIA.

D. Executive Order 13132 (Federalism)

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federal implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The proposal would not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

E. Unfunded Mandates Act

The Unfunded Mandates Reform Act of 1995 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 more than $100 million annually ($120.7 million as adjusted annually for inflation with base year of 1995). The assessment may be combined with other assessments, as it is here.

This proposal is not likely to result in expenditures by State, local or tribal governments or automobile manufacturers and/or their suppliers of more than $120.7 million annually. The agency estimates that upgrading the roof crush resistance standard would result in annual fleet costs of $88 to $95 million. No expenditures by State, local or tribal governments are expected. A full assessment of the rule's costs and benefits is provided in the PRIA.

F. Civil Justice Reform

This NPRM would not have any retroactive effect. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

State action on safety issues within the purview of a Federal agency may be limited or even foreclosed by express language in a congressional enactment, by implication from the depth and breadth of a congressional scheme that occupies the legislative field, or by implication because of a conflict with a congressional enactment. In this regard, we note that section 30103(b) of 49 U.S.C. provides, "When a motor vehicle safety standard is in effect under this chapter, a State or a political subdivision of a State may prescribe or continue in effect a standard applicable to the same aspect of performance of a motor vehicle or motor vehicle equipment only if the standard is identical to the standard prescribed under this chapter." Thus, all differing state statutes and regulations would be preempted.

Further, it is our tentative judgment that safety would best be promoted by the careful balance we have struck in this proposal among a variety of considerations and objectives regarding rollover safety. As discussed above, this proposal is a part of a comprehensive plan for reducing the serious risk of rollover crashes and the risk of death and serious injury in those crashes. The objective of this proposal is to increase the requirement for roof crush resistance only to the extent that it can be done without negatively affecting vehicle dynamics and rollover propensity. The agency has tentatively concluded that our proposal would not adversely affect vehicle dynamics and cause vehicles to become more prone to rollovers. In contrast, the agency believes that either a broad State performance requirement for greater levels of roof crush resistance or a narrower requirement mandating that increased roof strength be achieved by a particular specified means, would frustrate the agency's objectives by upsetting the balance between efforts to increase roof strength and reduce rollover propensity.

Increasing current roof crush resistance requirements too much could potentially result in added weight to the roof and pillars, thereby increasing the vehicle center of gravity (CG) height and rollover propensity. In order to avoid this, we sought to strike a careful balance between improving roof crush resistance and potentially negative effects of too large an increase upon the vehicle's rollover propensity.

We recognize that there is a variety of potential ways to increase roof crush resistance beyond the proposed level. However, we believe that any effort to impose either more stringent requirements or specific methods of compliance would frustrate our balanced approach to preventing rollovers from occurring as well as the deaths and injuries that result when rollovers nevertheless occur.

First, we believe that requiring a more stringent level of roof crush resistance for all vehicles could increase rollover propensity of many vehicles and thereby create offsetting adverse safety consequences. While the agency is aware of at least several current vehicle models that provide greater roof crush resistance than would be required under our proposal, requiring greater levels of roof crush resistance for all vehicles could, depending on the methods of construction and materials used, and on other factors, render other vehicles more prone to rollovers, thus frustrating the agency's objectives in this rulemaking.

Second, we believe that requiring vehicle manufacturers to improve roof crush resistance by a specific method would also frustrate agency goals. The optimum methods for addressing the risks of rollover crashes vary considerably for different vehicles, and requiring specific methods for improving roof crush resistance could interfere with the efforts to develop optimal solutions. Moreover, some methods of improving roof crush resistance are costlier than others. The resources diverted to increasing roof strength using one of the costlier

[108] Approximately $25,000.

[109] As discussed in Section X above, 68% of the current fleet meets the proposed requirements. We believe this may be especially true for high performance vehicles typically manufactured by small businesses.

methods could delay or even prevent vehicle manufacturers from equipping their vehicles with advanced vehicle technologies for reducing rollovers, such as Electronic Stability Control.

Based on the foregoing, if the proposal were adopted as a final rule, it would preempt all conflicting State common law requirements, including rules of tort law.

G. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." As discussed in Section V, we evaluated the Society of Automotive Engineers (SAE) inverted drop testing procedure, but decided against proposing it. We were unable to identify any other relevant technical standards. The agency requests comments on other relevant technical standards.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. NHTSA has reviewed this proposal and determined that it does not contain collection of information requirements.

I. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public's needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

J. Privacy Act

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

XVI. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.[110] "Motor vehicle safety standard" means a minimum performance standard for motor vehicles or motor vehicle equipment. When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.[111] The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the types of motor vehicles or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.[112] The responsibility for promulgation of Federal motor vehicle safety standards is delegated to NHTSA.

In proposing to improve roof crush resistance, the agency carefully considered these statutory requirements.

First, we believe that this proposal will meet the need for motor vehicle safety because the proposed applied force requirement would lead to stronger roofs and reduce the roof crush severity observed in real world crashes, thus better protecting front seat occupants.

Second, we believe that the roof crush resistance standard subject of this proposal is performance oriented because it requires only that the vehicle roof be able to withstand a certain amount of applied force. The standard does not specify the means by which the vehicle must meet the standard.

Third, this proposal was preceded by a Request for Comments, which facilitated the efforts of the agency to obtain and consider relevant motor vehicle safety information. We anticipate receiving an even more comprehensive array of relevant information in response to this proposal. Further, in preparing this document, the agency carefully evaluated previous agency research and vehicle testing that was relevant to this proposal. We also conducted additional testing in support of this document. Finally, the agency conducted a detailed statistical analysis in order to estimate risks of death or injury associated with roof crush, and to determine the relevant target population and potential costs and benefits of our proposal. In sum, this document reflects our consideration of all relevant, available motor vehicle safety information.

Fourth, to ensure that requiring greater roof crush resistance is practicable, the agency tested a number of vehicles and found that many already comply with the proposed requirements, while others could comply with relatively inexpensive modifications to their roof structure. In response to the request for comments, the agency received no indication that the proposed roof crush resistance requirements were impracticable. However, based on the latest information from the manufacturers and our own testing, we are proposing to amend the test procedure for vehicles with raised or altered roofs to provide additional assurance of practicability.[113] To improve practicability still further, the agency also proposes to revise the tie-down procedure. Because we are especially concerned with practicability of this proposal as it applies to vehicles manufactured in two or more stages, we are proposing to allow the certification of these vehicles to the roof crush requirements of FMVSS No. 220. In sum, we believe that this proposal to improve roof crush resistance is practicable.

Fifth, the proposed regulatory text following this preamble is stated in objective terms in order to specify precisely what performance is required and how performance will be tested to ensure compliance with the standard. Specifically, a large steel test plate would be forced down onto the roof of a vehicle. If the displaced roof structure does not contact the head or neck of the dummy seated inside the vehicle, the vehicle passes the test. The agency believes that this test procedure is sufficiently objective and would not result in any uncertainty as to whether a given vehicle satisfies the proposed roof crush resistance requirements.

[110] 49 U.S.C. 30111(a).

[111] 49 U.S.C. 30111(b).

[112] Id.

[113] The agency previously adopted a "secondary" test procedure for vehicles with raised or altered roofs which proved to be an impracticable solution.

Finally, we believe that this proposal is reasonable and appropriate for motor vehicles subject to the proposed requirements. As discussed elsewhere in this notice, the agency is concerned with the amount of fatalities and serious injuries resulting from rollovers. Our statistical data indicate that vehicles subject to the proposed requirements are involved in rollovers that cause death and serious injury. Accordingly, we believe that this proposal is appropriate for vehicles that are or would become subject to FMVSS No. 216 because it furthers the agency's objective of preventing deaths and serious injuries associated with roof crush occurring in some of the rollovers.

XV. Proposed Regulatory Text

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR Part 571 as follows:

PART 571—[AMENDED]

1. The authority citation of Part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 2011, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

2. Section 571.216 would be amended by:

a. Revising S3 to read as set forth below;

b. Adding to S4, in alphabetical order, new definitions of "Convertible" and "Roof component;"

c. Revising S5 to read as set forth below;

d. Removing S5.1;

e. Revising S7.1 through S7.6 to read as set forth below; and

f. Removing S8 through S8.4.

The revisions and additions read as follows:

§ 571.216 Standard No. 216; Roof crush resistance.

* * * * *

S3. Application. This standard applies to passenger cars, and to multipurpose passenger vehicles, trucks and buses with a GVWR of 4,536 kilograms (10,000 pounds) or less. However, it does not apply to—

(a) School buses;

(b) Vehicles that conform to the rollover test requirements (S5.3) of Standard No. 208 (§ 571.208) by means that require no action by vehicle occupants;

(c) Convertibles, except for optional compliance with the standard as an alternative to the rollover test requirement (S5.3) of Standard No. 208; or

(d) Vehicles manufactured in two or more stages, other than chassis cabs, that conform to the roof crush requirements (S4) of Standard No. 220 (§ 571.220).

S4. Definitions.

* * * * *

Convertible means a vehicle whose A-pillars are not joined with the B-pillars (or rearmost pillars) by a fixed, rigid structural member.

* * * * *

Roof component means the A-pillar, B-pillar, roof side rail, front header, rear header, roof, and all interior trim in contact with these components.

* * * * *

S5. Requirements. When the test device described in S6 is used to apply a force to either side of the forward edge of a vehicle's roof in accordance with S7, no roof component or portion of the test device may contact the head or the neck of the seated Hybrid III 50th percentile male dummy specified in 49 CFR Part 572, Subpart E. The maximum applied force in Newtons is at least 2.5 times the unloaded vehicle weight of the vehicle, measured in kilograms and multiplied by 9.8. A particular vehicle need not meet the requirements on the second side of the vehicle, after being tested at one location.

* * * * *

S7.1 Secure the vehicle in accordance with S7.1(a) through (d).

(a) Support the vehicle off its suspension at a longitudinal vehicle attitude of 0 degrees ± 0.5 degrees. Measure the longitudinal vehicle attitude along both the driver and passenger sill. Determine the lateral vehicle attitude by measuring the vertical distance between a level surface and a standard reference point on the bottom of the driver and passenger side sills. The difference between the vertical distance measured on the driver side and the passenger side sills shall not exceed ± 1 cm.

(b) Secure the vehicle with four stands. The locations for supporting the vehicle are defined in S7.1(c) or (d). Welding is permissible. The vehicle overhangs are not supported. Chains and wire rope are not used to secure the vehicle. Fix all non-rigid body mounts to prevent motion of the body relative to the frame. Close all windows, close and lock all doors, and secure any moveable or removable roof structure in place over the occupant compartment. Remove roof racks or other non-structural components.

(c) For vehicles with manufacturer's designated jacking locations, locate the stands at or near the specified location.

(d) For vehicles with undefined jacking locations, generalized jacking areas, or jacking areas that are not part of the vehicle body or frame, such as axles or suspension members, locate two stands in the region forward of the rearmost axle and two stands rearward of the forwardmost axle. All four stands shall be located between the axles on either the vehicle body or vehicle frame.

S7.2(a) Adjust the seats and steering controls in accordance with S8.1.2 and S.8.1.4 of 49 CFR 571.208.

(b) Place adjustable seat backs in the manufacturer's nominal design riding position in the manner specified by the manufacturer. Place any adjustable anchorages at the manufacturer's nominal design position for a 50th percentile adult male occupant. Place each adjustable head restraint in its lowest adjustment position. Adjustable lumbar supports are positioned so that the lumbar support is in its lowest adjustment position.

S7.3 Position the Hybrid III 50th percentile male dummy specified in 49 CFR Part 572, Subpart E in accordance with S10.1 through S10.6.2.2 of 49 CFR 571.208, in the front outboard designated seating position on the side of the vehicle being tested.

S7.4 Orient the test device as shown in Figure 1 of this section, so that—

(a) Its longitudinal axis is at a forward angle (in side view) of 5 degrees below the horizontal, and is parallel to the vertical plane through the vehicle's longitudinal centerline;

(b) Its transverse axis is at an outboard angle, in the front view projection, of 25 degrees below the horizontal.

S7.5 Maintaining the orientation specified in S7.4—

(a) Lower the test device until it initially makes contact with the roof of the vehicle.

(b) Position the test device so that—

(1) The longitudinal centerline on its lower surface is within 10 mm of the initial point of contact, or on the center of the initial contact area, with the roof; and

(2) The midpoint of the forward edge of the lower surface of the test device is within 10 mm of the transverse vertical plane 254 mm forward of the forwardmost point on the exterior surface of the roof, including windshield trim, that lies in the longitudinal vertical plane passing through the vehicle's longitudinal centerline.

S7.6 Apply force so that the test device moves in a downward direction perpendicular to the lower surface of

the test device at a rate of not more than 13 millimeters per second until reaching the force level specified in S5. Guide the test device so that throughout the test it moves, without rotation, in a straight line with its lower surface oriented as specified in S7.4(a) and S7.4(b). Complete the test within 120 seconds.

* * * * *

Issued: July 15, 2005.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 05–16661 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket No. NHTSA–2005–21698]

RIN 2127–AH73 and 2127–AI39

Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Anthropomorphic Test Devices; Instrumented Lower Legs for 50th Percentile Male and 5th Percentile Female Hybrid III Dummies

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Withdrawal of rulemakings.

SUMMARY: On February 3, 2004, NHTSA published a notice in the **Federal Register** requesting comments on whether to propose adding a high speed frontal offset crash test to Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection." The notice informed the public about recent testing the agency conducted to assess the benefits and/or disbenefits of such an approach. Based on our analysis of those comments, and other information gathered by the agency, we have decided to withdraw the rulemaking proceeding to amend FMVSS No. 208 to include a high speed frontal offset crash test requirement. Additional research and data analyses are needed to make an informed decision on rulemaking in this area. Additionally, we have decided to withdraw the related rulemaking proceeding to amend part 572 to include lower leg instrumentation until further testing necessary for federalization is completed.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Lori Summers, Office of Crashworthiness Standards, NVS–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone (202) 366–1740. Fax: (202) 366–7002.

For legal issues: Dorothy Nakama, Office of the Chief Counsel, NCC–112, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

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I. Background

Improving occupant protection in frontal crashes is a major goal of the National Highway Traffic Safety Administration (NHTSA). Frontal crashes are the most frequent cause of motor vehicle fatalities. In 1972, NHTSA promulgated FMVSS No. 208 to improve the frontal crash protection provided to motor vehicle occupants. The dynamic performance requirements of the standard include frontal rigid barrier crash tests, at angles between perpendicular and ±30 degrees with belted and unbelted dummies.[1] Occupant protection is evaluated based on data acquired from anthropomorphic test dummies positioned in the driver and right front passenger seats. Data collection instrumentation is mounted in the head, neck, chest, and femurs of the test dummies.

NHTSA initiated research in the early 1990s to develop performance tests not currently included in FMVSS No. 208, such as high severity frontal offset crashes that involve only partial engagement of a vehicle's front structure. Such performance tests result in large amounts of occupant compartment intrusion and increased potential for intrusion-related injury. The agency also instrumented the dummies in these tests with advanced lower leg instrumentation, not currently required in FMVSS No. 208, to assess the potential for lower extremity injury, specifically, to the knee, tibia, and ankle.

During the same time period, considerable international research focused on the development of a fixed offset deformable barrier crash test procedure. In December 1996, the European Union (EU) adopted the EU Directive 96/79 EC for frontal crash protection. This directive required vehicle compliance with a 56 km/h, 40 percent offset, fixed deformable barrier crash test. In 1998, Australia introduced a similar regulation for new passenger car model approvals. In addition to these regulations, several consumer information programs also began to utilize the EU Directive 96/79 EC crash test procedure, but raised the impact speed to 64 km/h. These programs included the European New Car Assessment Program (EuroNCAP), Australia NCAP (ANCAP), Japan NCAP and the Insurance Institute for Highway Safety (IIHS) Crashworthiness Evaluation program in the U.S.

Given the world-wide focus on the fixed offset deformable barrier crash test procedure, the conferees on the appropriations legislation for the Department of Transportation for FY 1997 directed NHTSA to work "toward establishing a Federal motor vehicle safety standard for frontal offset crash testing" in fiscal year 1997.[2] NHTSA was further directed to consider the harmonization potential with other countries and to work with interested parties, including the automotive industry, under standard rulemaking procedures. In 1997, NHTSA submitted a Report to Congress[3] on the status of the agency's efforts toward establishing a high speed frontal offset crash test requirement. The agency made a preliminary assessment that the adoption of the EU 96/79 EC frontal offset test procedure, in addition to the current requirements of FMVSS No. 208, could result in substantial benefits, since lower leg injuries were typically associated with long-term recovery and significant economic cost. However, the Report to Congress also made note of NHTSA's concerns relative to the potential for exacerbating small and large car incompatibility, as a result of adopting a frontal offset crash test procedure.

During 1998–2002, NHTSA completed over 25 frontal offset crash tests in an attempt to answer a number of research questions. Specifically, what are the merits of a fixed offset deformable barrier crash test procedure and what is the most appropriate dummy size, lower leg instrumentation and impact speed? Dummy injury measures from the fixed offset deformable barrier crash tests demonstrated the potential for injury reductions over and above the full frontal rigid barrier test configuration.[4]

[1] In March of 1997, NHTSA temporarily amended FMVSS No. 208 so that passenger cars and light trucks had the option of using a sled test for meeting the unrestrained dummy requirements. This option will be phased out in accordance with the advanced air bag rulemaking schedule.

[2] Conference Report 104–785, September 16, 1996. This report accompanied H.R. 3675.

[3] Report to Congress, "Status Report on Establishing a Federal Motor Vehicle Safety Standard for Frontal Offset Crash Testing," April 1997.

[4] Docket No. NHTSA–1998–3332.

The results demonstrated that the 5th percentile female dummy generally produced higher normalized lower leg injury measurements than the 50th percentile male dummy under comparable frontal offset crash test conditions.[5] Crash tests comparing lower leg instrumentation showed that the Thor-Lx/HIIIr lower leg instrumentation predicted a higher incidence of foot and ankle injury than the Denton/Hybrid III lower leg.[6] Finally, fixed offset deformable barrier crash tests conducted at a range of impact speeds, including 56 km/h, 60 km/h, and 64 km/h, demonstrated notable differences in the pass/fail rates, with the 56 km/h impact speed being the most benign.

In the 2000 and 2001 Regulatory Plans published in the **Federal Register**, NHTSA indicated that it was considering a rulemaking to establish a high speed frontal offset test. In response, the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, wrote a letter dated December 7, 2001, asking the U.S. Department of Transportation and NHTSA to consider giving greater priority to modifying its frontal occupant protection standard by establishing a high speed, frontal offset crash test requirement. The letter suggested that if the agency were to give this matter greater priority, the agency would need to refine its estimates of the specific safety benefits that a new offset test would generate. It said that this assessment would also need to include potential losses in existing safety benefits due to possible changes in vehicle structure and design. This reinforced the agency's intent to look at both the benefits and disbenefits from adoption of a high speed frontal offset crash test requirement.

In 2002, the agency initiated a vehicle-to-vehicle crash test program to assess the potential disbenefits of adopting a high speed frontal offset requirement.[7] NHTSA used the vehicle-to-vehicle crash test configuration from the agency's vehicle compatibility program[8] and test vehicles selected from vehicle models that had improved ratings in the IIHS frontal crashworthiness evaluation program.[9] The tests were configured to simulate both vehicles moving at 56.3 km/h, such that the subject vehicle impacted the left front corner of its collision partner at an offset of 50 percent and an impact angle of 30 degrees. Two vehicle-to-vehicle crash tests were conducted for each vehicle model under study, one using an older model and the other using a later redesign. Both vehicles struck a model year 1997 Honda Accord. The two sets of injury measurements for the driver dummy of the Honda Accord were compared to determine which version of the subject vehicle (*i.e.*, the older model or the redesign) imparted higher injury numbers.

The results of the testing suggested that, for some sport utility vehicles (SUVs), design changes that improved their performance in high speed frontal offset crash tests may also result in adverse effects to occupants of their collision partners. The results raised questions about whether or not these results are representative of the effects on collision partner protection in the current fleet, and the extent to which disbenefits to crash partners are associated with design changes made to improve performance in a high speed frontal offset crash test.

Because of our concern, the agency published a request for comments in the **Federal Register** (February 3, 2004, 69 FR 5108).[10, 11] The notice informed the public about the crash tests conducted to date, and sought comments on its findings and on alternative strategies that could be coupled with a frontal offset crash test requirement. The agency also planned to study the performance of four additional vehicle models, from different vehicle classes, that improved IIHS crashworthiness ratings as the result of a vehicle redesign.

Shortly after publication of the Request for Comments, the agency completed the four additional pairs of vehicle-to-vehicle crash tests.[12] The combined results showed that in five of the six vehicle pairs, the head injury criteria of the Honda Accord driver dummy increased when struck by the redesigned vehicle compared to when struck by the older model. Similarly, in four of the six vehicle pairs, the chest acceleration of the Honda Accord driver dummy increased when struck by the redesigned vehicle compared to when struck by the older model. Overall, the earlier trends observed in the SUV vehicle model testing were generally exhibited in the other vehicle classes tested, but to a lesser extent for passenger cars.

II. Summary of Request for Comments

A total of seventeen organizations and private individuals submitted comments in response to the February 3, 2004, request for comments notice on frontal offset crash testing. Comments were submitted by the Alliance of Automobile Manufacturers (Alliance), the Association of International Automobile Manufacturers, Inc. (AIAM), American Honda Motor Co., Inc. (Honda), General Motors Corporation (GM), DaimlerChrysler and Mercedes-Benz USA, LLC (DaimlerChrysler), Ford Motor Company (Ford), the Insurance Institute for Highway Safety (IIHS), the Property Casualty Insurers Association of America (PIA), the Advocates for Highway and Auto Safety (Advocates), and eight comments from private individuals.

Vehicle manufacturers and vehicle manufacturer associations supported the overall goal of reducing lower extremity injuries in frontal crashes, but did not support the agency's pursuing a rulemaking at this time. They recommended that NHTSA conduct additional research on the sources of lower extremity injury, as well as determine the appropriate anthropomorphic test device and injury criteria. Vehicle manufacturers also generally shared NHTSA's concern that some design changes that improve a vehicle's performance in a high speed frontal offset crash test may also result in adverse effects on their collision partner occupants. Consequently, some strongly advocated linking a vehicle compatibility strategy to any frontal offset crash test.

Conversely, the IIHS, PIA, the Advocates, and the majority of the private citizen comments supported the immediate adoption of a frontal offset crash test requirement. The IIHS stated that such a requirement would ensure all vehicle types are designed with state-of-the-art frontal crash protection; however, it believes that NHTSA should not delay the implementation of an offset crash test requirement because of unsubstantiated fears of compatibility disbenefits. The IIHS also stated that such a requirement could not be effective without specifically addressing

[5] Park, Morgan, Hackney, Lee, Stucki, "Frontal Offset Crash Test Study Using 50th Percentile Male and 5th Percentile Female Dummies," Proceedings of the 16th International Technical Conference on the Enhanced Safety of Vehicles, Paper No. 98–S1–O–01, 1998.

[6] Kuppa, Haffner, Eppinger, Saunders, "Lower Extremity Response and Trauma Assessment Using the Thor-Lx/HIIIr and the Denton Leg in Frontal Offset Vehicle Crashes," Proceedings of the 17th International Technical Conference on the Enhanced Safety of Vehicles, Paper No. 456, 2001.

[7] *See* 69 FR 5110.

[8] Summers, Prasad, Hollowell, "NHTSA's Vehicle Compatibility Research Program," Society of Automotive Engineers Paper No. 1999–01–0071, March 1999.

[9] In this program, vehicles are rated based on their performance in a 64 km/h fixed offset deformable barrier crash test.

[10] Docket No. NHTSA–2003–15715.

[11] Comment period subsequently extended to July 5, 2004 (69 FR 18015).

[12] Docket No. NHTSA–1998–3332.

occupant compartment integrity. PIA generally supported the IIHS's position and noted that frontal offset crash testing simulates a crash scenario that current Federal testing does not address. The Advocates further stated that it represents a majority of real world crashes and its adoption would complement full frontal crash tests.

III. Analysis of Comments

The main comments raised in response to the Request for Comments involved the projected benefits and potential disbenefits of a fixed offset deformable barrier crash test, the effect of industry's voluntary compatibility commitments, and consideration of alternative approaches. The following sections briefly analyze each issue.

A. *Underestimated the benefits of improved frontal offset crash protection:* The IIHS suggested that NHTSA greatly underestimated the benefits of improved frontal offset crash protection. It stated that NHTSA's analysis is inconsistent with real-world crash experience, which it said increasingly shows the benefits of improved frontal offset crash test performance for reducing serious and fatal injuries. The IIHS cited a study [13] indicating that drivers of vehicles with good frontal offset crash test ratings involved in fatal head-on crashes with poor-rated vehicles were 74 percent less likely to be the fatally injured driver. The IIHS also cited a Scandinavian study [14] that found that cars with better performance in EuroNCAP had much lower rates of serious injury than cars with worse performance.

The agency reviewed the two publications cited by the IIHS. The IIHS publication showed that drivers of good-rated vehicles involved in fatal head-on crashes with poor-rated vehicles were significantly less likely to be the fatally injured driver. However, since the inter-dependent relationship between frontal offset ratings and important factors such as vehicle age, vehicle weight, driver age, and driver gender were not examined, we question whether the fatality risk for better-rated vehicles might be overstated compared to the poor-rated vehicles. For example, the poor-rated vehicles might be consistently older than the good-rated vehicles, or the good-rated vehicles might tend to be heavier vehicles within a particular rating class. These inter-dependencies could decrease the fatality risk reduction estimated in the study.

We also note that the fatality reductions were only significant for head-on crashes of similar vehicles rated good and poor. Other estimated fatality risk reductions for acceptably and marginally-rated vehicles were inconclusive. In addition, we found that certain statistics were counter-intuitive. For example, for cars (the largest data set in the study), it showed that good-rated cars had higher frontal fatality rates than acceptably- and marginally-rated cars. Finally, the paper did not address the benefits of the frontal offset rating when two potentially incompatible vehicles collided (*i.e.*, car-to-SUV, car-to-pickup, etc.) Therefore, the magnitude of the overall benefit is not clear.

With respect to the Scandinavian field study cited by the IIHS, we are concerned that the comparison of EuroNCAP performance to real-world experience may not apply to the U.S., due to differences in mass distribution between the fleets and greater percentage of unbelted occupants in the U.S. We also observed a number of limitations in the study that raise questions as to whether it is appropriate to attribute life-saving benefits to a fixed offset deformable barrier test. First, the study stated there were insufficient data to separate the frontal impact rating from the side impact rating, so the analysis included both frontal and side impacts together. Consequently, it is unclear to what extent the front or side impact ratings were contributing to the correlation. Second, the paper used the Swedish injury classification of "severe" (or "typically admitted to the hospital"). The resulting correlation to "severe" injury may have been driven by lower limb injuries (maximum AIS 3 injuries), rather than life-threatening head or chest injuries. Also, due to insufficient data, the study combined all vehicle categories with similar EuroNCAP ratings together, regardless of mass. This may be problematic in providing meaningful real world results since frontal NCAP ratings (both full and offset) are only comparable within a given weight class. Finally, we found it noteworthy that the paper itself suggested that the results should not be seen as proof that there is a predictive value in the EuroNCAP system, especially not for individual car model scores. Thus, based on our concerns regarding these two studies, we believe more definitive analyses are needed to attribute lifesaving benefits to a fixed frontal offset deformable barrier crash test procedure.

In response to the Request for Comments, the IIHS also stated that NHTSA inappropriately relied solely on injury measures recorded by test dummies and discounted important information about occupant compartment integrity in the agency's tests. The IIHS stated that if the compartment is significantly damaged, good dummy injury measures offer no assurance of effective protection for the range of occupants who sit in different positions and may have different crash kinematics. It also stated that NHTSA's analysis is inconsistent with real-world crash experience, which increasingly shows that improved frontal offset crash test performance reduces serious and fatal injuries.[15]

NHTSA has monitored toe pan and other intrusion measurements in its frontal offset crash tests. While the IIHS strongly advocated that intrusion measurement be included in a future requirement, we have not seen how to express this measurement as a performance requirement that could provide objective results and be used to compute benefits. Ideally, dummy instrumentation should provide an objective and direct assessment of injury risk to a human occupant. However, the IIHS noted that good dummy injury measures, from a test with a single-sized dummy in a single seating position, offer no assurance of effective protection for the range of occupants who sit in different positions and may have different crash kinematics. While we acknowledge that a minimum performance requirement cannot account for every intrusion scenario that occurs in the real world, there needs to be an objective method for converting post-crash intrusion measurements in a particular location, of a particular vehicle, to the number of injuries it might cause for the range of occupants who sit in different positions and have different crash kinematics. Until further analysis can provide guidance on an intrusion-based approach, the agency will continue to consider using two regulated dummy sizes in its frontal offset crash tests to capture the injury spectrum associated with the most vulnerable and average-sized occupants. However, we are exploring development of a performance requirement approach to compartment intrusion, and plan to

[13] Farmer, "Relationship of Frontal Offset Crash Test Results to Real-World Driver Fatality Rates," Traffic Injury Prevention, 2004.

[14] Lie and Tingvall, "How do EuroNCAP Results Correlate with Real-Life Injury Risks? A Paired-Comparison Study of Car-to-Car Crashes," Traffic Injury Prevention, 2002.

[15] The IIHS cited a Scandinavian study that found that cars with better performance in EuroNCAP had much lower rates of serious injury than cars with worse performance. The IIHS also cited their own study that showed that drivers of vehicles with good frontal offset crash test ratings involved in fatal head-on crashes with poor-rated vehicles were 74 percent less likely to be the fatally injured driver.

revisit its potential during the course of future research.

B. *Increased vehicle aggressivity from improved frontal offset crash protection:* Some commenters shared the agency's concern that vehicle design changes that improve performance in high speed frontal offset crash tests may also result in increased aggressivity toward the occupants of their collision partners. As previously discussed, the agency's vehicle-to-vehicle crash tests demonstrated a trend in increased vehicle aggressivity towards collision partners in five of the six redesigned vehicle models tested. The AIAM and the Alliance concurred that the results justify a cautious approach in considering a frontal offset crash test requirement. The AIAM noted that there were instances of injury measures increasing in the struck vehicle, for every type of striking vehicle tested (passenger car, minivan, SUV, and pickup), when comparing the older and newer designs of the striking vehicle. The AIAM stated that the results raise questions regarding possible safety disbenefits resulting from design measures that are intended to improve frontal offset crash performance.

Conversely, the IIHS disagreed with the results of the agency's crash tests and concluded that the agency should ignore these test results in deciding whether to move ahead with a frontal offset crash test. The IIHS stated that, in theory, such tests could isolate the effects on driver dummy injury risk with changes in vehicle stiffness associated with improved crash test performance. However, it stated that most tests confounded changes in vehicle stiffness with changes in other important vehicle characteristics, such as mass and ride height. The IIHS cited this finding because it considers NHTSA's 30-degree frontal oblique test to be more characteristic of a side impact test with respect to the timing of the Honda Accord driver peak injury measures. It stated that injury measures reported by the Hybrid III dummy are unlikely to capture the full injury threat to a human occupant from such an impact because the lateral loading conditions are inconsistent with dummy design and sensor orientation.

We agree that some of the vehicle-to-vehicle tests confounded changes in vehicle stiffness with changes in mass, ride height, and other factors. However, our study was not targeted at solely examining vehicle stiffness. Whether the changes were increases in mass, stiffness, ride height, or combinations of these or other factors, the fact remains that five out of six redesigned vehicles that demonstrated improved performance in a frontal offset crash test indicated increased aggressivity toward its collision partner. Consequently, we do not agree that the tests should be ignored. The vehicle-to-vehicle test configuration was identified by field data as representing frontal crashes with a high risk of serious injury or fatality.[16] Additionally, NHTSA's research has shown that the test configuration is able to show a good correlation between target vehicle driver injury measures and bullet vehicle aggressivity metrics.[17] We further believe the Hybrid III dummy is the most-appropriate surrogate to evaluate injury risk in this frontal crash test configuration, with an 11 o'clock principle direction of force. Since the same dummy type was used in each of the vehicle-to-vehicle crash tests, we believe the relative differences in results should be reasonable for comparative purposes.

Furthermore, our concerns were reinforced by vehicle manufacturers' comments that suggested vehicles might become more aggressive as a result of a frontal offset crash test requirement. GM provided examples of crash test data from vehicle models designed with countermeasures to enable them to perform well in a high speed frontal offset crash test. According to GM, the data shows that vehicle structure has gotten stiffer in order to perform well in offset testing. Honda referenced its 1998 study[18] where it predicted the occurrence of a potential increased stiffness trend, based on vehicle weight, if a high speed offset crash test were added to other frontal crash tests. Ford similarly stated that countermeasures intended to reduce lower extremity injury risk could potentially increase the injury risk for occupants, including collision partner occupants, in other crash scenarios, such as front-to-front and/or front-to-side impacts. The Alliance stated that design approaches that lead to increases in vehicle front-end stiffness could degrade full frontal crash protection, rear seat occupant protection, particularly child safety performance, and might increase the frequency of acceleration-based injuries.

Conversely, the IIHS stated that the assumption that manufacturers simply make vehicle front ends stiffer to perform well in the offset test is incorrect. It cited a 2001 study where stiffness, as determined by U.S. New Car Assessment Program (NCAP) tests, was unrelated to the IIHS's structural ratings.[19] Although it acknowledged that some vehicles with improved frontal offset test ratings were "stiffer" than their predecessors, it said that stiffness typically was evident only after about 50 cm of vehicle deformation, when the crash deformation had neared the occupant compartment. According to the IIHS, this increased stiffness is necessary if the overall safety of the vehicle fleet is to improve. To further this point, the IIHS conducted a second field data analysis[20] to determine whether their good-rated vehicles contribute to increased vehicle aggressivity toward their collision partners. Although the relationships across all rating levels were not uniform, it reported that a consistent pattern emerged. Driver fatality rates were higher in both the rated vehicle and its collision partner when the rated vehicle had a poor rating than when it had a good rating. It concluded that this pattern contradicts NHTSA's concern that improved frontal offset test performance might lead to increased vehicle aggressivity.

The agency reviewed the IIHS's study and observed that the opposing vehicles' fatality risks appear to have been derived without controlling for factors such as vehicle make/models, vehicle weights, and model years. In our analyses, we have found that these factors could dramatically affect the fatality rate estimates. For example, if opposing vehicles for one rated group had a different vehicle profile (*i.e.*, make-up of make, model and weight) from another rated group, we believe that vehicle design may not completely explain the discrepancy in opposing vehicle fatality risks. Furthermore, if the weight profile of the opposing vehicles for a particular rated group were different from that of their rated collision partners, the risk adjustment formula for rated vehicles might not be applicable to their opposing vehicles. Therefore, we believe it may be misleading to judge aggressiveness by directly comparing fatality rates of opposing vehicles without controlling for these factors.

[16] Stucki, Hollowell, and Fessahaie, "Determination of Frontal Offset Test Conditions Based on Crash Data," Proceedings of the 16th International Technical Conference on the Enhanced Safety of Vehicles, 1998.

[17] Summers, Prasad, Hollowell, "NHTSA's Vehicle Compatibility Research Program," SAE Paper 1999–01–0071, SAE International Congress and Exposition, Detroit, MI, 1999.

[18] Sugimoto, Kadotani, and Ohmura, "The Offset Crash Test—A Comparative Analysis of Test Methods," Proceedings of the 16th International Technical Conference on the Enhanced Safety of Vehicles, 1998.

[19] Nolan and Lund, "Frontal Offset Deformable Barrier Crash Testing and its Effect on Vehicle Stiffness," Proceedings of the 17th International Technical Conference on the Enhanced Safety of Vehicles, 2001.

[20] Docket No. NHTSA–15715–20, Appendix.

While we do not dispute the suggestion by IIHS and other commenters that there are countermeasures other than stiffening a vehicle's front-end for achieving good performance in a frontal offset crash test, we are cognizant that some potential countermeasures could have adverse implications on vehicle weight, aerodynamics, braking effectiveness, and fuel economy, making it difficult for vehicle manufacturers to pursue them. GM noted that the vehicles with the most constraints are full size trucks, due to the breadth of product line, and small/economy size vehicles, due to their reduced compartment space/crush room. GM stated that additional crush space could only be achieved by adding extra length to the front of heavier vehicles; however, it stated that such complete engine compartment and front suspension repackaging are impracticable. While Honda commented that a forthcoming vehicle model employed its new Advanced Compatibility Engineering front structure,[21] Honda stated that it considers this type of structural countermeasure when its vehicles undergo a complete redesign. Therefore, additional lead-time may be needed to accommodate such strategies.

C. *Effect of voluntary compatibility commitments on disbenefits concerns:* When discussing the agency's compatibility concerns, several commenters referred to the Technical Working Group on Front-to-Front Compatibility.[22] The IIHS, a participant in the working group, reported that improved structural interaction is the immediate focus of the working group for improving vehicle incompatibility. To achieve this, vehicle manufacturers have committed to having all light trucks' primary energy-absorbing structures overlap the bumper zone of passenger cars by September 2009, or, alternatively, have all light trucks incorporate a secondary energy absorbing structure.[23] The AIAM noted that further commitments include assessing dynamic test protocols for enhanced structural interaction, and evaluating methods for determining an appropriate balance between small vehicle interior compartment strength and large vehicle energy absorption characteristics. The AIAM stated that over time these efforts could be expected to reduce aggressivity concerns and achieve significant reductions in lower extremity injuries in frontal crashes.

The Alliance and GM recommended that both NHTSA's and the industry's compatibility efforts attain a level of maturity before regulatory requirements are proposed. GM stated that each would contribute considerable insight toward improved lower leg protection, and improved occupant crash protection in vehicles and their collision partners. Other commenters stated that addressing vehicle aggressivity should be treated separately from the frontal offset crash test requirement. The IIHS stated that there is nothing to suggest that the incorporation of a frontal offset crash test into a standard depends on addressing vehicle aggressivity; however, it acknowledged that the incompatibility of vehicle structures is an important issue on its own.

The agency is monitoring the research efforts of the Technical Working Group on Front-to-Front Compatibility. We have been informed of their objectives, plans and timing for implementation. The potential for these efforts to reduce vehicle incompatibility in the fleet, and lower extremity injuries in frontal crashes, is dependent upon their effective implementation. We also believe that vehicle compatibility initiatives and any future frontal offset crash test proposal should be closely coordinated and not treated independently, as suggested by the IIHS. Our field data studies on vehicle aggressivity and vehicle crash test findings have persuaded us to proceed in conjunction with compatibility efforts when considering the adoption of a frontal offset crash test requirement, particularly for heavier vehicles. Since mass, stiffness, and geometric alignment have been identified as vehicle parameters that influence partner protection outcomes in our field data studies, our frontal offset strategy needs to be cognizant of the implications of these factors, so as to not promote countermeasures that may adversely affect safety.

However, we do not necessarily agree with commenters who suggested that the compatibility research efforts need to be completed before implementing a high speed frontal offset crash test requirement. While the industry has been working to develop a set of commitments to reduce vehicle aggressivity, the implementation of its first phase of efforts (*i.e.*, increased geometric alignment) will not be complete until September 1, 2009. The remaining commitments (assessing dynamic test protocols for enhanced structural interaction, and test procedures for measuring and controlling front-end stiffness characteristics) are only commitments for research at this point. In the long term, it is unclear what type of lower extremity injury benefits will be promoted by the research efforts. In the interim, NHTSA believes that numerous lower extremity injuries will continue to occur, and can be addressed through a restricted offset test.

D. *Alternative approaches:* The Request for Comments sought comments on alternative strategies that the agency should consider in conjunction with a fixed offset deformable barrier crash test requirement. Several vehicle manufacturers suggested strategies aimed at improving frontal offset crash protection, while controlling for vehicle aggressivity. Honda recommended simultaneously introducing a 64 km/h frontal offset deformable barrier crash test and a full-width deformable barrier crash test into NCAP[24] to evaluate a vehicle's partner protection. Honda stated that this strategy would help match the vehicle's principle force and stiffness at the specific interaction area where NHTSA, and other countries, require bumpers be located. Alternatively, for the long term, Honda and GM supported a moving deformable barrier (MDB) frontal offset crash test procedure for managing energy and stiffness, while DaimlerChrysler supported a fixed offset deformable barrier crash test with a mass-dependent impact speed.[25, 26] While the IIHS acknowledged that many metrics were under consideration by the research community to assess vehicle aggressivity and limit incompatibility, it stated that presently there are not sufficient data available on which to base a decision.

In consideration of these proposals, we believe both the MDB and fixed offset deformable barrier crash test with a mass-dependent impact speed

[21] Docket Number NHTSA–03–15715–15, Attachment 13.

[22] Participants include: BMW, DaimlerChrysler, Ford, General Motors, Honda, Hyundai, IIHS, Isuzu, Kia, Mazda, Mitsubishi, Nissan, Subaru, Suzuki, Toyota, TRL, and Volkswagen. The vehicle manufacturers participating in this program represent over 99 percent of light vehicle sales in the U.S. and Canada.

[23] See *http://www.autoalliance.org/archives/commitstatement.pdf.*

[24] Honda alternatively proposed to introduce the full-width deformable barrier crash test into FMVSS No. 208.

[25] A constant energy level would be determined by using an average-sized (or representative) passenger vehicle in a fixed offset deformable barrier crash test at a prescribed vehicle speed. That constant energy level would then be applied when testing the remainder of the fleet, such that lighter vehicles would be tested at higher speeds, and heavier vehicles would be conducted at lower speeds.

[26] GM also commented that the intent of making the impact speed proportional to the mass is directionally sound, but impracticable since the approach will drive slightly different test conditions for any vehicle tested and a significant amount of confusion could result.

approach require extensive research to determine the appropriate energy balance (mass and velocity) for which to balance the self and partner protection of the fleet. The strategy of combining an offset deformable barrier crash test with a full-width deformable barrier has merit for consideration; however, we also agree with Honda's belief that its approach is not mature enough and/or the fleet-wide effects are not understood well enough to include them in a standard at this time.

Several vehicle manufacturers alternatively suggested the use of existing FMVSS No. 208 tests to reduce lower extremity injuries. GM suggested adding the Denton/HIII lower leg instrumentation to the 0–40 km/h offset deformable barrier crash test in FMVSS No. 208. However, based on our testing experience in this crash configuration,[27] we are not persuaded that this proposal would drive the design of effective countermeasures that would reduce lower leg injuries. DaimlerChrysler also suggested adding lower leg instrumentation to the unbelted full frontal barrier crash tests of FMVSS No. 208. NHTSA has conducted 16 unbelted rigid barrier crash tests at 40 km/h with Hybrid III dummies having instrumented lower legs. Seven out of 16 vehicles exceeded the provisional injury criteria for the lower leg instrumentation. While DaimlerChrysler's suggestion may have more potential for reducing lower extremity injuries, further testing would be needed to evaluate the benefits of this approach, as well as investigate the lower leg performance in other crash tests prescribed by FMVSS No. 208.

In the Request for Comments, the agency also discussed limiting the vehicle classes or gross vehicle weight rating (GVWR) of the vehicles to which a frontal offset crash test requirement would apply as one strategy to reduce the potential disbenefits. The example provided was to limit the applicability of the frontal offset test requirement to passenger cars. NHTSA estimated that approximately 77 percent of the benefits of a high speed frontal offset requirement would accrue to passenger car occupants since their vehicles would be required to maintain compartment integrity and provide improved lower leg protection. It was noted that passenger car occupants may also benefit from the exclusion of LTVs, since the LTVs striking them may not be designed to be as stiff.

[27] NHTSA has conducted over 30 crash tests in the configuration proposed by GM. In each test, the driver dummy lower leg injury measures were far below the provisional injury criteria recommended by GM.

Several commenters on the Request for Comments were conceptually supportive of this alternative approach. Ford supported the European frontal offset crash test procedure for compact and subcompact passenger cars, because it said doing so would harmonize U.S. standards with those of the rest of the world. Ford stated that for larger, heavier vehicles, a deformable element that can absorb added kinetic energy must be developed to provide realistic test results, and vehicle design changes that would improve safety. GM and DaimlerChrysler[28] also supported the concept of an offset deformable barrier crash test with a mass limitation. GM and DaimlerChrysler suggested that up to some mass level, an offset deformable barrier crash test could be beneficial to a vehicle without increasing its aggressivity to a partner vehicle. Furthermore, the Alliance suggested that the potential disbenefits of a high speed frontal offset crash test might be reduced if the configuration were harmonized with the Economic Commission for Europe (ECE R94) 56 km/h frontal offset crash test, since higher test speeds were more prone to partner protection issues in heavier vehicles, such as LTVs. Other commenters, however, were against creating a distinction between passenger cars and LTVs. The Advocates strongly believed that since LTVs are predominantly designed and marketed as family vehicles, safety standards should apply to all passenger vehicle types, so that benefits to LTV occupants would not be discarded.

NHTSA believes that a mass exclusion approach addressing lighter vehicles would be an intermediate step to address lower extremity injury protection, while solutions to aggressivity issues related to heavier vehicles are being sought. We agree with Ford's observation that applying a frontal offset crash test requirement to compact and subcompact classes of passenger cars would be comparable to approaches taken in other countries. The results from our 56 km/h offset deformable barrier crash test results are also in agreement with the Alliance's suggestion that the potential disbenefits may be reduced at a lower impact speed. In response to the Advocates, we believe that occupant protection for heavier vehicles would still be provided. FMVSS No. 208 requires full frontal barrier requirements up to 56 km/h, and a fixed offset deformable barrier test up to 40 km/h for vehicles up to a loaded GVWR of 3,856 kg. Therefore, we believe concerns regarding crash protection to LTV occupants may be partially addressed through existing requirements until such time that the agency is ready to move forward with a more comprehensive approach.

[28] DaimlerChrysler supported this approach as intermediate step towards a mass-dependent impact speed strategy (discussed further in the notice).

IV. Rationale for Withdrawal

Although the agency testing and analyses completed thus far have provided a good understanding of the issues associated with frontal offset crashes, lower extremity injuries, and dummy instrumentation, further studies are needed to allow NHTSA to develop a proposed upgrade to FMVSS No. 208 that would effectively provide occupant protection in frontal offset crashes without adversely affecting the occupant protection of its collision partners. In the agency's Request for Comments, NHTSA used data from the 1995–2001 National Automotive Sampling System Crashworthiness Data System (NASS–CDS) in estimating that approximately 84,811 front seat vehicle occupants annually experience AIS 2+ skeletal and joint injuries to the lower extremities and hip in frontal offset crashes. Based on the agency's fixed offset deformable barrier crash tests conducted to date, and those from the IIHS, the agency preliminarily determined that such a test requirement would have the potential of annually reducing 1,300 to 8,000 MAIS 2+ lower extremity injuries.

Some aspects of these preliminary benefit projections were based on a very limited number of crash tests, as noted by some commenters to the request for comments notice. The testing of some crash configurations had been limited, to some extent, by the number of different research alternatives that the agency had explored (*i.e.*, lower leg instrumentation, dummy size, impact speed, *etc.*). The agency also did not have the opportunity to test any advanced air bag vehicles, as noted by other commenters. To accumulate the necessary data to refine and complete our benefits analysis, we believe that additional testing is needed, particularly of newer vehicles reflective of those in the current fleet.

We also remain concerned about increasing vehicle aggressivity and fleet incompatibility as a result of adopting a high-speed frontal offset crash test, particularly for heavier LTVs. In making our decision to withdraw this rulemaking, the agency had also considered other alternative approaches suggested by commenters. Energy management approaches (MDB and fixed offset deformable barrier tests with

a mass-dependent impact speed), force application limits, NCAP strategies, and lower leg applications in existing FMVSS No. 208 tests were among those considered. However, we believe each of these alternative approaches needs some degree of research and testing prior to consideration for rulemaking.

Despite this, we are concerned with the large number of lower extremity injuries associated with offset frontal crashes, since they are the second most costly long-term injuries, after brain injuries. Based upon our initial benefit analyses, we have tentatively determined that the most effective way to address these injuries while balancing the concerns with increased aggressivity is to pursue development of requirements in a two-step approach. The first step would be to develop offset frontal requirements for a limited segment of the vehicle fleet. Our initial cost/benefit estimates indicate that we would be able to maximize lower extremity benefits without creating disbenefits due to incompatibility by limiting applicability to a segment of the vehicle fleet. The second, longer-term step would be to develop requirements for those vehicles that are prone to increased aggressivity, perhaps in conjunction with compatibility requirements.

Based upon testing the agency has completed thus far, we believe that a fixed offset deformable barrier crash test in the range of 56–60 km/h using advanced dummy instrumented legs would provide the best opportunity to reduce lower extremity injuries without exacerbating vehicle incompatibility. However, focused testing under these conditions is needed to provide a sufficient basis to develop an offset frontal rulemaking proposal. We will examine the number of tests needed, including using two dummy sizes and requiring left/right side impacts. We also plan to explore new approaches to developing a performance metric for compartment intrusion, and its correlation to injury during the course of this testing and development.

The agency will also continue its efforts toward federalization [29] of retrofit instrumented lower legs for both the 5th and 50th percentile Hybrid III dummies. On May 3, 2002, the agency published an Advance Notice of Proposed Rulemaking (ANPRM) (67 FR 22381) on the adoption of the two potential types of lower leg instrumentation for assessing lower leg injury in full and offset-frontal crashes. In support of the notice, the agency published a technical report [30] describing the leg assemblies and documenting the lab, sled, and vehicle test experiences with the two pairs of lower leg instrumentation. Based on the ANPRM and subsequent testing, we have tentatively decided that the Thor-Lx/HIIIr and Thor-Flx/HIIIr lower leg instrumentation appear to have the greatest potential to assess lower extremity injuries. The agency is currently moving forward with the federalization of these two sets of lower leg instrumentation.

The agency also needs to conduct additional frontal high-speed offset crash tests to gather sufficient data for fleet representation and refined benefit estimates. These crash tests will be conducted with vehicle models certified to the advanced air bag requirements of FMVSS No. 208. Both 5th percentile female and 50th percentile male Hybrid III dummies will be instrumented with Thor-Lx/HIIIr and Thor-Flx/HIIIr lower leg instrumentation in the driver and right front passenger seating positions. Dummy and intrusion measurements from the tests will be compared to the field data experience. With this information, better estimates for the injury reduction rates associated with the proposed offset frontal requirement will be developed.

Finally, the agency will conduct an optimization study to determine the appropriate applicability limit for which the frontal offset crash test requirement should apply in order to maximize self protection, while minimizing the amount of risk associated with partner protection.

In sum, we believe that a fixed offset deformable barrier crash test, with applicability limited to a segment of the vehicle fleet and in the range of 56–60 km/h using advanced dummy instrumented legs, would provide the best opportunity to reduce lower extremity injuries without exacerbating vehicle incompatibility. However, focused testing under these conditions is needed to develop a sufficient basis for an offset frontal rulemaking proposal. Since this additional testing will not be completed within a year, we have decided to withdraw rulemaking for offset frontal requirements until completion of the testing and analysis, and then re-initiate rulemaking when it is completed.

V. Conclusion

Based on our evaluation of available information, we have concluded that further study is needed to have sufficient data to establish the appropriate number of tests and dummies, and to refine cost/benefit estimates for a definitive rulemaking proposal. Accordingly, we have decided that we should remove the frontal offset and lower leg instrumentation rulemakings from the Semi-Annual Regulatory Agenda (Unified Agenda) because rulemaking action is not anticipated in the immediate future. However, during the next year, we will continue the testing and analyses necessary to develop a proposal for occupant lower extremity protection in offset frontal crashes, and again place it in the Unified Agenda when a proposal is imminent.

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Issued: August 18, 2005.

H. Keith Brewer,

Director, Office of Crash Avoidance Standards for Rulemaking.

[FR Doc. 05–16721 Filed 8–19–05; 8:45 am]

BILLING CODE 4910–59–P

[29] Specifying by regulation at 49 CFR Part 572 *Anthropomorphic Test Devices.*

[30] Docket No. NHTSA–2002–11838.

Notices

Federal Register
Vol. 70, No. 162
Tuesday, August 23, 2005

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Sanders County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lolo and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on August 25 at 6:30 p.m. in Thompson Falls, Montana for a business meeting. The meeting is open to the public.

DATES: August 25, 2005.

ADDRESSES: The meeting will be held at the Thompson Falls Courthouse, 1111 Main Street, Thompson Falls, MT 59873.

FOR FURTHER INFORMATION CONTACT: Randy Hojem, Designated Federal Official (DFO), District Ranger, Plains Ranger District, Lolo National Forest at (406) 826–3821.

SUPPLEMENTARY INFORMATION: Agenda topics include reviewing the status of past projects, begin reviewing proposed RAC projects for 2006, and receiving public comment. If the meeting location is changed, notice will be posted in the local newspapers, including the Clark Fork Valley Press, and Sanders County Ledger.

Dated: August 12, 2005.

Randy Hojem,

DFO, Plains Ranger District, Lolo National Forest.

[FR Doc. 05–16653 Filed 2–22–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Cancellation of Meeting of the Agricultural Air Quality Task Force

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of meeting cancellation.

SUMMARY: The Agricultural Air Quality Task Force (AAQTF) meeting originally scheduled for Thursday, September 22–23, 2005, in Ithaca, New York, has been cancelled. The original meeting notice can be found in the **Federal Register**, Volume 70, Number 151, pages 45649–45650, published on Monday, August 8, 2005.

FOR FURTHER INFORMATION CONTACT: Questions or comments should be directed to Dr. Diane E. Gelburd, Designated Federal Official; telephone: (202) 720–2587; fax: (202) 720–2646; e-mail: *Diane.Gelburd@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information concerning AAQTF may be found on the World Wide Web at *http://aaqtf.tamu.edu/.* Notice of future AAQTF meetings will be published in the **Federal Register**.

Procedural

Meetings of AAQTF are open to the public. Written materials already submitted by members of the public will be retained and distributed to AAQTF at the next scheduled meeting, of which details will appear in the **Federal Register**.

Signed in Washington, DC on August 10, 2005.

Bruce I. Knight,

Chief.

[FR Doc. 05–16654 Filed 8–22–05; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Transportation and Related Equipment Technical Advisory Committee; Notice of Open Meeting

The Transportation and Related Equipment Technical Advisory Committee will meet on September 7, 2005, 9:30 a.m., in the Herbert C. Hoover Building, Room 6087B, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to transportation and related equipment or technology.

Agenda:

1. Opening remarks and introductions.
2. Review of Bureau issues of significance to TRANSTAC members.
3. Regulatory Overview.
4. Policy issues.
5 Wassenaar proposal status.
6. Jurisdiction working group report.
7. Follow-up on open action items.
8. Focus on proposals for March 6 Wassenaar presentation.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, member of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials to Yvette Springer at *Yspringer@bis.doc.gov.*

For more information, call Ms. Springer on (202) 482–4814.

Dated: August 17, 2005.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 05–16686 Filed 8–22–05; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Watch Duty-Exemption and 7113 Jewelry Duty-Refund Program Forms

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on 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 October 24, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via Internet at *dHynek@doc.gov* Telephone No. (202) 482–0266.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Faye Robinson, Acting Director, Statutory Import Programs Staff, Room 4211, U.S. Department of Commerce, Washington, DC 20230; Phone number (202) 482–3526, fax number (202) 482–0949 or via Internet at *Faye_Robinson@ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Pub. L. 97–446, as amended by Pub. L. 103–465, Pub. L. 106–36 and Pub. L. 108–429, requires the Departments of Commerce and the Interior to administer the distribution of watch duty-exemptions and watch and jewelry duty-refunds to program producers in the U.S. insular possessions and the Northern Mariana Islands. The primary consideration in collecting information is the enforcement of the laws and the information gathered is limited to that necessary to prevent abuse of the program and to permit a fair and equitable distribution of its benefits. Form ITA–340P provides the data to assist in verification of duty-free shipments of watches into the United States and make certain the allocations are not exceeded. Forms ITA–360P and ITA–361P are necessary to implement the duty-refund program for the watch and jewelry producers. The duty-refund benefit is issued biannually and forms ITA–360P and ITA–361P are used for the distribution of the duty-refund benefit. Due to the passage of Pub. L. 106–36 and Pub. L. 108–429, we will be updating the forms ITA–360P and ITA–361P. The updates will not include any new collections of data.

II. Method of Collection

The Department of Commerce issues Form ITA–360P to each watch and jewelry producer biannually. No information is requested unless the recipient wishes to transfer the certificate. Form ITA–361P is obtained from the Department of Commerce and must be completed each time a certificate holder wishes to obtain a portion, or all, of the duty-refund authorized by the certificate. The form is then sent to the Department of Commerce for validation and returned to the producer. Form ITA–340P may be obtained from the territorial government or may be produced by the company in an approved computerized format or any other medium or format approved by the Departments of Commerce and the Interior. The form is completed for each duty-free shipment of watches and watch movements into the U.S. and a copy is transmitted to the territorial government. Only if entry procedures are not transmitted electronically through Customs and Border Protection's automated broker interface, do the regulations require a copy of the permit be sent to Customs and Border Protection along with other entry paperwork.

III. Data

OMB Number: 0625–0134.

Form Number: ITA–340P, 360P, 361P.

Type of Review: Revision-Regular Submission.

Affected Public: Business or other for-profit .

Estimated Number of Respondents: 4 (Form ITA–340); 8 (Forms ITA–360P &361P).

Estimated Time Per Response: 6 minutes (Forms ITA–340P & 361P); 0 (ITA–360P).

Estimated Total Annual Burden Hours: 64 hours and 16 minutes.

Estimated Total Annual Costs: $10,771.

The estimated annual cost for this collection is $10,771 ($739 for respondents and $10,000 for federal government (included are some administration costs of program).

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 costs) 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 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: August 17, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–4591 Filed 8–22–05; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology (VCAT), National Institute of Standards and Technology (NIST), will meet Tuesday, September 13, 2005, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include updates on NIST's activities and the U.S. Measurement System Initiative; presentations on Implementation of NIST Strategic Plan in Homeland Security, including an overview of the Department of Homeland Security's Agenda for Homeland Security and the NIST role; Response to VCAT Recommendations in the FY 2004 Annual Report; and two laboratory tours. Discussions on NIST budget and planning information scheduled to begin at 8:30 a.m. and to end at 9:45 a.m. on September 13 will be closed. Agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone

number to Carolyn Peters no later than Thursday, September 8, and she will provide you with instructions for admittance. Mrs. Peter's e-mail address is *carolyn.peters@nist.gov* and her phone number is (301) 975–5607.

DATES: The meeting will convene on September 13 at 8:30 a.m. and will adjourn at 5 p.m.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Peters, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1000, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 27, 2004, that portions of the meeting of the Visiting Committee on Advanced Technology which deal with discussion of sensitive budget and planning information that would cause harm to third parties if publicly shared be closed in accordance with Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2.

Dated: August 17, 2005.

Hratch G. Semerjian,

Deputy Director.

[FR Doc. 05–16693 Filed 8–22–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will be meeting Tuesday, September 13, 2005, from 8:30 a.m. until 5 p.m. and Wednesday, September 14, 2005, from 8:30 a.m. until 5 p.m. and Thursday, September 15, 2005, from 8:30 a.m. until 12 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/ispab/.*

DATES: The meeting will be held on Tuesday, September 13, 2005, from 8:30 a.m. until 5 p.m. and Wednesday, September 14, 2005, from 8:30 a.m. until 5 p.m. and Thursday, September 15, 2005, from 8:30 a.m. until 12 p.m.

ADDRESSES: The meeting will take place at the Doubletree Hotel and Executive Meeting Center, 1750 Rockville Pike, Rockville, Maryland.

Agenda:

—Welcome and Overview.
—Privacy Act—Legal and Policy Framework.
—Government Security Line of Business.
—ISPAB Work Plan revisited.
—National Information Assurance Partnership Program—The Study.
—Computer Security Division Activities update.
—Agenda Development for December 2005 ISPAB Meeting.
—Role of the Chief Privacy Officer—next steps.
—Wrap-Up.

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees not later than September 9, 2005. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Ms. Pauline Bowen, Board Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930, telephone: (301) 975–2938.

Dated: August 16, 2005.

William A. Jeffrey,

Director.

[FR Doc. 05–16692 Filed 8–22–05; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Thursday, September 15, 2005. The Judges Panel is composed of ten members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the consensus process, select applicants for site visits, determine possible conflict of interest for site visited companies, begin stage 3 judging process, discuss Judges' survey revisions, review feedback to first stage applicants, a debriefing on the State and Local Workshop and a program update. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene September 15, 2005, at 9 a.m. and adjourn at 3 p.m. on September 15, 2005. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room D, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 20, 2004, that the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of Award

applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with section 552b(c)(4) of title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: August 13, 2005.

William Jeffrey,

Director.

[FR Doc. 05–16695 Filed 8–22–05; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Pacific Islands Region, Guam Bottomfish Large Vessel Permits

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.

DATES: Written comments must be submitted on or before October 24, 2005.

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 Anik Clemens (808) 944–2265 or *anik.clemens@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS) requires U.S. vessels, larger than 50 feet in length that land or transship bottomfish management unit species shoreward of the outer boundary of the Exclusive Economic Zone (EEZ) around Guam, be registered under a valid permit. Eligibility for such a permit would not be restricted in any way, and the permit would be renewable on an annual basis. To obtain a permit for a given year, a prospective participant would have to complete and submit an application form to NMFS. The permit application form provides basic information about the permit applicant, vessel, fishing gear and method, targeted species, projected fishing effort, etc., for use by NMFS and the Western Pacific Fishery Management Council. The information is important for understanding the nature of the fishery and provides a link to participants. It also aids in the enforcement of the Fishery Management Plan measures.

II. Method of Collection

Information is submitted in the form of paper permit application forms.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations; individuals or households.

Estimated Number of Respondents: 5.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 3.

Estimated Total Annual Cost to Public: $0.

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: August 17, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–16662 Filed 8–22–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Pacific Islands Region, Guam Bottomfish Large Vessel Logbook and Reporting

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.

DATES: Written comments must be submitted on or before October 24, 2005.

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 Anik Clemens (808) 944–2265 or *anik.clemens@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Under a Guam Bottomfish Large Vessel Fishing Permit authorized under the Fishery Management Plan for Bottomfish of the Western Pacific Region, the National Marine Fisheries Service (NMFS) requires U.S. fishing vessels registered for use, or any U.S. citizen issuee, to maintain on board the vessel an accurate and complete logbook and submit it to NMFS. The information in the logbook is used to obtain fish catch, fishing effort, and other data on bottomfish harvested in the area outside 50 nm of Guam shores. These data are needed to determine the condition of the fish stocks and whether or not the current management measures are having the intended effects, to evaluate the benefits and costs of changes in management measures, and to monitor and respond to incidental takes of endangered and threatened species.

II. Method of Collection

All information is recorded on paper logbook sheets.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business or other for-profits organizations; individuals or households.
Estimated Number of Respondents: 5.
Estimated Time Per Response: 30 minutes.
Estimated Total Annual Burden Hours: 550.
Estimated Total Annual Cost to Public: $0.

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: August 17, 2005.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 05–16663 Filed 8–22–05; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081705B]

Fisheries of the Exclusive Economic Zone Off Alaska; Notice of Crab Rationalization Program Public Workshop

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public workshop.

SUMMARY: NMFS will present a public workshop on the new Crab Rationalization Program (Program) for participants in the Bering Sea and Aleutian Islands (BSAI) king and Tanner crab fisheries. At this workshop, NMFS will review the Program, discuss the key Program elements, provide information on the application process, and answer questions. This workshop is specifically intended to address issues related to the Arbitration System portion of the Program. NMFS is conducting this public workshop to assist participants in complying with the requirements of this new Program.

DATES: The workshop will be held on Thursday, September 1, 2005, from 10 a.m. to 4 p.m. Pacific Standard Time (PST).

ADDRESSES: The workshop will be held at the Leif Erickson Hall, 2245 Northwest 57th Street, Seattle, WA.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, telephone: 907–586–7228; e-mail: *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: On March 2, 2005, NMFS published a final rule implementing the Program as Amendments 18 and 19 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs (70 FR 10174).

NMFS conducted four public workshops in March and April of 2005 in Alaska, Oregon, and Washington to assist fishery participants in complying with the requirements of the Program. At these workshops, NMFS reviewed the Program, discussed the key Program elements, and provided information on the application process. NMFS conducted an additional workshop on the Arbitration System in Seattle, WA, on May 9, 2005.

As with the May workshop, the September 1, 2005 workshop is intended to specifically focus on the Arbitration System. Elements related to economic data collection, monitoring and enforcement, electronic reporting, quota share and individual fishing quota application and transfer provisions, the appeals process, fee collection, and the loan program may be addressed secondarily. Additionally, NMFS will answer questions from workshop participants. For further information on the Crab Rationalization Program, please visit the NMFS Alaska Region Internet site at *www.fakr.noaa.gov*.

Special Accommodations

This workshop is physically accessible to people with disabilities. Requests for special accommodations should be directed to Glenn Merrill (see **FOR FURTHER INFORMATION CONTACT**) at least 5 working days before the workshop date.

Dated: August 18, 2005.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–4608 Filed 8–22–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081705A]

Gulf of Mexico Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public hearing.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public hearing to solicit comments on a Regulatory Amendment to the Reef Fish Fishery Management Plan to Set Commercial and Recreational Management Measures for Grouper.

DATES: The public hearing will held on Wednesday, September 7, 2005. The hearing will begin at 6 p.m. and conclude no later than 10:30 p.m.

ADDRESSES: The public hearing will be held at the Best Western The Westshore Hotel, 1200 North Westshore Boulevard, Tampa, FL 33607; telephone: (813) 282–3636.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Mr. Stu Kennedy, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico Fishery Management Council (Council) will convene a public hearing to solicit comments on a Regulatory Amendment to the Reef Fish Fishery Management Plan to set Commercial and Recreational Management Measures for Grouper.

Proposed measures include setting grouper trip limits for the commercial fishery, reduce recreational red grouper harvest in the Gulf of Mexico, and minimize associated impacts on gag and other groupers.

This Regulatory Amendment will address measures to set commercial trip limits for deep-water and shallow-water grouper to extend the fishing season into December, reduce recreational red grouper harvest in the Gulf of Mexico,

and minimize associated impacts on gag and other groupers: Secretarial Amendment 1 to the Reef Fish Fishery Management Plan of the Gulf of Mexico established a rebuilding plan and 6.56 million pounds of gutted weight allowable biological catch for red grouper. During 2003 and 2004, recreational red grouper landings exceeded the 1.25 million pounds gutted weight recreational allocation and during 2004, commercial fishing was closed on November 15 because the commercial quota was reached. In March 2005, the NMFS implemented an emergency rule to set trip limits but they will expire in February 2006 unless continued through this regulatory amendment. In July 2005, the NMFS implemented an interim rule to reduce the 2005 recreational red grouper harvest to levels in Secretarial Amendment 1 but they will expire in January 2006 unless continued through this regulatory amendment. The purpose of this regulatory amendment is to adjust regulatory management measures for the Gulf of Mexico red grouper fishery. New or adjusted management measures are needed if the Council intends to reduce the adverse socioeconomic effects of derby fishing in the commercial fishery, return recreational landings to levels specified in the red grouper rebuilding plan, and prevent or minimize impacts on gag and other groupers resulting from more restrictive recreational red grouper regulations.

A copy of the Amendment and related materials can be obtained by calling the Council office at (813) 348–1630.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council (see **ADDRESSES**) by August 29, 2005.

Dated: August 18, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–4600 Filed 8–22–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081705C]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; committee meeting.

SUMMARY: The New England Fishery Management Council's (Council) Scallop Oversight Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The two-day meeting will be held on Wednesday, September 7, 2005, from 9 a.m. to 5 p.m. and Thursday, September 8, 2005, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Four Points by Sheraton, 407 Squire Road, Revere, MA 02151; telephone: (781) 284–7200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

Wednesday, September 7, 2005, at 9 a.m.

The Oversight Committee will review the analysis of alternatives in Framework Adjustment 18 (FW 18) and identify preferred alternatives. The Council will take a final vote on these recommendations when it meets on September 13–15, 2005 in Fairhaven, MA. FW 18 includes alternatives addressing the following: area rotation measures; specifications for trip and days-at-sea (DAS) allocations in 2006 and 2007; a proposed Notice Action procedure to adjust 2007 Elephant Trunk Area and open area allocations based on surveys of scallop biomass; measures to constrain the growth of the general category scallop fishery; an increase in the crew limits for controlled access area trips; a new bycatch data collection and monitoring program; changes in controlled access area trip exchange measures and deadlines; a measure to further liberalize the broken trip exemption program, and changes in the research set-aside program.

Thursday, September 8, 2005, at 8:30 a.m.

Continuation of above agenda.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: August 18, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–4598 Filed 8–22–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081805A]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet September 18–23, 2005. The Council meeting will begin on Monday, September 19, at 4 p.m., reconvening each day through Friday. All meetings are open to the public,

except a closed session will be held at 4 p.m. on Monday, September 19 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Embassy Suites Portland Airport, 7900 NE 82nd Avenue, Portland, OR 97220, telephone: 503–460–3000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks, Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Administrative Matters

1. Approval of Council Meeting Minutes
2. Council Meeting Agenda Planning
3. Legislative Matters
4. Fiscal Matters
5. Appointments to Advisory Bodies, Standing Committees, and Other Forums
6. Work Load Priorities and Draft November 2005 Council Meeting Agenda

C. Highly Migratory Species Management

1. NMFS Report
2. Bigeye Tuna Overfishing Response Update
3. Proposed Council Operating Procedure for Approving Exempted Fishing Permits for Highly Migratory Species

D. Pacific Halibut Management

1. Proposed Changes to the Catch Sharing Plan and Annual Regulations
2. Pacific Halibut Bycatch Estimate for the International Pacific Halibut Commission

E. Habitat

1. Current Habitat Issues

F. Groundfish Management

1. Status of 2005 Groundfish Fisheries and Consideration of Inseason Adjustments
2. NMFS Report
3. Amendment 18 (Bycatch)
4. Amendment 19 (Essential Fish Habitat)
5. Final Consideration of Inseason Adjustments, If Necessary
6. Process and Schedule for 2007–2008 Biennial Management Specifications Adoption
7. Rebuilding Plan Revision Policy
8. Stock Assessments for 2007–2008 Groundfish Fisheries
9. Management Specifications for Spiny Dogfish and Pacific Cod for 2006

G. Salmon Management

1. Klamath River Fall Chinook Conservation Objective
2. Salmon Methodology Review

H. Marine Protected Areas

1. Channel Islands National Marine Sanctuary

SCHEDULE OF ANCILLARY MEETINGS

SUNDAY, September 18, 2005	
Groundfish Management Team	1 p.m.
MONDAY, September 19, 2005	
Council Secretariat	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Habitat Committee	8 a.m.
Scientific and Statistical Committee	8 a.m.
Model Evaluation Workgroup	9 a.m.
Special Briefing: Groundfish Stock Assessments - A Summary by Northwest Fisheries Science Center	9 a.m.
Legislative Committee	10:30 a.m.
Budget Committee	1 p.m.
Special Presentation: "Common Ground: Oregon's Ocean" (Green Fire Productions Marine Habitat Protection Video)	5 p.m.
Enforcement Consultants	5:30 p.m.
TUESDAY, September 20, 2005	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Enforcement Consultants	As necessary
WEDNESDAY, September 21, 2005	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Salmon Advisory Subpanel	8 a.m.
Salmon Technical Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Enforcement Consultants	As necessary
THURSDAY, September 22, 2005	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As necessary
FRIDAY, September 23, 2005	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Enforcement Consultants	As necessary

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those 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 Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: August 18, 2005.

Emily Menashes,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E5–4599 Filed 8–22–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081605B]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; receipt of applications for scientific research permits.

SUMMARY: Notice is hereby given that NMFS has received two scientific research permit applications (1533 and

1548) relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight-saving time on September 22, 2005.

ADDRESSES: Written comments and public hearing requests on the applications should be mailed to Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232-1274; or faxed to 503–230–5441; or e-mailed to *resapps.nwr@NOAA.gov*.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, fax: 503–230–5441, e-mail: *Garth.Griffin@noaa.gov*. Permit application instructions are available at *http://www.nwr.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species (evolutionarily significant units) are covered in this notice:

1. Snake River (SR) fall chinook salmon (*Oncorhynchus tshawytscha*);
2. SR spring/summer (spr/sum) chinook salmon (*O. tshawytscha*);
3. Upper Columbia River (UCR) spring chinook salmon (*O. tshawytscha*);
4. UCR steelhead (*O. mykiss*); and
5. Middle Columbia River (MCR) steelhead (*O. mykiss*).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 et. seq) and regulations governing listed fish and wildlife permits (50 CFR 222-226). NMFS issues permits based on findings that such permits: (1) are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1533

The Washington Department of Fish and Wildlife (WDFW) is requesting a five-year permit to take adult and juvenile SR spr/sum and fall chinook salmon during the course of two studies in the lower Snake River. The first study would determine steelhead, bull trout, and spring chinook stock status (i.e., distribution, relative abundance, and genetic characterization) in mainstem areas and tributaries of the Grande Ronde and Snake Rivers in Asotin, Garfield, Whitman, and Columbia Counties in Washington State. The second study would take place in Asotin Creek, Washington, and would focus on monitoring the population status of summer steelhead and spring and fall chinook salmon in Asotin Creek above George Creek. It would also focus on the productivity of the natural populations in the absence of direct hatchery influences (i.e., out-plants or supplementation). The studies would benefit the fish by collecting baseline data that would be used to improve planning and future management decisions.

The WDFW intends to capture the fish using smolt traps, hook-and-line fishing equipment, backpack electrofishers and, possibly, dip nets. The fish would be variously captured, handled, measured, tissue-sampled, and released. Some of the captured juveniles would receive passive integrated transponder (PIT) tags, and a few captured adults would receive a combination of floy- and PIT-tags. In some cases, tissue samples would be taken from already dead fish. Moreover, rescue and salvage operations would be conducted whenever needed. The WDFW does not intend to kill any of the fish being captured, but some may die as an unintended result of the research.

Permit 1548

The Yakima Training Center (YTC) is seeking a five-year permit to take juvenile UCR spring chinook salmon, juvenile UCR steelhead, and juvenile MCR steelhead during the course of several surveys on YTC land in southwestern Washington State. The research is designed to determine fish abundance and distribution on the YTC lands as well as describe habitat conditions throughout the 500-square mile reservation. The fish would benefit from the research because it would allow YTC staff to take them fully into account and thereby protect them during all future land management planning. It would also give regional fish managers important data on fish presence that have not previously been available.

The YTC researchers intend to capture the fish using backpack electrofishing gear, seines, and minnow traps. Once captured, the fish would be measured, allowed to recover, and released. Some of the steelhead may have scale samples taken. The YTC does not intend to kill any of the fish being taken, but some may die as an unintended result of the activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: August 18, 2005.

P. Michael Payne,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 05–16710 Filed 8–22–05; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF EDUCATION

Jacob K. Javits Gifted and Talented Program—National Research and Development Center

AGENCY: Institute of Education Sciences (IES), Department of Education.

ACTION: Notice of extension of project period and waiver.

SUMMARY: The Director waives the requirements in Education Department General Administrative Regulations (EDGAR), in 34 CFR 75.250 and 75.261(c)(2), respectively, that generally prohibit project periods exceeding five years and project period extensions involving the obligation of additional Federal funds. This extension of project period and waiver will enable the current Jacob K. Javits Gifted and Talented Program—National Research and Development Center (Center) to be funded for an additional 12-month Federal funding period from October 1, 2005, until September 30, 2006, a period exceeding the original project period of five years. This extension will avoid any lapse in research and related activities conducted by the Center while IES is conducting a competition for a new award under this program during fiscal year 2006.

DATES: This notice is effective August 23, 2005.

FOR FURTHER INFORMATION CONTACT: Elizabeth Payer, Institute of Education Sciences, U.S. Department of Education, 555 New Jersey Avenue, NW., room 602C, Washington, DC 20208. Telephone: (202) 219–1310 or via Internet: *elizabeth.payer@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: On June 13, 2000, we published a notice in the **Federal Register** (65 FR 37229) inviting applications for one award under the Jacob K. Javits Gifted and Talented Education Program—National Research and Development Center. The purpose of this program is to support a national research and development center to conduct research on methods and techniques for identifying and teaching gifted and talented students and for using gifted and talented programs and methods to serve all students. The authorizing statute for the Jacob K. Javits Gifted and Talented Education Program does not specify a project period for this program. *See* the Jacob K. Javits Gifted and Talented Students Education Act of 1994, 20 U.S.C. 8034 (2000) and the Jacob K. Javits Gifted and Talented Students Education Act of 2001, 20 U.S.C. 7253 (2000 Supplement 1).

The notice inviting applications, consistent with 34 CFR 75.250, established a project period of five years. The project period for the Center, as established in its initial grant award, is from October 1, 2000 until September 30, 2005.

Under section 191 of the Education Sciences Reform Act, 20 U.S.C. 9581, IES is not subject to section 437(d) of the General Education Provisions Act, 20 U.S.C. 1232(d), and, for that reason, can waive 34 CFR 75.250 and 75.261(c)(2) without providing notice and an opportunity for public comment. Accordingly, IES waives the requirements in 34 CFR 75.250 and 75.261(c)(2), which prohibit project periods exceeding five years and extensions of project periods that involve the obligation of additional Federal funds. The waiver of these provisions will allow IES to fund the current Center for an additional budget period of 12 months, from October 1, 2005 until September 30, 2006. This action is being taken in order to avoid any lapse in research and related activities carried out by the Center while IES is conducting a competition for a new award under this program during fiscal year 2006.

Regulatory Flexibility Act Certification

The Secretary certifies that the final extension of the project period and waiver would not have a significant economic impact on a substantial number of small entities. The only entity that would be affected is the current Center.

Paperwork Reduction Act of 1995

This final extension of project period and waiver does not contain any information collection requirements.

Intergovernmental Review

This program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number 84.206 Javits Gifted and Talented Education Grants Program)

Program Authority: 20 U.S.C. 7253c(d).

Dated: August 18, 2005.

Grover J. Whitehurst,

Director, Institute of Education Sciences.

[FR Doc. 05–16722 Filed 8–22–05; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of Environmental Management

Notice of Preferred Sodium Bearing Waste Treatment Technology

AGENCY: Office of Environmental Management, U.S. Department of Energy.

ACTION: Extension of time for comments.

SUMMARY: In response to a public request, the Department of Energy (DOE) announces an extension of time to submit comments on the preferred technology announced August 3, 2005 in the **Federal Register** Notice of Preferred Sodium Bearing Waste Treatment Technology (70 FR 44598) to September 21, 2005.

ADDRESSES: Comments on the preferred technology may be submitted to Richard Kimmel, Document Manager, U.S. Department of Energy, Idaho Operations Office, 1955 North Fremont, MS–1222, Idaho Falls, Idaho, 83415 or via e-mail at *Richard.Kimmel@nuclear.energy.gov*.

DOE will consider any comments transmitted or postmarked by September 21, 2005 before issuing a Record of Decision on the Idaho High-Level Waste and Facilities Disposition Environmental Impact Statement. Comments submitted after this date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Requests for further information on the preferred technology should be addressed to: Richard Kimmel, Document Manager, U.S. Department of Energy, Idaho Operations Office, 1955 North Fremont, MS–1222, Idaho Falls, Idaho, 83415, Telephone (208) 526–5583, or via email at *Richard.Kimmel@nuclear.energy.gov*.

For further information on DOE's National Environmental Policy Act (NEPA) process, please contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

On August 3, 2005, the DOE published a Notice of Preferred Sodium Bearing Waste Treatment Technology (70 FR 44598) which announced that comments on the preferred treatment technology should be submitted no later than 30-days from the date of publication of the notice. DOE is extending the time allowed for submittal of comments to September 21, 2005.

Issued in Washington DC, August 18, 2005.

Steven Frank,

Office of Environmental Management, NEPA Compliance Office.

[FR Doc. 05–16674 Filed 8–22–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, September 28, 2005, 1 p.m.–8:30 p.m.

ADDRESSES: Jemez Complex, Santa Fe Community College, 6401 Richards Avenue, Santa Fe, New Mexico.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; Fax (505) 989–1752 or e-mail: *mmanzanares@doeal.gov*.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1 p.m.—Call to Order by Deputy Designated Federal Officer (DDFO), Christina Houston
Establishment of a Quorum
Welcome and Introductions by Vice-Chairman, Jim Brannon
Approval of Agenda
Approval of Minutes of July 27, 2005
1:15 p.m.—Board Business
A. Election of Chair and Vice-Chair for Fiscal Year 2006
B. Report from Vice-Chair, Jim Brannon
—Report on Site-Specific Advisory Board Chairs' Meeting in Idaho (September 21–23)
C. Report from Department of Energy, DDFO, Christina Houston
E. Consideration and Action on Fiscal Year 2006 Committee Work Plans
F. Consideration and Action on Fiscal Year 2006 Northern New Mexico Citizens' Advisory Board Budget
G. New Business
2:45 p.m.—Break
3 p.m.—Reports
A. Waste Management Committee, Jim Brannon
B. Community Involvement Committee, Grace Perez
C. Environmental Monitoring, Surveillance and Remediation Committee, Chris Timm
—Introduction of Recommendation 2005–6 (Tabled on July 27th)
—Introduction of Recommendation 2005–7 (Tabled on July 27th)
D. Reports from Ex-Officio Members
U.S. Environmental Protection Agency—Rich Mayer
U.S. Department of Energy—John Ordaz
University of California/Los Alamos National Laboratory—Ken Hargis
New Mexico Environment Department—James Bearzi
5 p.m.—Dinner Break
6 p.m.—Public Comment
6:15 p.m.—Consideration and Action on Recommendation 2005–6, Chris Timm
Consideration and Action on Recommendation 2005–7, Chris Timm
6:30 p.m.—Presentation on Risk Assessment by Dr. Helen Grogan of Risk Assessment Corporation
8 p.m.—Comments from Board and Ex-Officio Members
8:20 p.m.—Recap of Meeting: Issuance of Press Releases, Editorials, etc.
8:30 p.m.—Adjourn.

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.–4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http://www.nnmcab.org*.

Issued at Washington, DC, on August 17, 2005.

Carol Matthews,

Acting Advisory Committee Officer.

[FR Doc. 05–16675 Filed 8–22–05; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EMSSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 1, 2005, 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L–107, Front Range Community College, 3705 W. 112th Avenue, Westminster, Colorado.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Executive Director, Rocky Flats Citizens Advisory Board, 12101 Airport Way, Unit B, Broomfield, CO 80021; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Presentation and Discussion on Results of the Recent Aerial Gamma Survey Conducted at Rocky Flats.

2. Discussion on Board Work Plan Activities for 2006.

3. Presentation and Discussion on the Rocky Flats Post-Closure Involvement Plan.

4. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable

provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments. This Notice is being published less than 15 days before the date of the meeting due to programmatic issues.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 12101 Airport Way, Unit B, Broomfield, CO 80021; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC, on August 17, 2005.

Carol Matthews,

Acting Advisory Committee Officer.

[FR Doc. 05–16676 Filed 8–22–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–559–000]

Algonquin Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2005.

Take notice that on August 12, 2005, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective September 12, 2005.

Algonquin states that copies of its filing have been served upon all affected customers of Algonquin and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4575 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–665–000, ER05–665–001, and ER05–665–002]

Barrick Goldstrike Mines Inc.; Notice of Issuance of Order

August 16, 2005.

Barrick Goldstrike Mines Inc. (Barrick) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity, energy and ancillary at market-based rates. Barrick also requested waiver of various Commission regulations. In particular, Barrick requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Barrick.

On August 16, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Barrick should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is September 15, 2005.

Absent a request to be heard in opposition by the deadline above, Barrick is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Barrick, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Barrick issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4566 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–549–000]

Dominion Transmission, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2005.

Take notice that on August 10, 2005, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective September 12, 2005:

Fourth Revised Sheet No. 36
First Revised Sheet No. 155
Second Revised Sheet No. 204
Second Revised Sheet No. 208
Fourth Revised Sheet No. 211
First Revised Sheet No. 309
Eighth Revised Sheet No. 1406

DTI states that the purpose of the filing is to update the tariff sheets currently on file with the Commission. DTI states that it is filing the above referenced tariff sheets to correct outdated or omitted references and typographical errors and no substantive changes have been made to the above-referenced tariff sheets.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4571 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–552–000]

East Tennessee Natural Gas, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2005.

Take notice that on August 12, 2005, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective September 12, 2005.

East Tennessee states that copies of its filing have been served upon all affected customers of East Tennessee and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4573 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–553–000]

Egan Hub Storage, LLC; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2005.

Take notice that on August 12, 2005, Egan Hub Storage, LLC (Egan Hub) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective September 12, 2005.

Egan Hub states that copies of its filing have been served upon all affected customers of Egan Hub and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or

protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4574 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–400–001]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

August 16, 2005.

Take notice that on August 5, 2005, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with an effective date of September 1, 2005:

Second Revised Sheet No. 1800
Second Revised Sheet No. 1802
Original Sheet No. 1802A
Substitute Fourth Revised Sheet No. 2400

Gulf South states that it is submitting revised and supplemented tariff sheets to implement the changes required pursuant to the Commission's Order No. 587–S.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on August 22, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4569 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–550–000]

Portland General Electric Company; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2005.

Take notice that on August 11, Portland General Electric Company (PGE) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the tariff sheets listed in its filing, to be effective September 1, 2005.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4572 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–560–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

August 16, 2005.

Take notice that on August 5, 2005, Transcontinental Gas Pipe Line Corporation filed a report reflecting the flow through of refunds received from Dominion Transmission, Inc. in Docket No. RP05–502–000.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on August 23, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4565 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP05–546–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 16, 2005.

Take notice that on August 10, 2005, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Thirtieth Revised Sheet No. 28, to become effective August 1, 2005.

Transco states that copies of the filing are being mailed to affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4570 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–1020–000, ER05–1020–001, ER05–1020–002]

WASP Energy, LLC; Notice of Issuance of Order

August 17, 2005.

WASP Energy LLC (WASP) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of capacity, energy and ancillary at market-based rates. WASP also requested waiver of various Commission regulations. In particular, WASP requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by WASP.

On August 17, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by WASP should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is September 16, 2005.

Absent a request to be heard in opposition by the deadline above, WASP is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of WASP, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of WASP issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4604 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 710]

Wolf River Hydro Limited Partnership; Notice of Designation of Certain Commission; Personnel as Non-Decisional

August 16, 2005.

Commission staff members Lon Crow (Office of Energy Projects; *lon.crow@ferc.gov*, 202–502–8749) and Elizabeth Molloy (Office of the General Counsel; *elizabeth.molloy@ferc.gov*, 202–502–8771) are assigned to review and discuss with parties the provisions of a draft settlement agreement for the Shawano Project. The parties involved in the settlement process wish to complete a settlement agreement to resolve the pending court appeal of the license that was issued in 1997.

As non-decisional staff, Mr. Crow and Ms. Molloy will not participate in an advisory capacity in the Commission's review of any resulting offer of settlement or settlement agreement, or deliberations concerning the disposition of any license amendment application addressing the substance of the settlement agreement once it is filed for the project.

Different Commission advisory staff will be assigned to review any offer of settlement or settlement agreement, and process the amendment application, including providing advice to the Commission with respect to the agreement and application. Non-decisional staff and advisory staff will be prohibited from communicating with one another concerning this settlement agreement once filed and any related amendment application for the project.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4568 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–141–000]

Southern Montana Electric Generation & Transmission Cooperative, Inc., Complainant v. NorthWestern Corporation, NorthWestern Energy, and Montana First Megawatts I, LLC, Respondents; Notice of Complaint

August 17, 2005.

Take notice that on August 12, 2005, Southern Montana Electric Generation & Transmission Cooperative, Inc. (SME) filed a complaint with the Commission, pursuant to section 206 of the Federal Power Act, against NorthWestern Corporation, d/b/a NorthWestern Energy (NEW) and Montana First Megawatts I, LLC (MMI). The complaint asserts that NEW has not complied with the Commission's Large Generator Interconnection Policy in the management of its Generation Interconnection Queue with respect to its dealings with its affiliate MMI. SME requests that the Commission order NEW to process the Interconnection Request for SME's Highwood Generating Station as senior to the subordinated queue ranking which should have been assigned to MMI.

SME states that copies of the complaint have been served on NEW and MMI.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on September 1, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4606 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filings #2

Monday, August 15, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER00–2268–012, ER99–4124–010, ER00–3312–011, ER99–4122–013, ER03–352–003.

Applicants: Pinnacle West Capital Corporation, Arizona Public Service Company, Pinnacle West Energy Corporation, APS Energy Services Company, Inc., and Gen. West, LLC.

Description: Pinnacle West Companies submit an informational response to FERC's 6/8/05 letter.

Filed Date: 08/08/2005.

Accession Number: 20050811–0029.

Comment Date: 5 p.m. eastern time on Monday, August 29, 2005.

Docket Numbers: ER00–3251–010, EL05–132–000.

Applicants: Exelon Generation Company, LLC and AmerGen Energy Company, LLC, et al.

Description: Exelon Generation Company requests to substitute the Original Sheet 6, of an amendment to the market-based rate tariff filed 8/4/05.

Filed Date: 08/11/2005.

Accession Number: 20050815–0235.

Comment Date: 5 p.m. eastern time on Thursday, September 1, 2005.

Docket Number: ER04–841–001.

Applicants: Dominion Energy Salem Harbor, LLC and ISO New England Inc.

Description: Dominion Salem Harbor, LLC and ISO New England, Inc submits a Notice of Cancellation of the Reliability Agreement between ISO New England, Inc and USGen New England, Inc.

Filed Date: 08/11/2005.

Accession Number: 20050815–0236.
Comment Date: 5 p.m. eastern time on Thursday, September 1, 2005.

Docket Numbers ER05–1202–001.
Applicants: Blue Canyon Windpower II LLC.
Description: Blue Canyon Windpower II, LLC submits blacklined version of FERC Electric Tariff, Original Volume 1, correcting typographical errors in the Market Behavior Rules.
Filed Date: 08/10/2005.
Accession Number: 20050812–0143.
Comment Date: 5 p.m. eastern time on Wednesday, August 31, 2005.

Docket Numbers: ER05–1289–000, ER05–862–001.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits a Facilities Construction Agreement between PSEG Lawrenceburg Energy Co, LLC, the Midwest ISO and Cinergy Services, Inc.
Filed Date: 08/03/2005.
Accession Number: 20050805–0276.
Comment Date: 5 p.m. eastern time on Wednesday, August 24, 2005.

Docket Number: ER05–1310–000.
Applicants: Central Hudson Gas & Electric Corp.
Description: Notice of Cancellation of Rate Schedule FERC 13 filed with FERC on 9/1/54 pursuant to 18 CFR 35.15 and 131.53.
Filed Date: 08/10/2005.
Accession Number: 20050812–0141.
Comment Date: 5 p.m. eastern time on Wednesday, August 31, 2005.

Docket Number: ER05–1313–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc., on behalf of Kansas Gas & Electric Company, submits a Notice of Cancellation of an Amended Interchange Agreement with the Associated Electric Cooperative, Inc, and other companies.
Filed Date: 08/11/2005.
Accession Number: 20050815–0217.
Comment Date: 5 p.m. eastern time on Thursday, September 1, 2005.

Docket Number: ER05–1314–000.
Applicants: Allegheny Power.
Description: Monongahela Power Co, The Potomac Edison Company, and West Penn Power Company all doing business as Allegheny Power submit revisions to FERC Electric Tariff, Original Volume 6.
Filed Date: 08/11/2005.
Accession Number: 20050815–0218.
Comment Date: 5 p.m. eastern time on Thursday, September 01, 2005.

Docket Number: ER05–1317–000.
Applicants: NorthWestern Energy.
Description: NorthWestern Corporation dba NorthWestern Energy submits a Notice of Cancellation of its service agreement No. 30SD under FERC Electric Tariff, Original Volume 1.
Filed Date: 08/11/2005.
Accession Number: 20050815–0221.
Comment Date: 5 p.m. eastern time on Thursday, September 1, 2005.

Docket Number: ER05–1318–000.
Applicants: Geneva Energy, LLC.
Description: Geneva Energy, LLC's petition for acceptance of initial rate schedule (FERC Electric Rate Schedule 1), waivers and granting certain blanket authority.
Filed Date: 08/11/2005.
Accession Number: 20050815–0222.
Comment Date: 5 p.m. eastern time on Thursday, September 1, 2005.

Docket Number: ER05–1320–000.
Applicants: Avista Corporation.
Description: Avista Corporation submits revisions to its Open Access Transmission Tariff, FERC Electric Tariff, Volume 8.
Filed Date: 08/12/2005.
Accession Number: 20050815–0223.
Comment Date: 5 p.m. eastern time on Friday, September 2, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,
Secretary.
[FR Doc. E5–4562 Filed 8–22–05; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 15, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–1758–003.
Applicants: Altorfer, Inc.
Description: Altorfer Inc. submits revisions to its market-based FERC Electric Rate Schedule No. 1 to amend the reporting requirements for changes in status adopted in Order No. 652.
Filed Date: 08/09/2005.
Accession Number: 20050811–0005.
Comment Date: 5 p.m. eastern time on Tuesday, August 30, 2005.

Docket Numbers: ER04–691–059; EL04–104–056.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits Second Substitute First Revised Sheet 766 to FERC Electric Tariff, Third Revised Volume No. 1 pursuant to section 205 of the Federal Power Act.
Filed Date: 08/09/2005.
Accession Number: 20050811–0091.
Comment Date: 5 p.m. eastern time on Tuesday, August 30, 2005.

Docket Numbers: ER05–6–034.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. and the Midwest ISO Transmission Owners

submit a joint filing to revise the sub-zone charges set forth on Schedule 22 of the Midwest ISO Open Access Transmission and Energy Markets Tariff.

Filed Date: 08/08/2005 as amended 8/11/2005.

Accession Number: 20050811–0097.

Comment Date: 5 p.m. eastern time on Monday, August 26, 2005.

Docket Numbers: ER05–1105–001.

Applicants: LP and T Energy, LLC.

Description: LP &T Energy, LLC submits an amended application for order accepting initial market base rate tariff & granting certain waivers & blanket approvals.

Filed Date: 08/08/2005.

Accession Number: 20050811–0092.

Comment Date: 5 p.m. eastern time on Monday, August 29, 2005.

Docket Numbers: ER05–1124–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc. submits Substitute Second Revised Sheet 1212 to FERC Electric Tariff, Third Revised Volume No. 1 in compliance with the Commission's order issued 8/3/05 in Docket No. ER05–1124–000.

Filed Date: 08/10/2005.

Accession Number: 20050811–0110.

Comment Date: 5 p.m. eastern time on Wednesday, August 31, 2005.

Docket Numbers: ER05–1142–001.

Applicants: Kincaid Generation, LLC.

Description: Kincaid Generation, LLC submits an amendment to its two June 24, 2005 filings.

Filed Date: 08/09/2005.

Accession Number: 20050811–0090.

Comment Date: 5 p.m. eastern time on Tuesday, August 30, 2005.

Docket Numbers: ER05–1228–001.

Applicants: Sea Breeze Juan de Fuca Cable, LP.

Description: Sea Breeze Pacific Juan de Fuca Cable, LP submits an application for authorization to sell transmission rights at negotiated rates.

Filed Date: 07/20/2005.

Accession Number: 20050725–0043.

Comment Date: 5 p.m. eastern time on Wednesday, August 22, 2005.

Docket Numbers: ER05–1275–001.

Applicants: Ramco Generating One, Inc.

Description: Ramco Generating One, Inc. submits an amendment to its 7/27/05 notice of cancellation of its FERC Electric Tariff, Original Volume No. 1.

Filed Date: 08/08/2005.

Accession Number: 20050811–0098.

Comment Date: 5 p.m. eastern time on Monday, August 29, 2005.

Docket Numbers: ER05–1299–000.

Applicants: Wabash Valley Power Association, Inc.

Description: Wabash Valley Power Association, Inc. submits First Revised Sheet 122 to FERC Electric Tariff, Original Volume No. 1, and an addendum to agreement for electric service with Carroll County REMC pursuant to FERC 12/7/04 Order.

Filed Date: 08/08/2005.

Accession Number: 20050811–0102.

Comment Date: 5 p.m. eastern time on Monday, August 29, 2005.

Docket Numbers: ER05–1300–000; ER04–833–000 and 001.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits a status report re Attachment AA of its open access transmission tariff in compliance with FERC's 10/5/04 Order.

Filed Date: 08/05/2005.

Accession Number: 20050811–0099.

Comment Date: 5 p.m. eastern time on Friday, August 26, 2005.

Docket Numbers: ER05–1301–000.

Applicants: Cogentrix Energy Power Marketing, Inc.

Description: Cogentrix Energy Power Marketing, Inc. submits a notice of cancellation of its market based rate electric tariff, Rate Schedule 2, effective 8/8/05.

Filed Date: 08/08/2005.

Accession Number: 20050811–0104.

Comment Date: 5 p.m. eastern time on Monday, August 29, 2005.

Docket Numbers: ER05–1302–000.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits an executed Interconnection Service Agreement with PPL Susquehanna, LLC *et al.* pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, part 35 of the Commission's regulations, 18 CFR part 35, and Part IV of the PJM Interconnection L.L.C.

Filed Date: 08/08/2005.

Accession Number: 20050811–0107.

Comment Date: 5 p.m. eastern time on Monday, August 29, 2005.

Docket Numbers: ER05–1303–000.

Applicants: Arizona Public Service Company.

Description: Arizona Public Service Company submits a notice of cancellation of two rate schedules, FERC Electric Rate Schedule 246 and 248.

Filed Date: 08/08/2005.

Accession Number: 20050811–0108.

Comment Date: 5 p.m. eastern time on Monday, August 29, 2005.

Docket Numbers: ER05–1304–000.

Applicants: Mystic Development, LLC.

Description: Mystic Development, LLC submits its proposed FERC Electric Tariff, Original Volume No. 2, proposed RMR agreement and supporting cost data specifying Mystic Development's revenue requirement for providing cost-based reliability services pursuant to a cost-of-service agreement with ISO New England Inc., in accordance with ISO–NE Market Rule No. 1, Appendix A.

Filed Date: 08/09/2005.

Accession Number: 20050811–0105.

Comment Date: 5 p.m. eastern time on Tuesday, August 30, 2005.

Docket Numbers: ER05–1305–000.

Applicants: Mystic I, LLC.

Description: Mystic I, LLC submits its proposed FERC Electric Tariff, Original Volume No. 2 and supporting cost data specifying its revenue requirement for providing cost-based reliability services pursuant to a cost-of-service agreement with ISO New England, Inc. in accordance with ISO–NE Market Rule 1, Appendix A.

Filed Date: 08/09/2005.

Accession Number: 20050811–0106.

Comment Date: 5 p.m. eastern time on Tuesday, August 30, 2005.

Docket Numbers: ER05–1307–000.

Applicants: North American Electric Reliability Council.

Description: North American Electric Reliability Council submits revisions to the transmission loading relief procedures adopted for use in the Eastern Interconnections.

Filed Date: 08/08/2005.

Accession Number: 20050811–0100.

Comment Date: 5 p.m. eastern time on Monday, August 29, 2005.

Docket Numbers: ER05–1308–000.

Applicants: New England Power Company.

Description: New England Power Company submits an amended interconnection & support agreement between New England Power Company, Massachusetts Electric Company and the Town of Marblehead Municipal Light Department.

Filed Date: 08/09/2005.

Accession Number: 20050811–0101.

Comment Date: 5 p.m. eastern time on Tuesday, August 30, 2005.

Docket Numbers: ER05–1309–000.

Applicants: American Electric Power System.

Description: American Electric Power Service Corporation on behalf of AEP Texas North Company submits a fully executed interconnection agreement between AEPTNC and FPL Energy Horse Hollow Wind, L.P., dated of 8/2/05.

Filed Date: 08/10/2005.

Accession Number: 20050812–0140.

Comment Date: 5 p.m. eastern time on Wednesday, August 31, 2005.

Docket Numbers: ER97–3954–020; EL05–132–000.

Applicants: Unicom Power Marketing, Inc.

Description: Unicom Power Marketing, Inc. submits an amendment to its market-based rate tariffs by which Unicom undertakes to observe the Market Behavior Rules and incorporates a statement of policy and code of conduct with respect to the relationship between Unicom and Public Service Electric and Gas, pursuant to a Commission Order issued 7/5/05 in Docket No. EL05–132–000.

Filed Date: 08/05/2005.

Accession Number: 20050811–0094.

Comment Date: 5 p.m. eastern time on Friday, August 26, 2005.

Docket Numbers: ER98–1734–010; EL05–132–000.

Applicants: Exelon Corporation.

Description: Commonwealth Edison Company submits an amendment to its market-based rate tariff to observe the Market Behavior Rules and incorporate a Statement of Policy and Code of Conduct with respect to the relationship between ComEd and Public Service Electric and Gas, pursuant to a Commission Order issued in Docket No. EL05–132–000.

Filed Date: 08/05/2005.

Accession Number: 20050811–0095.

Comment Date: 5 p.m. eastern time on Friday, August 26, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlinSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4563 Filed 8–22–05; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC05–120–000, et al.]

Prime Power Sales I, LLC, et al. Electric Rate and Corporate Filings

August 16, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Prime Power Sales I, LLC, Madison Niche Opportunities, LLC, GS Prime Direct Holdings, LLC

[Docket No. EC05–120–000]

Take notice that on August 9, 2005, Prime Power Sales I, LLC (PPSI), Madison Niche Opportunities, LLC (MNO), and GS Prime Direct Holdings, LLC (GS Holdings) (collectively, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby GS Holdings will transfer all of its ownership interests in PPSI to MNO. Applicants request confidential treatment of Exhibit B and Exhibit I, pursuant to 18 CFR 388.112 of the Commission's regulations.

Comment Date: 5 p.m. eastern time on August 30, 2005.

2. Metro Energy, L.L.C.

[Docket Nos. EC05–121–000; ER01–2317–006]

Take notice that on August 9, 2005, Metro Energy, L.L.C. (Metro Energy), submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of a jurisdictional facility whereby ownership of the 50% ownership interest in Metro Energy held by an indirect, wholly-owned subsidiary of Duquesne Light Holdings, Inc. will be transferred to the holder of the remaining 50% ownership interest in Metro Energy, DTE Energy Services Company, Inc. (DTEES), an indirect, wholly-owned subsidiary of DTE Energy Company. Metro Energy states that DTEES will own 100% of the ownership interests in Metro Energy. Metro Energy further states that included with the application, pursuant to section 205 of the Federal Power Act is a notice of no material change in status with respect to its market-based rate authorization.

Comment Date: 5 p.m. eastern time on August 30, 2005.

3. TransCanada Hydro Northeast Inc., Vermont Hydro-electric Power Authority

[Docket No. EC05–122–000]

Take notice that on August 10, 2005, the Vermont Hydro-electric Power Authority (VHPA) submitted an application pursuant to section 203 of the Federal Power Act (FPA) requesting authorization, to the extent necessary, for the transfer of certain FPA-jurisdictional facilities associated with the 49 MW Bellows Falls Hydroelectric Project from TransCanada Hydro Northeast Inc. to VHPA in order for VHPA to lease the Facility to the Bellows Falls Power Company, LLC.

Comment Date: 5 p.m. eastern time on August 31, 2005.

4. Monongahela Power Company; Monongahela Power Company; Columbus Southern Power Company

[Docket No. EC05–123–000; ER05–1312–000]

Take notice that on August 11, 2005, Monongahela Power Company (Monongahela) filed a request pursuant to section 203 of the Federal Power Act (FPA) and Part 33 of the Commission's Regulations, for Commission approval of a proposed transfer of Monongahela's transmission facilities located in Ohio to Columbus Southern Power Company (CSP).

Monongahela states that the transaction involves the transfer of

jurisdictional transmission and distribution assets located within the state of Ohio, and the transfer of all of Monongahela's Ohio assets to CSP.

Comment Date: 5 p.m. eastern time on September 1, 2005.

5. GridSouth Transco, L.L.C.; Carolina Power & Light Company; Duke Energy Corporation; South Carolina Electric & Gas Company

[Docket No. RT01–74–000]

Take notice that on August 11, 2005, Carolina Power & Light Company, Duke Energy Corporation, and South Carolina Electric & Gas Company, (collectively, GridSouth Sponsors) notified the Commission that they have elected to terminate the GridSouth Transco project.

Comment Date: 5 p.m. eastern time on September 15, 2005.

6. Southwest Power Pool, Inc.

[Docket Nos. RT04–1–014; ER04–48–014]

Take notice that on August 9, 2005, Southwest Power Pool, Inc., (SPP) submitted for filing changes to its Bylaws and Membership Agreement, in accordance with the Commission's Order Nos. 2000 and 2000–A, and the Commission's Orders issued February 11, 2005, March 21, 2005, and May 20, 2005, in the above-referenced dockets. SPP requests an effective date of July 26, 2005.

SPP states that it has served a copy of its filing on all parties to the proceeding. In addition, SPP also states that a copy of SPP's filing had been served on all state commissions within SPP's service region. Finally, SPP indicates that SPP's filing will be posted on the SPP Web page (*http://www.spp.org*).

Comment Date: 5 p.m. eastern time on August 30, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4564 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

August 17, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER01–205–009; ER98–2640–007; ER98–4590–005; ER99–1610–012; EL05–115–000.

Applicants: Xcel Energy Services, Inc.; Northern States Power Company and Northern States Power Company (Wisconsin); Public Service Company of Colorado; Southwestern Public Service Company; Xcel Energy Services Inc., *et al.*

Description: Xcel Energy Services, Inc., on behalf of itself and the above-listed companies, submits a Notice of Withdrawal of Request for Market-Based Rate Authority in Control Area, Intent to Transact Under Cost-Based Rates, and Request to Terminate Proceedings.

Filed Date: 08/01/2005.

Accession Number: 20050801–5116.

Comment Date: 5 p.m. eastern time on Thursday, September 1, 2005.

Docket Numbers: ER05–1325–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits revisions to its Wholesale Distribution Access Tariff, including its proposed Standard Small Generator Agreement and its proposed Standard Small Generator Interconnection Procedurest.

Filed Date: 08/12/2005.

Accession Number: 20050816–0077.

Comment Date: 5 p.m. eastern time on Friday, September 02, 2005.

Docket Numbers: ER05–1326–000.

Applicants: CornerStone Energy General Partners, LLC.

Description: CornerStone Energy General Partners, LLC submits an application for and order granting market-based rate authority, waiving regulations and granting blanket approvals.

Filed Date: 08/12/2005.

Accession Number: 20050816–0063.

Comment Date: 5 p.m. eastern time on Friday, September 02, 2005.

Docket Numbers: ER05–1327–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company (SCE) submits the Nandina Avenue Wholesale Distribution Load Interconnection Facilities Agreement and Service Agreement for Wholesale Distribution Service between SCE and the City of Moreno Valley, California.

Filed Date: 08/12/2005.

Accession Number: 20050816–0064.

Comment Date: 5 p.m. eastern time on Friday, September 02, 2005.

Docket Numbers: ER05–1328–000.

Applicants: Central Maine Power Company.

Description: Central Maine Power submits an unexecuted Local Network Transmission Service Agreement and an unexecuted Local Network Agreement entered into with Mr. Israel Feldmus.

Filed Date: 08/12/2005.

Accession Number: 20050816–0066.

Comment Date: 5 p.m. eastern time on Friday, September 02, 2005.

Docket Numbers: ER05–1329–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company submits revised tariff sheets adopting the Commission's changes, without modification, to the standard large generator interconnection procedures and agreement.

Filed Date: 08/12/2005.

Accession Number: 20050816–0065.

Comment Date: 5 p.m. eastern time on Friday, September 02, 2005.

Docket Numbers: ER05–1330–000.

Applicants: MidAmerican Energy Company.

Description: MidAmerican Energy Company submits revisions to its Open Access Transmission Tariff to include minor changes to the pro forma Large Generator Interconnection Procedures and Large Generator Interconnection Agreement.

Filed Date: 08/12/2005.

Accession Number: 20050816–0067.
Comment Date: 5 p.m. eastern time on Friday, September 02, 2005.

Docket Numbers: ER05–1331–000.
Applicants: Tampa Electric Company.
Description: Tampa Electric Company submits revised tariff sheets to its Open Access Transmission Tariff to include revisions to the Large Generator Interconnection Procedures and Large Generator Interconnection Agreement.
Filed Date: 08/12/2005.
Accession Number: 20050816–0068.
Comment Date: 5 p.m. eastern time on Friday, September 02, 2005.

Docket Numbers: ER05–1332–000.
Applicants: Duke Energy Corporation.
Description: Duke Energy Corporation on behalf of Duke Electric Transmission submits revised tariff sheets incorporating the changes set forth in Appendix A of the Commission's Order No. 2003–C.
Filed Date: 08/12/2005.
Accession Number: 20050816–0069.
Comment Date: 5 p.m. eastern time on Friday, September 02, 2005.

Docket Numbers: ER05–1340–000.
Applicants: Nevada Power Company; Sierra Pacific Resources Operating Company.
Description: Nevada Power Company and Sierra Pacific Power Company submit amendments to the Sierra Pacific Resources Operating Companies Open Access Transmission Tariff, Third Revised Volume No. 1.
Filed Date: 08/12/2005.
Accession Number: 20050816–0226.
Comment Date: 5 p.m. eastern time on Friday, September 02, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

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Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4602 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC05–124–000, et al.]

Kumeyaay Wind LLC, et al.; Electric Rate and Corporate Filings

August 17, 2005.

The following filings have been made with the Commission. The filings are listed in ascending order according within each docket classification.

1. Kumeyaay Wind LLC and TIFD VIII-W, Inc.

[Docket No. EC05–124–000]

Take notice that on August 11, 2005, Kumeyaay Wind LLC (Kumeyaay) and TIFD VIII-W, Inc. (jointly, Applicants) filed with the Commission an application pursuant to section 203 of the Federal Power Act for authorization to make changes in the ownership structure of and for the sale of an upstream ownership interest in Kumeyaay's jurisdictional facilities. Applicants state that Kumeyaay is developing a 50 MW wind farm along the Tecate Divide, within the In-Ko-Pah Mountains on the Campo Indian Reservation in eastern San Diego, California (the Project). Applicants further state that the jurisdictional facilities will consist of interconnection facilities, a tariff for the wholesale sale of energy, capacity and ancillary services at market-based rates and a power purchase agreement and associated books and records. Applicants indicate that the restructuring of the ownership of Kumeyaay and the transfer of an upstream ownership interest will result from the sale of member interests in Applicant's parent company to one or more entities that will contribute equity to the Project and become passive investors.

Comment Date: 5 p.m. eastern time on September 1, 2005.

2. Sithe Energies, Inc., Sithe Energies U.S.A., Inc., Sterling Power, Ltd., Sterling Power Partners, L.P., Seneca Power Corporation, Seneca Power Partners, L.P., and Alliance Energy Group LLC

[Docket No. EC05–126–000]

Take notice that on August 15, 2005, Sithe Energies, Inc. (Sithe); Sithe Energies U.S.A., Inc. (Sithe U.S.A.); Seneca Power Corporation, Seneca Power Partners, L.P. (the Seneca Partnership); Sterling Power, Ltd., Sterling Power Partners, L.P. (the Sterling Partnership); and Alliance Energy Group LLC (Alliance Energy) (collectively, the Applicants) submitted an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Alliance Energy would acquire all of the interests in the Seneca Partnership and Sterling Partnership directly and indirectly owned by Sithe and Sithe U.S.A. (the Transaction). The Applicants state that the transaction would be accomplished pursuant to two Purchase and Sale Agreements between Alliance Energy and Sithe and Alliance Energy and Sithe U.S.A.

Comment Date: 5 p.m. eastern time on September 6, 2005.

3. United States Department of Energy, Western Area Power Administration

[Docket No. EF05–5091–000]

Take notice that on August 11, 2005, the Deputy Secretary of the Department of Energy, confirmed and approved Rate Order No. WAPA–120 and Rate Schedule BCP–F7, placing the electric service ratesetting formula and fiscal year 2006 base change and rates from the Boulder Canyon Project of the Western Area Power Administration

into effect on an interim basis. Rate Schedule BCB-F7 will be placed into effect on an interim basis on the first day of the first full billing period beginning on or after October 1, 2005, and will be in effect until the Commission confirms, approves, and places the rate schedule in effect on a final basis through September 30, 2010, or until the rate schedule is superseded.

Comment Date: 5 p.m. eastern time on September 6, 2005.

4. PJM Interconnection, L.L.C.

[Docket No. ER04–776–005]

Take notice that on April 15, 2005, Kentucky Public Service Commission, pursuant to section 18.17.4 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (PJM) and the Commission's order in *PJM Interconnection, L.L.C.*, 107 FERC ¶ 61,322 (2004), submits for filing the State Certification in which the Kentucky Public Service Commission makes certain representations and warranties regarding its legal obligations and those of its authorized representatives with respect to confidential information that may be disclosed by PJM and/or the PJM Market Monitor pursuant to section 18.17.4 of the Operating Agreement.

Comment Date: 5 p.m. eastern time on September 6, 2005.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Linda Mitry,

Deputy Secretary.

[FR Doc. E5–4607 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 4204–038, 4660–043 and 4659–042]

City of Batesville and Independence County Arkansas; Notice of Availability of Environmental Assessment

August 15, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license amendments for the White River Lock and Dam No. 1 Project (P–4204), White River Lock and Dam No. 2 Project (P–4660) and the White River Lock and Dam No. 3 Project (P–4659), and has prepared an Environmental Assessment (EA) for the projects. On August 12, 2005, the Order Approving Revised Transmission Line Routes was issued and the EA was attached. The projects are located on the White River in Independence County, Arkansas.

The EA contains the staff's analysis of the potential environmental impacts of the projects and concludes that issuing the amendments, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA is on file with the Commission and is available for public inspection. Copies of the EA are available for review in Public Reference, Room 2–A at the Commission's offices at 888 First Street, NE., Washington, DC. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. For assistance, contact FERC On Line Support at *FERCOnlineSupport@ferc.gov* or call toll free at (866) 208–3676, or for TTY contact (202) 502–8659.

For further information, please contact Andrea Shriver at (202) 502–8171.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4577 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2090–003]

Green Mountain Power Corporation; Notice of Availability of Final Environmental Assessment

August 15, 2005.

In accordance with the National Environmental Policy Act of 1969 and Part 380 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380; FERC Order No. 486 and 52 FR 47,897, the Office of Energy Projects Staff (staff) reviewed the application for a new license for the Waterbury Hydroelectric Project, located on the Little River in the town of Waterbury in Washington County, Vermont, and prepared a final environmental assessment (FEA) for the project. The project does not use or occupy any federal facilities or lands.

In this FEA, the staff analyzes the potential environmental effects of the existing project and concludes that licensing the project, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the FEA is available for review at the Commission in the Public Reference Room 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects.

For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4578 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12063–001]

Little Wood River Ranch II, Idaho William Arkoosh, Notice of Availability of Final Environmental Assessment

August 16, 2005.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application and prepared the enclosed Environmental Assessment (EA) for an original license for William Arkoosh's Little Wood River Ranch II Hydroelectric Project. The proposed project would be located on the Little Wood River, 6 miles west of the town of Shoshone, Lincoln County, Idaho. The proposed project would be located entirely on private lands owned by William Arkoosh. The EA contains the staff's analysis of the potential environmental impacts of the proposed project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call 1–866–208–3676 or for TTY, (202) 502–8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix "Little Wood River Ranch II Hydroelectric Project No. 12063" to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link. For further information, contact Gaylord Hoisington at (202) 502–6032.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4567 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Soliciting Comments

August 17, 2005.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* 459–128.

c. *Date Filed:* August 12, 2005.

d. *Applicant:* Union Electric Company, d/b/a AmerenUE.

e. *Name of Project:* Osage Hydroelectric Project.

f. *Location:* Located on the Osage River, in Benton, Camden, Miller and Morgan counties, central Missouri. The project occupies 1.6 acres of federal land.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Mr. Jerry Hogg, Superintendent Hydro Regulatory Compliance, AmerenUE, 617 River Road, Eldon, MO 65026; Telephone (573) 365–9315; e-mail—*jhogg@ameren.com.*

i. *FERC Contact:* Allan Creamer at (202) 502–8365, or by e-mail at *allan.creamer@ferc.gov.*

j. *Deadline for Filing Comments:* The deadline for filing comments on the Settlement Agreement is 20 days from the date of this notice. The deadline for filing reply comments is 30 days from the date of this notice. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions of the Commission's Web site (*http://www.ferc.gov*) under the "e-filing" link.

k. AmerenUE filed the Comprehensive Settlement Agreement on behalf of itself and four other entities. The purpose of the Settlement Agreement is to resolve, among the signatories, all issues related to AmerenUE's pending Application for New License for the Osage Hydroelectric Project. The issues resolved through the settlement relate to project operations (*e.g.*, turbine upgrades and capacity expansion, generation flows, etc.), erosion and flood control, minimum instream flows, lake level management, water quality, environmental restoration and enhancement measures (*e.g.*, mussel habitat restoration, fish protection, and shoreline management), cultural resource management, and recreational enhancements. AmerenUE and the other signatories request that the Commission approve the Settlement Agreement and incorporate the terms of Appendix A of the Settlement, without material modification, into a new 40-year license for the project.

l. A copy of the Settlement Agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "e-Library" link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4603 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Temporary Variance Request and Soliciting Comments, Motions To Intervene, and Protests

August 17, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Temporary Variance of Minimum Flow Requirement.

b. *Project No.:* 405–064.

c. *Date Filed:* August 15, 2005.

d. *Applicant:* Susquehanna Electric Company and PECO Energy Power Company.

e. *Name of Project:* Conowingo Project.

f. *Location:* On the Susquehanna River, in Harford and Cecil Counties, Maryland, and York and Lancaster Counties, Pennsylvania. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Brian J. McManus, Attorney for Susquehanna Electric Company and PECO Energy Power Company, Jones Day, 51 Louisiana Avenue, NW., Washington, DC 20001–2113, (202) 879–3939.

i. *FERC Contact:* Robert H. Grieve, *robert.grieve@ferc.gov*, (202) 502–8752.

j. *Deadline for filing comments, motions to intervene and protest:* September 16, 2005.

Please include the project number (P–405–064) on any comments or motions filed. All documents (original and seven copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper, see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–405–064) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* Susquehanna Electric Company (SEC) has requested Commission approval of a variance of the minimum flow requirement of the project license. Due to drought conditions and low river flows in the Susquehanna River, SEC requests that it be allowed immediately to include plant leakage of about 800 cubic feet per second (cfs) in the required minimum flow discharge until September 14, 2005, or until flow conditions improve where the Conowingo Project no longer requires leakage be included as part of the minimum flow requirement. According to the license, for the period June 1 through September 14, annually, SEC must provide a minimum flow release (not including leakage) below the dam of 5,000 cfs, or inflow (as measured at the USGS gage at Marietta, PA), whichever is less. During the fall period, September 15 through November 30, SEC is required to release a minimum flow of 3,500 cfs not including leakage, or inflow to the project whichever is less, as measured at the Marietta gage.

The SEC is concerned about the ability of the Conowingo Project to maintain an adequate pond level and storage capacity during the current low flow period. Maintaining storage is necessary for generation and to ensure an adequate water supply for recreational and consumptive uses of the Conowingo Reservoir to include operation of Peach Bottom Atomic Power Station and Muddy Run Pumped Storage Project. Including plant leakage in the minimum flow discharge will contribute to the maintenance of these project water uses during this low flow period. During the period of the minimum flow variance the SEC will conduct daily monitoring of the Susquehanna River below the project for potential environmental effects. If any abnormal or adverse conditions are observed the SEC will promptly notify the Maryland Department of Natural Resources.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's Web site at *http:www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance call (202) 502–8222 or for TTY (202) 208–1659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210. 385.211, and 385.2114. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATION FOR TERMS AND CONDITIONS", "PROTESTS, OR MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4605 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–000 and EL00–98–000]

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents.; Investigation of Practices of the California Independent System Operator and the California Power Exchange; Notice of Technical Conference

August 16, 2005.

The Federal Energy Regulatory Commission staff will convene a technical conference to finalize the template for submission of cost filings, as discussed in *San Diego Gas & Electric Co.* v. *Sellers of Energy & Ancillary Services, et al.*, 112 FERC ¶ 61,1176 (2005). Participants should be prepared and will be expected to discuss the substantive details of the cost filings' uniform format.

The staff technical conference will be held on August 25, 2005, at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, beginning at 9 a.m. (e.s.t.) in a room to be announced at a later date.

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an e-mail to *accessibility@ferc.gov* or call toll free 1–866–208–3372 (voice) or 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

Parties to these proceedings and Commission staff may attend. For more information about the conference, please contact: Heidi Werntz, Office of General Counsel, Federal Energy Regulatory Commission, at (202) 502–8910 or *Heidi.Werntz@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E5–4576 Filed 8–22–05; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7957–5; EDOCKET ID No.: ORD–2005–0024]

Board of Scientific Counselors, Executive Committee Meeting—Fall 2005

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, the Environmental Protection Agency, Office of Research and Development (ORD), gives notice of an Executive Committee meeting of the Board of Scientific Counselors (BOSC).

DATES: The meeting will be held on Monday, September 12, 2005 from 8:30 a.m. to 5:15 p.m. The meeting will continue on Tuesday, September 13, 2005 from 8:30 a.m. to 1:45 p.m. All times noted are eastern time. The meeting may adjourn early on Tuesday if all business is finished. Written comments, and requests for the draft agenda or for making oral presentations at the meeting will be accepted up to 1 business day before the meeting date.

ADDRESSES: The meeting will be held at the Hilton Cincinnati Netherland Plaza Hotel, 35 W 5th Street, Cincinnati, Ohio 45202–2899.

Document Availability

Any member of the public interested in receiving a draft BOSC agenda or making a presentation at the meeting may contact Ms. Lorelei Kowalski, Designated Federal Officer, via telephone/voice mail at (202) 564–3408, via e-mail at *kowalski.lorelei@epa.gov*, or by mail at Environmental Protection Agency, Office of Research and Development, Mail Code 8104-R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

In general, each individual making an oral presentation will be limited to a total of three minutes. The draft agenda can be viewed through EDOCKET, as provided in Unit I.A. of the **SUPPLEMENTARY INFORMATION** section.

Submitting Comments

Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Ms. Lorelei Kowalski, Designated Federal Officer, via telephone/voice mail at (202) 564–3408, via e-mail at *kowalski.lorelei@epa.gov*, or by mail at Environmental Protection Agency, Office of Research and Development, Mail Code 8104-R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. General Information

Proposed agenda items for the meeting include, but are not limited to: discussion of the draft report from the Drinking Water Subcommittee; update on subcommittees for the Particulate Matter/Ozone, Global Change, Land, and Water Quality program reviews; update on the STAR Fellowships subcommittee; update on the BOSC risk assessment workshop held in February 2005; site visit to National Homeland Security Research Center facilities; discussion of BOSC lessons learned from the program review subcommittees; briefing on EPA's Global Earth Observation System of Systems (GEOSS); update on EPA's Science Advisory Board activities; and future issues and plans (including the Communications and Nomination Subcommittees). The meeting is open to the public.

Information on Services for Individuals with Disabilities: For information on access or services for individuals with disabilities, please contact Lorelei Kowalski at (202) 564–3408 or *kowalski.lorelei@epa.gov*. To request accommodation of a disability, please contact Lorelei Kowalski, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

A. How Can I Get Copies of Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. ORD–2005–0024. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Documents in the official public docket are listed in the index in EPA's electronic public docket and comment system, EDOCKET. Documents may be available either electronically or in hard copy. Electronic documents may be viewed through EDOCKET. Hard copy of the draft agenda may be viewed at the Board of Scientific Counselors, Executive Committee Meeting—Fall 2005 Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is

(202) 566–1744, and the telephone number for the ORD Docket is (202) 566–1752.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EDOCKET. You may use EDOCKET at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EDOCKET.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EDOCKET at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, *http://www.epa.gov*, select "Information Sources," "Dockets," and "EDOCKET." Once in the system, select "search," and then key in Docket ID No. ORD–2005–0024. The system is an anonymous access system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *ORD.Docket@epa.gov*, Attention Docket ID No. ORD–2005–0024. In contrast to EPA's electronic public docket, EPA's e-mail system is not an anonymous access system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: U.S. Environmental Protection Agency, ORD Docket, EPA Docket Center (EPA/DC), Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention Docket ID No. ORD–2005–0024.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center (EPA/DC), Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC, Attention Docket ID No. ORD–2005–0024 (note: this is not a mailing address). Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.A.1.

Dated: August 17, 2005.

Kevin Y. Teichman,

Director, Office of Science Policy.

[FR Doc. 05–16687 Filed 8–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7957–4]

Proposed CERCLA Administrative Agreement for Recovery of Past Response Costs; A-American Environmental Superfund Removal Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Action ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed Administrative Order on Consent ("AOC," Region 9 Docket No. 9–2005–0014) pursuant to section 122(h) of CERCLA concerning the A-American Environmental Removal Site (the "Site"), located in Alhambra, California. The respondents to the AOC are thirty-one among approximately 600 parties that arranged for the disposal of hazardous substances at the Site, for which EPA incurred response costs. The respondents are: United States Department of Veterans Affairs; Alger Manufacturing Company, Inc.; American Fabrication Corp.; City of Los Angeles, Dept. of Public Works; County of Los Angeles; Duthie Electric; Epmar Corporation; EZ Lube, Inc.; FedEx Ground Package System, Inc.; Flint Ink North America Corporation; Forrest Machining, Inc.; Graphic Center; Gruber Systems, Inc.; Haskel International Inc.; Jacuzzi Whirlpool Bath, Inc.; Los Angeles Chemical Co.; Los Angeles County Metropolitan Transportation Authority; M C Gill Corp.; NeoMPS,

Inc.; Opi Products Inc.; Remo, Inc.; Santa Catalina Island Company; Sundance Spas, Inc.; Ultra-Flex Moulding Inc.; Vista Paint Corp.; California Acrylic Inc.; Sterigenics EO, Inc.; Mansfield Plumbing Products, LLC; Semtech Corp.; State of California, Office of State Publishing; and State of California, Dept. of Transportation.

Through the proposed AOC, these settling parties will reimburse the United States $259,472 of its response costs, which total $683,755. The AOC provides the settling parties with a covenant not to sue and contribution protection for the costs and the removal action at the Site. The AOC will supplement EPA's previous cost recovery settlement, EPA Docket No. 9–2004–0014.

For thirty (30) day following the date of publication of this Notice, the Agency will receive written comments relating to the proposed AOC. The Agency's response to any comments will be available for public inspection at EPA'S Region IX offices, located at 75 Hawthorne Street, San Francisco, California 94105.

DATES: Comments must be submitted on or before September 22, 2005.

ADDRESSES: The proposed Agreement may be obtained from Judith Winchell, Docket Clerk, telephone (415) 972–3124. Comments regarding the proposed Agreement should be addressed to Judith Winchell (SFD–7) at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105, and should reference the A-American Environmental Superfund Removal Site, Alhambra, California, and USEPA Docket No. 9–2005–0014.

FOR FURTHER INFORMATION CONTACT: J. Andrew Helmlinger, Office of Regional Counsel, telephone (415) 972–3904, USEPA Region IX, 75 Hawthorne Street, San Francisco, California 94105.

Dated: August 12, 2005.

Keith A. Takata,

Director, Superfund Division.

[FR Doc. 05–16684 Filed 8–22–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7957–9]

Notice of Proposed Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act (CERCLA), and the Resource Conservation and Recovery Act (RCRA), Garvey Elevator Site, Hastings, NE

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed agreement for the Garvey Elevator Site.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i)(1), and section 7003(d) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 9673(d), notice is hereby given of a proposed agreement concerning the Garvey Elevator Site (Site) located in Hastings, Nebraska, with AGP Grain Marketing, LLC (AGP) and Garvey Elevators, Inc. (Garvey). The agreement was executed by the United States Environmental Protections Agency on July 11, 2005, and concurred upon by the United States Department of Justice on August 8, 2005. The agreement would resolve certain potential CERCLA and RCRA claims against AGP Grain Marketing, LLC, and is subject to final approval after the comment period.

The Site is an active grain elevator facility. The proposed agreement requires AGP Grain Marketing, LLC to pay $2,050,000.00 into an escrow account following the sale of the Site property to AGP to be used by Garvey to implement response actions at the Site. In addition, AGP will be required to provide access to the Site, refrain from any activity that would interfere with the response actions or exacerbate the existing contamination at the Site, and comply with certain use restrictions. Appendix A to the Agreement is the Escrow Agreement that details the process for EPA to approve disbursements from the Escrow Fund. The Escrow Agreement also provides for a Security Agreement to be executed by Garvey and EPA. The proposed agreement grants AGP a covenant not to sue pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), subject to certain EPA reservations of rights.

This notice is also given in accordance with section 7003(d) of RCRA. The proposed agreement also includes an EPA covenant not to sue AGP pursuant to section 7003 of RCRA, 42 U.S.C. 9673. Commenters may request an opportunity for a public meeting in the affected area in accordance with section 7003(d) of RCRA, 42 U.S.C. 9673(d).

For thirty (30) days following the date of publication of this notice, EPA will receive written comments relating to the proposed agreement. EPA will consider all comments received, and may withdraw or withhold its consent to the proposed agreement if such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate. EPA's response to any written comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, KS 66101, and at a local information repository near the Site.

DATES: Comments must be submitted on or before September 22, 2005.

ADDRESSES: The proposed agreement is available for public inspection at the U.S. Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101. A copy of the proposed agreement may be obtained from Alyse Stoy, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551–7826. Comments should be addressed to Alyse Stoy at the above address or by e-mail at *stoy.alyse@epa.gov*, and should reference the Garvey Elevator Site Agreement, Hastings, Nebraska, and U.S. EPA Region VII Docket No. CERCLA–07–2005–0268.

FOR FURTHER INFORMATION CONTACT: Alyse Stoy, Assistant Regional Counsel, U.S. Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551–7826, or by e-mail at *stoy.alyse@epa.gov.*

Dated: August 10, 2005.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 05–16690 Filed 8–22–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[MD Docket No. 05–59; DA 05–2087]

Assessment and Collection of Regulatory Fees for Fiscal Year 2005

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: By this document, the Commission announces, the FY 2005 regulatory fee payment window is now available to accept the annual regulatory fees from licensees and regulatees.

DATES: Payments due August 23, 2005 through September 7, 11:59 p.m.

ADDRESSES: Mail payment of billed regulatory fees to Federal Communications Commission, Regulatory Fees, P.O. Box 358365, Pittsburgh, PA 15251–5365.

Courier delivery address of billed regulatory fees to Federal Communications Commission, Regulatory Fees, c/o Mellon Client Service Center, 500 Ross Street, Room 670, Pittsburgh, PA 15262–0001, Attn: FCC Module Supervisor. See **SUPPLEMENTARY INFORMATION** for payment procedures for all other entities.

FOR FURTHER INFORMATION CONTACT: Regina Dorsey, Special Assistant to the Chief Financial Officer, at 1–202–418–1993, or by e-mail at *regina.dorsey@fcc.gov*.

SUPPLEMENTARY INFORMATION: Licensees and regulatees who are required to pay annual regulatory fees pursuant to 47 U.S.C. 159 (Public Law 103–66) must make their Fiscal Year (FY 2005) fee payments by 11:59 p.m. on September 7, 2005. The official fee payment window will open on August 23, 2005, but payments may be sent prior to August 23. Payments received after 11:59 p.m. on September 7, 2005 will be assessed a 25% late payment penalty. The Commission is required by Congress to collect regulatory fees to recover the regulatory costs associated with its enforcement, policy, rulemaking, user information, and international activities.

Licensees and regulatees pay differing fees dependent on a variety of factors, such as the number of subscribers, number of assigned telephone numbers, or revenue, etc. For more information on how the FY 2005 regulatory fees were determined or instructions on how to make payment go to *http://www.fcc.gov/fees*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 05–16840 Filed 8–22–05; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 2005.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Eastside Commercial Bancshares, Inc., Conyers, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Eastside Commercial Bank, Conyers, Georgia.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Riverland Bancorporation, Jordan, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Riverland Bank, Jordan, Minnesota, a *de novo* bank.

Board of Governors of the Federal Reserve System, August 17, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 05–16651 Filed 8–22–05; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Advisory Board on Radiation and Worker Health, Centers for Disease Control and Prevention of the Department of Health and Human Services, has been renewed for a 2-year period extending through August 3, 2007.

For further information, contact: Lewis Wade, Executive Secretary, Advisory Board on Radiation and Worker Health, Centers for Disease Control and Prevention of the Department of Health and Human Services, HHH Building, 200 Independence Avenue, SW., Room 715–H, M/S P–12, Washington, DC 20201. Telephone 202/401–2192, fax 202/260–4464, e-mail *LOW0@cdc.gov*.

The Director, Management and Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 16, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–16635 Filed 8–22–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Epi-Centers for Prevention of Healthcare-Associated Infections

Announcement Type: New.

Funding Opportunity Number: CI06–001.

Catalog of Federal Domestic Assistance Number: 93.283.

Letter of Intent Deadline: September 22, 2005.

Application Deadline: October 24, 2005.

I. Funding Opportunity Description

Authority: 42 U.S.C. 247b(k)(2).

Background: Healthcare-associated infections (HAIs) and other adverse events continue to cause significant morbidity and mortality among patients treated in U.S. healthcare institutions and add billions of dollars to healthcare costs in the United States. However, estimates of the burden of these adverse events at the local, state, and national levels are inexact because surveillance methods are neither standardized nor uniformly applied in U.S. health care facilities. In addition, at the facility level, surveillance data vary in quality, completeness, timeliness, and their usefulness in preventing adverse events. Innovative strategies for detection and prevention of HAIs, Antimicrobial Resistance (AR), and other adverse events are needed to reduce the morbidity, mortality, and costs associated with these conditions.

Purpose: The purpose of this research program is to improve detection, reporting, and prevention of HAIs, AR and other adverse events in all types of healthcare facilities in the United States. This program addresses the "Healthy People 2010" focus areas 14–20, to "Reduce hospital-acquired infections in intensive care unit patients", and 14–21 to "Reduce antimicrobial use among intensive-care unit patients". For a copy of Healthy People 2010, visit the Internet site: *http://www.health.gov/healthypeople.*

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Infectious Diseases (NCID): Protect Americans from infectious diseases.

Research Objectives:

• *Nature of the research problem:* HAIs, AR and other adverse events, such as medication errors, cause significant morbidity and mortality among patients in U.S. healthcare facilities, adding billions of dollars to the cost of healthcare. However, estimates of the burden of these adverse events are inexact because surveillance methods are neither standardized nor uniformly applied throughout the United States. Furthermore, shortcomings in surveillance at the facility level impede systematic, patient care quality improvement efforts. Thus, there is a need to develop uniform, active surveillance methods to identify and analyze HAIs and other adverse events that compromise patient safety. In addition, the extent of compliance with infection control processes, such as hand hygiene, that enhance patient safety should be monitored. To reduce the incidence and adverse outcomes of HAIs, such infections need to be monitored systematically and reported in a standardized way throughout the U.S. healthcare system. Effective interventions need to be designed to reduce the incidence and severity of HAIs, AR and other adverse events. These interventions, once thoroughly evaluated and implemented, need to be exported for long-term use by prevention programs in a variety of healthcare settings (*e.g.*, academic medical centers, small community hospitals, and long-term acute care facilities) to continually improve the delivery of patient care. Such prevention strategies need not be limited to acute-care settings but could be applicable to programs that involve the entire spectrum of the healthcare delivery system, such as for health maintenance organizations where many Americans now receive their healthcare. The resource requirements and impact of all interventions and prevention activities need to be measured in economic terms.

• *Scientific knowledge to be achieved through research supported by this program:* This research program will provide the scientific knowledge to: (1) Develop strategies and methods for accurately measuring HAIs, AR and other adverse events in healthcare facilities in the United States, and (2) develop effective interventions that can be applied in different types of healthcare settings to reduce the incidence of HAIs, AR and other adverse events related to medical care.

• *Objectives of this research program:* The objectives of this program are to: (1) identify and validate direct and/or surrogate markers for HAIs (*e.g.*, bloodstream infections, pneumonia, surgical site infections, and urinary tract infections) and processes of care that are closely linked to HAIs (*e.g.*, sub-optimal hand hygiene, poor insertion and care of indwelling medical devices, and inappropriate antibiotic prophylaxis), particularly HAI markers and process of care measures that can be assessed through automated retrieval, processing, and analysis of data from electronic health records or other electronic information systems in use in healthcare institutions; (2) identify and validate interventions or prevention programs in various healthcare settings that result in sustained reductions in HAIs, AR and other adverse events; and (3) develop quantitative estimates of the economic impact (*e.g.*, cost-effectiveness) of interventions and prevention programs.

• *Examples of experimental approaches include:* Developing innovative approaches for case detection and reporting of surgical site infections (SSIs) such as using (1) clinical electronic data sources and computer algorithms to detect SSIs in health care settings, and (2) standard electronic messages to report clinical and laboratory data for each infection.

• *Project Organization:* This project requires participation by multiple healthcare facilities in a healthcare system (such as those that may be affiliated with an academic medical center). Participation by multiple facilities will allow for more robust validation of findings and innovations than is possible in a single facility. Each healthcare system should be comprised of at least 10 free standing healthcare facilities and should include at least three of the following types of institutions: academic medical centers that include adult and pediatric populations, small (100–200 bed) community hospitals, a health maintenance organization, long-term care facilities, long-term acute care centers, dialysis units, and ambulatory surgery centers. The applicants must demonstrate how multiple facilities within each healthcare system will actively participate in development and validation of both interventions and reporting measures. Promising research and development approaches are encouraged as long as they address each of the three essential areas of investigation: (1) To identify and validate direct and/or surrogate markers for HAIs, AR and other adverse events, and processes of care that can be assessed through automated re-use of data already entered in electronic health records or other electronic information systems (including laboratory, administrative, and financial systems); (2) identification and validation of interventions or multifaceted prevention programs that reduce infectious adverse events in healthcare settings and that can be effectively implemented in at least two different types of healthcare facilities; and (3) development of quantitative estimates to assess the economic impact (*e.g.*, cost-effectiveness) of the preventive interventions. Participating project sites must document institutional commitment; organizational capabilities; current electronic health record capacity that will enable automated detection, data collection, and reporting of HAIs, AR and other adverse events within their healthcare system and interdisciplinary coordination and collaboration, ability to involve multiple facilities and facilities of varying types in validating interventions and reporting measures. Participating project sites must also document a willingness to collaborate and assist CDC investigators in

determining the scope and magnitude of newly emerging infectious disease threats by conducting rapid surveys of their patient populations as needed during the funding period.

• *Awardee Organization:* Awardees will be organized into a consortium. The consortium will be overseen by the Epicenters Program Steering Committee composed of principal investigators and CDC representatives. The steering committee will direct coordinate, and supervise the entire range of scientific project activities, monitor progress and ensure that the strategic plan is implemented. A well-developed Program Steering Committee is integral to the Program's success

Awardee activities for this program are as follows:

• Actively participate, as a member of the Epicenters Steering Committee, in developing, managing, and coordinating the project activities and ensuring that the strategic plan of the Steering Committee is implemented.

• Identify and validate direct and surrogate markers for HAIs, particularly those that can be assessed through automated retrieval, processing, and analysis of data from electronic health records or other electronic information systems in use in healthcare institutions. The purpose of developing such markers is to provide measures that minimize resources required for data collection, have maximal utility for supporting and evaluating prevention efforts, and are broadly generalizable and applicable across a wide variety of institutions.

• Identify and validate processes of care that are closely linked to HAIs, particularly those that can be assessed through automated retrieval, processing, and analysis of data from electronic health records or other electronic information systems in use in healthcare. The purpose of developing such markers is to provide measures that directly support and guide prevention efforts by measuring adherence to critical prevention practices. Ideally these measures should require minimal resources for collection, and should be broadly generalizable and applicable across a wide variety of institutions.

• Produce quantitative estimates of the economic impact of interventions and prevention programs. The purpose of these estimates is to provide quantifiable estimates of the cost-effectiveness of prevention activities.

• Determine the scope and magnitude of newly emerging infectious disease threats by conducting rapid surveys of their patient and provider populations as needed during the funding period. The purpose of this activity is to collaborate with CDC to provide a mechanism for rapid assessment across a wide variety of U.S. healthcare institutions of conditions as they relate to newly emerging infectious disease threats.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC Activities for this program are as follows:

• Collaborate, as appropriate, with the recipient in all stages of the program, and provide programmatic and technical assistance. A CDC representative will serve as a member of the Epicenters Program Steering Committee, and in that capacity actively participate in the management, coordination, and supervision of the entire range of project activities, as well as monitoring progress and ensure that the strategic plan is implemented.

• Offer assistance to the recipient in all aspects of the science, including active participation in protocol development.

• Participate in improving program performance through consultation with the recipient based on information and activities of other projects.

• Assist in the development of research protocols for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

• Participate in the dissemination of findings and information stemming from the project.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Mechanism of Support: U01.

Fiscal Year Funds: $2,000,000.

Approximate Current Fiscal Year Funding: $2,000,000.

Approximate Total Project Period Funding: $10,000,000.

This amount is an estimate, and is subject to availability of funds. This amount includes Direct and Indirect costs.

Approximate Number of Awards: four—five.

Approximate Average Award: $350,000.

This includes Direct an Indirect costs for the first 12 month budget period.

Floor of Award Range: $300,000.

Ceiling of Award Range: $400,000 total cost for each of five years of the funding period, which includes direct and indirect costs. Proposals that exceed this amount for any years of the project will be considered ineligible and will not be reviewed.

Anticipated Award Date: February 2006.

Budget Period Length: 12 months.

Project Period Length: five years.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations.

- Public nonprofit organizations
- Private nonprofit organizations
- Universities
- Colleges
- Research institutions
- Hospitals
- Community-based organizations
- Faith-based organizations
- Federally recognized Indian tribal governments
- Indian tribes
- Indian tribal organizations
- State and local governments or their Bona Fide Agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau)
- Political subdivisions of States (in consultation with States)

A Bona Fide Agent is an agency/organization identified by the state as eligible to submit an application under the state eligibility in lieu of a state application. If you are applying as a bona fide agent of a state or local government, you must provide a letter from the state or local government as documentation of your status. Place this documentation behind the first page of your application form.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not

be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements: If your application is incomplete or non-responsive to the requirements listed in this section, it will not be entered into the review process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section "IV.3. Submission Dates and Times" for more information on deadlines.

Note: Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

Individuals Eligible to Become Principal Investigators: Any individual with the skills, knowledge, and resources necessary to carry out the proposed research is invited to work with their institution to develop an application for support. Individuals from underrepresented racial and ethnic groups as well as individuals with disabilities are always encouraged to apply for CDC programs. Additional Principal Investigator qualifications are as follows:

- Knowledge of healthcare infection control practices.
- Knowledge of electronic data reporting systems used in healthcare.
- Experience in administering multi-center programs.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity, use application form PHS 398 (OMB number 0925–0001 rev. 9/2004). Forms and instructions are available in an interactive format on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

Forms and instructions are also available in an interactive format on the National Institutes of Health (NIH) Web site at the following Internet address: *http://grants.nih.gov/grants/funding/phs398/phs398.html.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Application Submission

Letter of Intent (LOI). Your LOI must be written in the following format:

- Maximum number of pages: two
- Font size: 12-point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Your LOI must contain the following information:

- Descriptive title of the proposed research
- Name, address, E-mail address, telephone number, and FAX number of the Principal Investigator
- Names of other key personnel
- Participating institutions
- Number and title of this Announcement

Application: Follow the PHS 398 application instructions for content and formatting of your application. If the instructions in this announcement differ in any way from the PHS 398 instructions, follow the instructions in this announcement. For further assistance with the PHS 398 application form, contact PGO–TIM staff at 770–488–2700, or contact GrantsInfo, Telephone (301) 435–0714, E-mail: *GrantsInfo@nih.gov.*

Your research plan should address activities to be conducted over the entire project period. As part of the application preparation process, the applicants must develop a strategic plan and provide a timeline of planning and priority-setting processes. The purpose of the strategic plan is to identify unique approaches for measuring HAIs, AR and adverse events, developing successful interventions and prevention programs to reduce them, and assessing their cost implications. The plan must include both short- and long-term goals, and must include descriptions of objective milestones that will be used to measure progress. The following framework is suggested for developing the strategic plan:

- Strengths—Identify and describe the strengths of the application including a brief summary of the research expertise of participants, description of the current facilities including the extent to which there is shared common administrative and information technology infrastructure that will facilitate aggregation of electronic information and coordination of interventions and/or prevention programs across facilities, and other research resources available.
- Opportunities—Identify and evaluate the potential opportunities to establish a high quality research program using project funds. As part of the planning process, the applicant needs to include a description of how they will participate in the steering committee to: Determine which collaborations will be developed, identify opportunities that utilize the unique strengths within the healthcare system, and target opportunities that will address the goals of the project.
- Research Theme—The intent of the Epicenter Program is to support a substantial range of research activities that involve vibrant, multi-disciplinary approaches that transcend customary thinking and organizational structures to address critical questions related to monitoring and prevention of HAIs, AR and other adverse events. The theme and the range of activities pursued should be clearly defined as a result of the strategic planning process.
- Action Plan—Outline the major approaches to measuring HAIs, AR and other adverse events to be investigated using project funds and describe how these research efforts will yield measurable benefits when they are disseminated and deployed in a variety of other healthcare institutions in the United States. Develop a detailed research plan, with milestones, for the first year of funding and describe overall aims and milestones for subsequent years of funding. Elements of the action plan should include: Determining what research projects will be pursued, identifying possible pilot projects for support as developmental research projects, and defining milestones for specific products that the project proposes to pursue.
- Outcome Measurements—Determine and describe how progress on the action plan will be measured. Include qualitative and quantitative criteria for measuring how each participating healthcare facility provides "added value" and for assessing unique contributions that cannot be provided by other research awards. Define metrics (both process and outcome measures) for assessing long-term goals for the entire funding period, and specific, detailed milestones with timelines for the first year for each project and activity.

Each application must propose a Research Program that includes at least three research Projects or activities, which together will enable the Program to contribute significantly to the identification, reporting, and ultimate prevention or reduction in HAIs, AR and other adverse events in healthcare institutions. The range of research topics that may be proposed is outlined above. Each research project must

include measurable milestones and process and outcome measures, with timelines, and criteria for assessing success/productivity at periodic intervals. Applicants are encouraged to consider the scope and range of research proposed and develop a Research Program that is coherent and consistent with available resources and personnel.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. Your DUNS number must be entered on line 11 of the face page of the PHS 398 application form. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.*

This announcement requires summary budget information provided in the application package along with budget justification and support must be written in the form, format, and the level of detail as specified in the budget guidelines. You may access the latest version of the budget guidelines by accessing the following Web site: *http://www.cdc.gov/od/pgo/funding/budgetguide2004.htm.*

Additional requirements that may require you to submit additional documentation with your application are listed in section "VI.2. Administrative and National Policy Requirements."

IV.3. Submission Dates and Times

LOI Deadline Date: September 22, 2005. CDC requests that you send a LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: October 24, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your application does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds relating to the conduct of research will not be released until the appropriate assurances and IRB approvals are in place.
- Reimbursement of pre-award costs is not allowed.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or E-mail to: Dr. Trudy Messmer, Scientific Review Administrator, CDC/NCID, 1600 Clifton Road, MS C–19, Atlanta, GA 30333. Phone: (404) 639–3770. Fax: (404) 639–2469. E-mail: *TMessmer@cdc.gov.*

Application Submission Address: Submit the original and one hard copy of your application and appendices by mail or express delivery service to: Technical Information Management—CI06–001, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

At the time of submission, four additional copies of the application with appendices must be sent to: Dr. Trudy Messmer—CI06–001, Scientific Review Administrator, CDC/NCID, 1600 Clifton Road, MS C–19, Atlanta, GA 30333. Phone: (404) 639–3770. E-mail: *TMessmer@cdc.gov.*

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Review Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals stated in the "Purpose" section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

The goals of CDC-supported research are to advance the understanding of biological systems and health risks, improve the control and prevention of disease and injury, and enhance health. In the written comments, reviewers will be asked to evaluate the application in order to judge the likelihood that the proposed research will have a substantial impact on the pursuit of these goals. The scientific review group will address and consider each of the following criteria equally in assigning the application's overall score, weighting them as appropriate for each application.

The review criteria are as follows:

Significance: Does this proposal address important problems? If the aims of the application are achieved, what new knowledge will be available about healthcare-associated infections; AR, other adverse events in healthcare; and processes to prevent HAIs, AR and adverse events? What will be the effect of these studies on the concepts or methods that drive this field?

Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative, problem-solving tactics?

Innovation: Does the project employ novel and promising concepts, approaches or methods? Are the aims original and innovative? Does the project challenge existing paradigms or develop new methodologies or technologies?

Investigator: Is the investigator appropriately trained and well suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers (if any)?

Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Do the proposed studies take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there evidence of previous collaboration among the facilities included in the application?

Additional Review Criteria: In addition to the above criteria, the following items will be considered in the determination of scientific merit and priority score:

- All major objectives are addressed.
- All three subject areas (HAIs, other adverse events and processes of care) are addressed.
- Presence of a detailed research plan, with measurable and achievable milestones and process and outcome measures, for the first year of funding that describes overall aims of the project.
- Metrics for assessing long-term goals for the entire funding period and approximate timelines for subsequent years.
- Demonstration of interdisciplinary coordination and collaboration.
- Demonstration of ability to involve multiple facilities of various types in validating interventions and reporting measures. Healthcare systems demonstrating the capacity and plans for involving a large number of facilities in the validation of both interventions and reporting measures will be given priority. Of particular importance will be demonstrating prior evidence of multi-facility collaboration within a healthcare system, or strong evidence for the administrative capacity to coordinate and standardize intervention and data collection strategies across a large number of facilities.
- Demonstration of an existing capacity for electronic healthcare recordkeeping and electronic clinical and laboratory data exchanges within the participating facilities in the healthcare system. Preference will be given to healthcare systems with shared common administrative and information technology infrastructure that will facilitate coordination of data collection and performance of prevention activities in a standardized fashion.
- Knowledge of healthcare infection control practices.
- Previous experience in multi-facility and/or multi-center research studies

Protection of Human Subjects from Research Risks: Federal regulations (45 CFR Part 46) require that applications and proposals involving human subjects must be evaluated and reference to the risk to the subjects, the adequacy of protection against these risks, the potential benefits of the research to the subjects and others, and the importance of the knowledge gained or to be gained. *http://www.hhs.gov/ohrp/humansubjects/guidance/45cfr46.htm.*

Inclusion of Women and Minorities in Research: Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the design of the study is adequate to measure differences when warranted; and (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Care and Use of Vertebrate Animals: If vertebrate animals are to be used in the project, the five items described under section f. of the PHS 398 research grant application instructions will be assessed.

Budget: The reasonableness of the proposed budget and the requested period of support in relation to the proposed research. The priority score should not be affected by the evaluation of the budget.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) and for responsiveness by NCID. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

Applications that are complete and responsive to the announcement will be evaluated for scientific and technical merit by an appropriate peer review group or charter study section convened by NCID in accordance with the review criteria listed above. As part of the initial merit review, all applications may:

- Undergo a process in which only those applications deemed to have the highest scientific merit by the review group, generally the top half of the applications under review, will be discussed and assigned a priority score.
- Receive a written critique.
- Receive a second programmatic level review by CDC senior staff.

Award Criteria: Criteria that will be used to make award decisions during the programmatic review include:

- Scientific merit (as determined by peer review)
- Availability of funds
- Programmatic priorities

V.3. Anticipated Award Date

February 2006.

VI. Award Administration Information

VI.1. Award Notices

After the peer review of the application is completed. all applications will receive a written critique called a summary statement.

Those applications under consideration for funding will receive a call or e-mail from the Grants Management Specialist (GMS) of the Procurements and Grants Office (PGO) for additional information.

A formal notification in the form of a Notice of Award (NoA) will be provided to the applicant organization. The NoA signed by the Grants Management Officer (GMO) is the authorizing document. This document will be mailed and/or emailed to the recipient fiscal officer identified in the application.

Selection of the application for award is not an authorization to begin performance. Costs incurred before receipt of the NoA are not allowed.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements
- AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
- AR–3 Animal Subjects Requirements
- AR–6 Patient Care
- AR–7 Executive Order 12372
- AR–8 Public Health System Reporting Requirements
- AR–9 Paperwork Reduction Act Requirements
- AR–10 Smoke-Free Workplace Requirements
- AR–11 Healthy People 2010
- AR–12 Lobbying Restrictions
- AR–14 Accounting System Requirements
- AR–15 Proof of Non-Profit Status
- AR–16 Security Clearance Requirement
- AR–22 Research Integrity
- AR–23 States and Faith-Based Organizations
- AR–24 Health Insurance Portability and Accountability Act Requirements
- AR–25 Release and Sharing of Data

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, (use form PHS 2590, OMB Number 0925–0001, rev. 9/2004 as posted on the CDC Web site) due 90 days before the end of the budget period.
2. Financial status report, due 90 days after the end of the budget period.
3. Final financial and performance reports, due 90 days after the end of the project period.

These reports must be mailed to the Grants Management Specialist listed in the "Agency Contacts" section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2700.

For scientific/research issues, contact: Dr. Trudy Messmer, Scientific Review Administrator, CDC/NCID, 1600 Clifton Road, MS C–19, Atlanta, GA 30333. Telephone: (404) 639–3770. E-mail: *TMessmer@cdc.gov.*

For questions about peer review, contact: Ms. Barbara Stewart, Public Health Analyst, CDC/NCID, 1600 Clifton Road, MS C–19, Atlanta, GA 30333. Telephone: (404) 639–3770. E-mail: *BStewart@cdc.gov.*

For financial, grants management, or budget assistance, contact: Sharron P. Orum, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341. Telephone: 770–488–2716. E-mail: *spo2@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

Dated: August 17, 2005.

William P. Nichols,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 05–16694 Filed 8–22–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Advisory Board on Radiation and Worker Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH) and Subcommittee for Dose Reconstruction and Site Profile Reviews, ABRWH.

Subcommittee Meeting Time and Date: 10 a.m.–5 p.m., CT, August 24, 2005.

Committee Meeting Times and Dates: 8:30 a.m.–5 p.m., CT, August 25, 2005. 8:30 a.m.–4:30 p.m., CT, August 26, 2005.

Place: Westin St. Louis Hotel, 811 Spruce Street, St. Louis, Missouri, telephone 314–621–2000, fax 314–552–5700.

Status: Open to the public, limited only by the space available. The meeting space accommodates approximately 100 people. A closed portion of the meeting will held on August 25, 2005, CT 1 p.m. to 3 p.m.

Background: The ABRWH was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by Health and Human Services (HHS) as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, advice on the scientific validity and quality of dose estimation and reconstruction efforts being performed for purposes of the compensation program, and advice on petitions to add classes of workers to the Special Exposure Cohort (SEC).

In December 2000, the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, and renewed on July 27, 2005.

Purpose: This board is charged with (a) Providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS advise the Secretary on whether the is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters To Be Discussed: The agenda for the subcommittee meeting is the Bethlehem Site Profile; Selection of the 4th round of 20 dose reconstructions; Mallinckrodt Site Profile Review; and a discussion of Site Profile Candidates for review by the S. Cohen and Associates (SC&A). The agenda for the Board meeting will include reports from the Subcommittee meeting; the Mallinckrodt SEC petition; a heads-up on upcoming SEC petitions under § 83.14 of the SEC rule (42 CFR 83); and policy on SC&A Capitol Hill visits. The Board will convene in closed session on August 25, 2005 from 1 p.m. to 3 p.m. CT. The closed session will involve finalization of work tasks for the SC&A Contract for the next fiscal year. There will be a general public comment period

scheduled for August 25, 2005 from 7 p.m. to 8:30 p.m. CT.

A portion of the meeting will be closed to the public in accordance with provisions set forth regarding subject matter considered confidential under the terms of 5 U.S.C. 552b(c)(9)(B), and the Determination of the Director of the Management and Services Office, Centers for Disease Control and Prevention, pursuant to Pub. L. 92–463.

The agenda is subject to change as priorities dictate.

In the event an individual cannot attend, written comments may be submitted. Any written comments received will be provided at the meeting and should be submitted to the contact person below well in advance of the meeting.

Contact Person For More Information: Dr. Lewis V. Wade, Executive Secretary, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513–533–6825, fax 513–533–6826.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 16, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control Prevention.

[FR Doc. 05–16637 Filed 8–22–05; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy Sites: Savannah River Site Health Effects Subcommittee (SRSHES).

Time and Date: 8:30 a.m.–4 p.m., September 15, 2005.

Place: The Partridge Inn, 2110 Walton Way, Augusta, Georgia 30904, telephone 1–800–476–6888, and fax 706–731–0826.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with the Department of Energy (DOE), and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (DHHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. DHHS delegated program responsibility to CDC. In addition, an MOU was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between the Agency for Toxic Substances and Disease Registry (ATSDR) and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community interaction, and serve as a vehicle for members of the public to express concerns and provide recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include a Review of the Savannah River Site (SRS) Report; National Institute for Occupational Safety and Health Update, and Completed Work Involving the Site; and a Summary of ATSDR Current SRS Activities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Mr. Phillip Green, Executive Secretary, SRSHES, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, NE. (E–39), Atlanta, Georgia 30333, telephone (404) 498–1800, fax (404) 498–1811.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: August 16, 2005.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 05–16636 Filed 8–22–05; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Title: Performance Measurement On-Line Tool (PMOTOOL).

OMB No.: New Collection.

Description: The Performance Measurement On-line Tool was designed by the Children's Bureau to collect data, in an automated format, from specified discretionary grants funded by the Children's Bureau. The data collected by this instrument will be submitted by individual discretionary grantees funded under the following programs: Abandoned Infants Assistance Program, Infant Adoption Awareness Training Program, Adoption Opportunities Program, Child Abuse and Neglect Program and the Child Welfare Training Program. Grantees will submit this information on a semi-annual basis in conjunction with their semi-annual program progress report.

The purpose of this data collection is to assist the Children's Bureau in responding to the Program Assessment Rating Tool (PART), an OMB-mandated reporting system that focuses on quantifiable outcome measures, directly related to the expected social impact or public benefit of each Federal program.

The Children's Bureau will use the aggregated data collected under each Federal program. The measurable outcomes will serve as evidence that the federally funded programs are making progess toward achieving broad, legislated program goals.

Respondents: All competitive discretionary grant programs funded by the Children's Bureau).

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Performance Measurement On-line Tool	Abandoned Infants Assistance Program Range 30–36	2 per fiscal year ...	1 hour per response	Range 60–72.
Performance Measurement On-line Tool	Infant Adoption Awareness Program .... Ranges 4–6	3 per fiscal year ...	1 hour per response	Range 8–12.
Performance Measurement On-line Tool	Adoption Opportunities Program ..... Range 45–55	2 per fiscal year ...	1 hour per response	Range 90–110.
Performance Measurement On-line Tool	Child Abuse and Neglect Program ..... Range 25–32	2 per fiscal year ...	1 hour per response	Range 50–64.
Performance Measurement On-line Tool	Child Welfare Training Program ..... Range 45–55	2 per fiscal year ...	1 hour per response	Range 90–110.
Total	Range 149–184	.....	.....	Range 298–368.

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families in soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. The e-mail address is: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comment 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 of the proposed collection of information; (c) the quality, utility and clarity of 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. Consideration will be given to comments and suggestions submitted within 60 days of publication.

Dated: August 15, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–16638 Filed 8–22–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: ACF–196TT Tribal Temporary Assistance for Needy Families Financial Report.

OMB No.: New Collection.

Description: This information collection is authorized under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA).

Tribal entities participating in the Temporary Assistance for Needy Families program are required by statute to report financial data on a quarterly basis. This form meets the legal standard and provides essential data on the use of Federal funds. Failure to collect the data would seriously compromise ACF's ability to monitor program expenditures, estimate funding needs and to prepare budget submissions required by Congress.

Respondents: Tribal TANF Agencies.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–196TT	50	4	8	1,600

Estimated Total Annual Burden Hours: 1,600.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: Gregory Kenyon, Division of Mandatory Grants. Alternatively, you may request a copy of the proposed form and submit comments by e-mail at *gkenyon@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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 of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 15, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–16639 Filed 8–22–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: Field Test of Social-Emotional and Modified Measures for the Heat Start National Reporting System.

OMB No.: New Collection.

Description: The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF) of the Department of Health and Human Services (HHS) is requesting comments on plans to conduct the field Test of Social-Emotional Measures and Modified Assessment Measures for the Head Start National Reporting System (HSNRS). This study is being conducted under contract with Westat, Xtria, and Pearson (HHS23320052902YC) to examine new and modified measures for HSNRS.

Purposes

The purposes of the field test are to explore the expansion of the HSNR'S coverage of the domain elements of the Head Start Outcomes Framework and to improve the performance of the current HSNRS assessment battery. The Head Start Bureau is interested in expanding the coverage of the HSNRS to include non-cognitive domains, in recognition of the "whole child" orientation of Head Start, in particular social and emotional development. To that end, the Head Start Bureau has reviewed potential measures of social-emotional development and has identified several existing, ratings-based measures as candidates for field testing. Further, the Head Start Bureau is interested in expanding the coverage of the HSNRS to the Physical Health and Development domains of the Head Start Outcomes Framework. Finally, the Quality Assurance Study's findings, Technical Work Group recommendations, and findings from psychometric analysis of first-year implementation data have also suggested some areas for improvement to the current HSNRS assessment battery.

For these purposes, the Head Start Bureau is planning to conduct field tests of measures of social-emotional development and the collection of child health data in fall 2005 and spring 2006. These measures are intended to address the domains of Social and Emotional Development and Physical Health and Development.

Further, the Head Start Bureau will examine modifications to measures in the current HSNRS assessment battery.

The field test will also examine the effectiveness of training procedures and relative feasibility of the selected measures with a diverse set of Head Start programs, staff, and children.

Teacher-Reported Measures of Social-Emotional Development

Five teacher-reported measures of social-emotional development will be field tested in fall 2005 and spring 2006. A teacher-rating approach will be taken because these measures would not place additional burdens (in the form of direct assessment) on the children. These measures have been used in the Family and Child Experiences Survey (FACES) and National Head Start Impact Study (NHSIS) and include:

- Cooperative Classroom Behavior;
- Problem Behaviors;
- Preschool Learning Behavior Scale (PLBS);
- Student-Teacher Relationship Scale (STRS): Short form; and
- Adjustment Scales for Preschool Intervention (ASPI).

Modifications to Current HSNRS Direct Assessment

Modifications to the current HSNRS direct assessment include:

- A new language screener;
- New Letter Naming task; and
- New items in Early Math Skills task using manipulatives.

Health Records Extract

Finally, to expand HSNRS coverage to include health status, child safety, and linkages to health care, the field test will also examine the feasibility of collecting child health information from Head Start programs. Based on these data, indicators of the quality of health service provided by local Head Start programs will be developed. The child health information includes:

- Height;
- Weight;
- Immunization status;
- Dental care records; and
- Occurrences of child injuries

requiring medical attention at each center.

Sample

The national probability sample of Head Start programs for the field test will consist of 30 programs, including for Native American programs, selected with probability proportional to size. From each program, up to 6 classrooms will be selected (each classroom will be taught by a different teacher). This will result in a sample of approximately 1,440 children.

Training

A two-day Field-Test training will take place in September 2005. Field-test participants will be trained and certified in the field-tested measures and procedures. A "training-the-trainers" approach will be used. Trainees must pass a written quiz to be certified trainers. For the modified assessment measures, trainees will participate in role play and conduct observed assessment with children. For the social-emotional measures, all field test participants will also receive self-study materials, including an assessor's guide, which they will bring back to their local programs and distribute among their classroom teachers to study and be quizzed on prior to completing the social-emotional measures.

Once trained, field-test participants will return to their programs and train and certify local teachers or other program staff to conduct field-test measures.

Prior to spring data collection on the field tested measures, refresher training materials (e.g., instructional and exercise materials) will be sent to the participating Head Start programs.

Data Collection

Teacher-reported social-emotional development measures will be completed by the lead teacher of each classroom in the sample. Parallel data of the teacher ratings will be collected in each classroom in order to examine inter-rater reliability. Teacher ratings will be collected independently by the lead teacher and by another staff member in the same classroom (e.g., an assistant teacher), if available and qualified.

For modified HSNRS child assessment measures, local assessors will conduct the field-test measures on the sampled kindergarten-eligible children in their program. Data will be

recorded on scannable answer forms and submitted to Westat. Assessors will also provide feedback on issues such as ease of administration, time of administration, and clarity of training and instructions. The inter-assessor reliability of these measures will be examined through parallel data collected in the form of the regular HSNRS assessments administered to each child.

Respondents: Head Start Children and Head Start Staff.

ANNUAL BURDEN ESTIMATES

[Fall 2005]

Instruments	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Training on Field Test Measures				
Head Start Staff: Participate in Training of Trainers Training	30	1	9	270
Head Start Staff: Review Self-Study Materials on Teacher-Reported Ratings of Social-Emotional Development	360	1	1	360
Head Start Staff: Participate in Local Training on Modified Measures	60	1	2	120
Head Start Staff: Conduct Local Training on Modified Measures	30	1	2	60
Head Start Staff: Complete Feedback Survey on Training Procedures	30	1	1/12	2.5
Head Start Staff: Complete Feedback Survey on Training Procedures	360	1	1/12	30
Field Test of Teach-Reported Ratings of Social-Emotional Development				
Head Start Lead Teacher: Complete Teach-Reported Ratings	180	8	1/4	360
Head Start Classroom Staff: Complete Parallel Reacher-Reported Ratings	180	8	1/4	360
Head Start Lead Staff: Complete Feedback Survey on Teacher-Reported Rating Measures	180	1	1/12	15
Field Test of Modifications to Current HSNRS Direct Child Assessment Battery				
Head Start Staff: Administer Modified Measures	60	24	1/4	360
Head Start Staff: Participate in Modified Measures	1,440	1	1/4	360
Field Test of Collection of Child Health Information				
Head Start Staff: Collect & Submit Child Health Info	30	48	1/12	120
Head Start Staff: Demonstrate Procedures for collecting Height and Weight Information	30	1	1/6	5
Head Start Staff: Complete Feedback Survey on Child Health Data Collection Procedures	30	1	1/12	2.5
Fall 2005 Totals	3,000			2,425

SPRING 2006

Instruments	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Training on Field Test Measures				
Head Start Staff: Participate in Training of Trainers Training	30	1	3	90
Head Start Staff: Review Self-Study materials on Teacher-Reported Ratings of Social-Emotional Development	360	1	1	360
Head Start Staff: Participate in Local Training on Modified Measures	60	1	1	60
Head Start Staff: Conduct Local Training on Modified Measures	30	1	1	30
Head Start Trainers: Complete Feedback Survey on Training Procedures	30	1	1/12	30
Head Start Staff: Complete Feedback Survey on Training Procedures	360	1	1/12	30
Field Test of Teacher-Reported Ratings of Social-Emotional Development				
Head Start Lead Teacher: Complete Teacher-Reported Ratings	180	8	1/4	360

SPRING 2006—Continued

Instruments	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Classroom Staff: Complete Parallel Teacher-Reported Ratings	180	8	¼	360
Head Start Lead Teacher: Complete Feedback Survey on Teacher-Reported Rating Measures	180	1	1/12	15
Field Test of Modifications to Current HSNRS Direct Child Assessment Battery				
Head Start Staff: Administer Modified Measures	60	24	¼	360
Head Start Children: Participate in Modified Measures	1,440	1	¼	360
Field Test of Collection of Child Health Information				
Head Start Staff: Collect & Submit Child Health Info	30	48	1/12	120
Head Start Staff: Demonstrate Procedures for collecting Height and Weight Information	30	1	⅛	5
Head Start Staff: Complete Feedback Survey on Child Health Data Collection Procedures	30	1	1/12	2.5
Spring 2006 Totals	3,000			2,155
Grand Totals	3,000			4,580

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail: *rsargis@acf.hhs.gov.*

The Department specifically requests comments 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 of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 17, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–16640 Filed 8–22–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Application Requirements for the Low Income Home Energy Assistance Program (LIHEAP) Model Plan.

OMB No.: 0970–0075.

Description: The 1994 reauthorization of the LIHEAP statute, the Human Services amendments of 1994 (Public Law 103–252, requires that States, including the District of Columbia, Tribes, Tribal organizations and territories applying for LIHEAP block grant funds must submit an annual application (Model Plan) that meets the LIHEAP statutory and regulatory requirements prior to receiving Federal funds. A detailed application must be submitted every three years. Abbreviated applications may be submitted in alternate years. There have been minor changes in the Model Plan for clarity. There have been no substantive changes.

Respondents: State, local or tribal governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Detailed Model Plan	65	1	1	65
Abbreviated Model Plan	115	1	.33	38

Estimated Total Annual Burden Hours: 103.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information

collection. E-mail address: *grjohnson@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov.*

Dated: August 16, 2005.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 05–16641 Filed 8–19–05; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0153]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Regulations for In Vivo Radiopharmaceuticals Used for Diagnosis and Monitoring

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by September 22, 2005.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Regulations For In Vivo Radiopharmaceuticals Used For Diagnosis and Monitoring—(OMB Control Number 0910–0409)—Extension

In response to the requirements of section 122 of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Public Law 105–115), FDA published a final rule (64 FR 26675, May 17, 1999) amending its regulations by adding provisions that clarify FDA's evaluation and approval of in vivo radiopharmaceuticals used in the diagnosis or monitoring of diseases. The regulation describes the kinds of indications of diagnostic radiopharmaceuticals and some of the criteria that the agency would use to evaluate the safety and effectiveness of a diagnostic radiopharmaceutical under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) and section 351 of the Public Health Service Act (the PHS Act) (42 U.S.C. 262). Information about the safety or effectiveness of a diagnostic radiopharmaceutical enables FDA to properly evaluate the safety and effectiveness profiles of a new diagnostic radiopharmaceutical or a new indication for use of an approved diagnostic radiopharmaceutical.

The rule clarifies existing FDA requirements for approval and evaluation of drug and biological products already in place under the authorities of the act and the PHS Act. The information, which is usually submitted as part of a new drug application (NDA), biologics license application, or as a supplement to an approved application, typically includes, but is not limited to, nonclinical and clinical data on the pharmacology, toxicology, adverse events, radiation safety assessments, and chemistry, manufacturing, and controls. The content and format of an application for approval of a new drug are set forth in § 314.50 (21 CFR 314.50). Under 21 CFR part 315, information required under the act and needed by FDA to evaluate the safety and effectiveness of in vivo radiopharmaceuticals still needs to be reported.

Based on the number of submissions (that is, human drug applications and/or new indication supplements for diagnostic radiopharmaceuticals) that FDA receives, the agency estimates that it will receive approximately two submissions annually from two applicants. The hours per response refers to the estimated number of hours that an applicant would spend preparing the information required by the regulations. Based on FDA's experience, the agency estimates the time needed to prepare a complete application for a diagnostic radiopharmaceutical to be approximately 10,000 hours, roughly one-fifth of which, or 2,000 hours, is estimated to be spent preparing the portions of the application that would be affected by these regulations. The regulation does not impose any additional reporting burden for safety and effectiveness information on diagnostic radiopharmaceuticals beyond the estimated burden of 2,000 hours because safety and effectiveness information is already required by § 314.50 (OMB control number 0910–0001, approved by OMB until March 31, 2005). In fact, clarification in these regulations of FDA's standards for evaluation of diagnostic radiopharmaceuticals is intended to streamline overall information collection burdens, particularly for diagnostic radiopharmaceuticals that may have well-established, low-risk safety profiles, by enabling manufacturers to tailor information submissions and avoid unnecessary clinical studies. Table 1 of this document contains estimates of the annual reporting burden for the preparation of the safety and effectiveness sections of an application that are imposed by existing regulations. The burden totals do not include an increase in burden. This estimate does not include the actual time needed to conduct studies and trials or other research from which the reported information is obtained.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
315.4, 315.5, and 315.6	2	1	2	2,000	4,000

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Total					4,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

In the **Federal Register** of May 3, 2005 (70 FR 22887), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

Dated: August 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–16656 Filed 8–22–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0029]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Infant Formula Recall Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Infant Formula Recall Regulations" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 1, 2005 (70 FR 5188), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0188. The approval expires on July 31, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: August 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–16657 Filed 8–22–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0317]

Agency Information Collection Activities; Proposed Collection; Comment Request; Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the record retention requirement of the soy protein/coronary heart disease health claim.

DATES: Submit written or electronic comments on the collection of information by October 24, 2005.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Record Retention Requirements for the Soy Protein and Risk of Coronary Heart Disease Health Claim—21 CFR 101.82(c)(2)(ii)(B) (OMB Control Number 0910–0428)—Extension

Section 403(r)(3)(A)(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)(3)(A)(i)) provides for the use of food label statements characterizing a relationship of any nutrient of the type required to be in the label or labeling of the food to a disease or a health related condition only where that statement

meets the requirements of the regulations promulgated by the Secretary to authorize the use of such a health claim. Section 101.82 (21 CFR 101.82) of FDA's regulations authorizes a health claim for food labels about soy protein and the risk of coronary heart disease. To bear the soy protein/coronary heart disease health claim, foods must contain at least 6.25 grams of soy protein per reference amount customarily consumed. Analytical methods for measuring total protein can be used to quantify the amount of soy protein in foods that contain soy as the sole source of protein. However, at the present time there is no validated analytical methodology available to quantify the amount of soy protein in foods that contain other sources of protein. For these latter foods, FDA must rely on information known only to the manufacturer to assess compliance with the requirement that the food contain the qualifying amount of soy protein. Thus, FDA requires manufacturers to have and keep records to substantiate the amount of soy protein in a food that bears the health claim and contains sources of protein other than soy, and to make such records available to appropriate regulatory officials upon written request. The information collected includes nutrient data bases or analyses, recipes or formulations, purchase orders for ingredients, or any other information that reasonably substantiates the ratio of soy protein to total protein.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
101.82(c)(2)(ii)(B)	25	1	25	1	25

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Based upon its experience with the use of health claims, FDA estimates that only about 25 firms would be likely to market products bearing a soy protein/coronary heart disease health claim and that only, perhaps, one of each firm's products might contain nonsoy sources of protein along with soy protein. The records required to be retained by § 101.82(c)(2)(ii)(B) are the records, e.g., the formulation or recipe, that a manufacturer has and maintains as a normal course of its doing business. Thus, the burden to the food manufacturer is that involved in assembling and providing the records to appropriate regulatory officials for review or copying.

Dated: August 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–16658 Filed 8–22–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0469]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Adverse Experience Reporting for Licensed Biological Products; and General Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Adverse Experience Reporting for Licensed Biological Products; and General Records" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 20, 2005 (70 FR 20571), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0308. The approval expires on July 31, 2008. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: August 17, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–16659 Filed 8–22–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005D–0310]

Draft Guidance for Industry on Gene Therapy Clinical Trials—Observing Participants for Delayed Adverse Events; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Industry: Gene Therapy Clinical Trials—Observing Participants for Delayed Adverse Events," dated August 2005. The draft guidance provides sponsors of gene therapy studies with recommendations regarding collection of data on delayed adverse events in participants who have been exposed to gene therapy products. When finalized, this guidance will supplement the recommendations in the "Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors" (Retroviral Vector guidance), dated October 2000, for study participant long-term followup. However, the recommendations in the Retroviral Vector guidance regarding the length of followup will be superseded by this Gene Therapy Clinical Trials guidance.

DATES: Submit written or electronic comments on the draft guidance by November 21, 2005, to ensure their

adequate consideration in preparation of the final guidance. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Brenda R. Friend, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled "Guidance for Industry: Gene Therapy Clinical Trials—Observing Participants for Delayed Adverse Events" dated August 2005. This draft guidance provides to sponsors of gene therapy studies recommendations on: (1) Methods to assess the risk of gene-therapy-related delayed adverse events following exposure to gene therapy products, (2) guidance for determining the likelihood that long-term followup observations on study participants will provide scientifically meaningful information, and (3) specific advice regarding the duration and design of long-term followup observations.

This draft guidance, when finalized, will supplement the recommendations in the "Guidance for Industry: Supplemental Guidance on Testing for Replication Competent Retrovirus in Retroviral Vector Based Gene Therapy Products and During Follow-up of Patients in Clinical Trials Using Retroviral Vectors" (Retroviral Vector guidance), dated October 2000, for study participant long-term followup. However, the recommendations in the Retroviral Vector guidance regarding the length of followup will be superseded by this Gene Therapy Clinical Trials guidance.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The information collection provisions in this guidance for the investigational new drug application (IND) regulations (21 CFR part 312) have been approved under OMB control number 0910–0014; and the good laboratory practice (GLP) regulations (21 CFR part 58) have been approved under OMB control number 0910–0119.

III. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cber/guidelines.htm* or *http://www.fda.gov/ohrms/dockets/default.htm.*

Dated: August 12, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–16629 Filed 8–22–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Prior Disclosure Regulations

AGENCY: Bureau of Customs and Border Protection (CBP), U.S. Department of Homeland Security (DHS).

ACTION: Notice and request for comments.

SUMMARY: The Department of the Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Prior Disclosure Regulations. This proposed information collection was previously published in the **Federal Register** (70 FR 35280–35281) on June 17, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 22, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting

comments concerning the following information collection:

Title: Prior Disclosure Regulations.

OMB Number: 1651–0074.

Form Number: N/A.

Abstract: This collection of information is required to implement a provision of the Customs Modernization portion of the North American Free Trade Implementation Act concerning prior disclosure by a person of a violation of law committed by that person involving the entry or introduction or attempted entry or introduction of merchandise into the United States by fraud, gross negligence or negligence, pursuant to 19 U.S.C. 1592(c)(4), as amended.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 3,500.

Estimated Time per Respondent: 60 minutes.

Estimated Total Annual Burden Hours: 3,500.

Estimated Annualized Cost to the Public: N/A.

Dated: August 16, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–16719 Filed 8–22–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request Vessel Entrance or Clearance Statement Form

AGENCY: Bureau of Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Notice and request for comments.

SUMMARY: The Department of Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning Vessel Entrance of Clearance Statement. This proposed information collection was previously published in the **Federal Register** (70 FR 35280–35281) on June 17, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 22, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Customs and Border Protection, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) 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 estimates 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 including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Vessel Entrance or Clearance Statement Form.

OMB Number: 1651–0019.

Form Number: CBP Form 1300.

Abstract: This form is used by a master of a vessel to attest to the truthfulness of all other forms associated with the manifest.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 12,000.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 21,991.

Estimated Total Annualized Cost on the Public: N/A.

Dated: August 16, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Group.

[FR Doc. 05–16723 Filed 8–22–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Entry and Manifest of Merchandise Free of Duty

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Entry and Manifest of Merchandise Free of Duty. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 35284) on June 17, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before September 22, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated

response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Entry and Manifest of Merchandise Free of Duty.

OMB Number: 1651–0013.

Form Number: CBP Form–7523.

Abstract: CBP Form–7523 is used by carriers and importers as a manifest for the entry of merchandise free of duty under certain condition and by CBP to authorize the entry of such merchandise. It is also used by carriers to show that the articles being imported are to be released to the importer or consignee.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 4,950.

Estimated Time per Respondent: 1 hour and 40 minutes.

Estimated Total Annual Burden Hours: 8,247.

Estimated Total Annualized Cost on the Public: N/A.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at (202) 344–1429.

Dated: August 16, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–16725 Filed 8–22–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Entry Summary and Continuation Sheet

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Entry Summary and Continuation Sheet. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (70 FR 35279) on June 17, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before September 22, 2005.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Entry Summary and Continuation Sheet.

OMB Number: 1651–0022.

Form Number: Customs Form–7501, 7501A.

Abstract: Form CBP–7501 is used by CBP as a record of the impact transaction, to collect proper duty, taxes, exactions, certifications and enforcement endorsements, and to provide copies to Census for statistical purposes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 38,500.

Estimated Time per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 6,627,678.

Estimated Annualized Cost to the Public: N/A.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300

Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–344–1429.

Dated: August 16, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–16727 Filed 8–22–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request Crew's Effects Declaration

AGENCY: Bureau of Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Crew's Effects Declaration. This proposed information collection was previously published in the **Federal Register** (70 FR 35285) on June 17, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 22, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Branch, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Crew's Effects Declaration.

OMB Number: 1651–0020.

Form Number: CBP Form–1304.

Abstract: CBP Form–1304 contains a list of crew's effects that are accompanying them on the trip, which are required to be manifested, and also the statement of the master of the vessel attesting to the truthfulness of the merchandise being carried on board the vessel as crews effects.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 206,100.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 17,326.

Estimated Total Annualized Cost on the Public: N/A.

Dated: August 16, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–16729 Filed 8–22–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request Entry and Immediate Delivery Application

AGENCY: Bureau of Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Notice and request for comments.

SUMMARY: The Department of Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Entry and Immediate Delivery Application. This proposed information collection was previously published in the **Federal Register** (70 FR 35282) on June 17, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before September 22, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Branch, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Entry and Immediate Delivery Application.

OMB Number: 1651–0024.

Form Number: CBP Form–3461 and Form–3461 Alternate.

Abstract: CBP Form–3461 and Form–3461 Alternate are used by importers to provide CBP with the necessary information in order to examine and release imported cargo.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 6,543,405.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 838,158.

Estimated Annualized Cost to the Public: N/A.

Dated: August 16, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–16731 Filed 8–22–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request Foreign Trade Zone Annual Reconciliation Certification and Recordkeeping Requirement

AGENCY: Bureau of Customs and Border Protection (CBP), Department of Homeland Security (DHS).

ACTION: Notice and request for comments.

SUMMARY: The Department of Homeland Security, as part of its continuing effort to reduce paperwork and respondent burden, CBP invites the general public and other Federal agencies to comment on an information collection requirement concerning the Foreign Trade Zone Annual Reconciliation Certification and Recordkeeping Requirement. This proposed information collection was previously published in the **Federal Register** (70 FR 35279) on June 17, 2005, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before September 22, 2005, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Customs and Border Protection, Information Services Branch Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Bureau of Customs and Border Protection, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW., Room 3.2C, Washington, DC 20229, Tel. (202) 344–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Foreign Trade Zone Annual Reconciliation Certification and Recordkeeping Requirement.

OMB Number: 1651–0051.

Form Number: N/A.

Abstract: Each Foreign Trade Zone Operator will be responsible for maintaining its inventory control in compliance with statue and regulations. The operator will furnish CBP an annual certification of their compliance.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 260.

Estimated Time per Respondent: 45 minutes.

Estimated Total Annual Burden Hours: 195.

Estimated Total Annualized Cost on the Public: N/A.

Dated: August 16, 2005.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 05–16732 Filed 8–22–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker Permit

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker permits are cancelled without prejudice.

Name	Permit No.	Issuing port
World Broker Puerto Rico, Inc	4902AHE	San Juan.
BDP International	1101	San Francisco.
World Asia Logistics, Inc	99–00281	Washington, DC.
John M. Schepers	20012	Los Angeles.
Menlo Worldwide Trade Services, Inc	94–17–010	Atlanta.
Masterpiece International, Ltd	17–04–D52	Atlanta.
Cavalier International Air Freight, Inc	17–03–HTD	Atlanta.
Jorge Diaz	23–04-BGP	Laredo.
Stephen A. Sowda	53–03–BCW	Houston.
Menlo Worldwide Trade Services, Inc	86029	Houston.
Thomas A. Barnhart	04–00228	Washington, DC.
HYC Logistics, Inc	995	New York.
Guy Perego dba Stella International	28–04–BJW	San Francisco.
J.M. Rodgers Co., Inc	14203	Detroit.

Dated: August 15, 2005.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 05–16724 Filed 8–22–05; 8:45 am]

BILLING CODE 9110–06–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of One Current Public Collection of Information; Federal Flight Deck Officer (FFDO) Program

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on one currently approved information collection requirement abstracted below that will be submitted to OMB for renewal in compliance with the Paperwork Reduction Act.

DATES: Send your comments by October 24, 2005.

ADDRESSES: Comments may be mailed or delivered to Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Ms. Wawer at the above address or by telephone (571) 227–1995 or facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), 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. Therefore, in preparation for submission to renew clearance of the following information collection, 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.

Information Collection Requirement

1652–0011; Federal Flight Deck Officer (FFDO) Program. The Transportation Security Administration (TSA) initially required this information collection under Pub. L. 107–296 and Pub. L. 108–176. See Arming Pilots Against Terrorism Act (APATA), Title XIV of the Homeland Security Act (Pub. L. 107–296, Nov. 25, 2202), codified at 49 U.S.C. 44921; Vision 100—Century of Aviation Reauthorization Act (Vision 100) (Pub. L. 108–176, 117 Stat. 2490, Dec. 12, 2003), codified at 49 U.S.C. 44918. TSA is seeking to renew this information collection in order to continue collecting the information described in this notice to comply with its statutory mission. APATA required TSA to establish a program to screen, select, train, deputize, equip and supervise qualified volunteer pilots of passenger aircraft. With the enactment of the Vision 100, the program was expanded to include pilots of cargo aircraft, as well as flight engineers and navigators, on both passenger and cargo aircraft.

These individuals, known as Federal Flight Deck Officers (FFDOs), are authorized to transport and carry a firearm and to use force, including deadly force, to defend the flight deck of an aircraft against acts of criminal violence or air piracy. In order to screen FFDO volunteers for entry into the program, TSA collects information, including name, address, prior address information, personal references, criminal history, limited medical information, financial information and employment information, from applicants through comprehensive applications they submit to TSA. The information collected is used to assess the qualifications and suitability of prospective and current FFDOs through an online application, to ensure the readiness of every FFDO, to administer the program, and for security purposes.

Based on the number of current FFDOs, TSA estimates a total of 6,000 respondents annually. It is estimated the online application will take one hour for each applicant to prepare, for a total burden of 6,000 hours.

Issued in Arlington, Virginia, on August 17, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. 05–16683 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–21]

Credit Watch Termination Initiative

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration (FHA) against HUD-approved mortgagees through the FHA Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000; telephone (202) 708–2830 (this is not a toll free number). Persons with hearing or speech impairments may access that number through TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in HUD's mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating Origination Approval Agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees, which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement: Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Origination Approval Agreement (Agreement) between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause: HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the 23rd review period, HUD is terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 200 percent of the field office rate.

Effect: Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may apply for a new Origination Approval Agreement if the mortgagee continues to be an approved mortgagee meeting the requirements of 24 CFR 202.5, 202.6, 202.7, 202.8 or 202.10 and 202.12, if there has been no Origination Approval Agreement for at least six months, and if the Secretary determines that the underlying causes for termination have been remedied. To enable the Secretary to ascertain whether the underlying causes for termination have been remedied, a mortgagee applying for a new Origination Approval Agreement must obtain an independent review of the terminated office's operations as well as its mortgage production, specifically including the FHA-insured mortgages cited in its termination notice. This independent analysis shall identify the underlying cause for the mortgagee's high default and claim rate. The review must be conducted and issued by an independent Certified Public Accountant (CPA) qualified to perform audits under Government Auditing Standards as provided by the General Accounting Office. The mortgagee must also submit a written corrective action plan to address each of the issues identified in the CPA's report, along with evidence that the plan has been implemented. The application for a new Agreement should be in the form of a letter, accompanied by the CPA's report and corrective action plan. The request should be sent to the Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, SW., Room B133–P3214, Washington, DC 20410–8000 or by courier to 490 L'Enfant Plaza, East, SW., Suite 3214, Washington, DC 20024–8000.

Action: The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
First Alternative Mortgage Corp.	145 Huguenot Street, New Rochelle, NY 10801.	Albany, NY	6/22/2005	Philadelphia.
Major Mortgage	5137 S 1500 W, Ogden, UT 84405	Salt Lake City, UT	5/21/2005	Denver.
New York Mortgage Bankers LTD.	128 Rivington Street, New York, NY 10002	New York, NY	5/21/2005	Philadelphia.
Primero LLC	2465 Sheridan Blvd., Ste. 200, Denver, CO 80214.	Denver, CO	6/22/2005	Denver.
Professional Mortgage LLC	2232 SE Washington Blvd., Ste. 205, Bartlesville, OK 74006.	Tulsa, OK	6/22/2005	Denver.
Realty Mortgage Corporation	238 Courthouse Road, Gulfport, MS 39507	Jackson, MS	5/21/2005	Atlanta.
Residential Finance Corporation	401 N Front Street, Ste. 300, Columbus, OH 43215.	Columbus, OH	6/22/2005	Philadelphia.
Residential Lending Corporation	3039 Premiere Pkwy., Ste. 100C, Duluth, GA 30097.	Atlanta, GA	5/21/2005	Atlanta.

Dated: August 10, 2005.

Brian D. Montgomery,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. E5–4614 Filed 8–22–05; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 17, 2005.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on (202) 693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Coke Oven Emissions (29 CFR 1910.1029).

OMB Number: 1218–0128.

Frequency: Quarterly.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Federal Government; and State, local, or tribal government.

Number of Respondents: 14.

Number of Annual Responses: 49,527.

Estimated Time per Response: Varies from 5 minutes for a secretary to maintain record to 4 hours to complete a medical examination.

Total Burden Hours: 51,756.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $933,064.

Description: The information collection requirements in the Coke Oven Emissions Standard at 29 CFR 1910.1029 provides protection for employees from the adverse health effects associated with exposure to coke oven emissions. In this regard, the Coke Oven Emissions Standard requires employers to monitor employees' exposure to coke oven emissions, monitor employee health, and provide employees with information about their exposures and the health effects of exposures to coke oven emissions.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Slings (29 CFR 1910.184).

OMB Number: 1218–0223.

Frequency: On occasion and annually.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, local, or tribal government.

Number of Respondents: 65,000.

Number of Annual Responses: 164,938.

Estimated Time per Response: Varies from 1 minute to maintain a certificate to 30 minutes for a manufacturing worker to acquire information from a manufacturer for a new tag, make a new tag, and affix it to a sling.

Total Burden Hours: 19,167.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: The Slings Standard (29 CFR 1910.184) specifies several collection of information (paperwork) requirements, depending on the type of sling. The purpose of each of these requirements is to prevent employees from using defective or deteriorated slings, thereby reducing their risk of death or serious injury caused by sling failure during material handling.

Paragraph (e) of the Standard covers alloy steel chain slings. Paragraph (e)(1) requires that alloy steel chain slings have permanently affixed and durable identification stating the size, grade, rated capacity, and reach of the sling. The information, supplied by the manufacturer, is typically marked on a metal tag and affixed to the sling.

Paragraph (e)(3)(i) requires the employer to make a thorough periodic inspection of alloy steel chain slings in use on a regular basis, but at least once a year. Paragraph (e)(3)(ii) requires the employer to make and maintain a record of the most recent month in which each alloy steel chain sling was thoroughly inspected, and make this record available for examination.

Paragraph (e)(4) requires the employer to retain certificates of proof testing. Employers must ensure that before use, each new, repaired, or reconditioned alloy steel chain sling, including all welded components in the sling assembly, has been proof tested by the sling manufacturer or an equivalent entity. The certificates of proof testing must be retained by the employer and made available for examination.

Paragraph (f) of the Standard covers wire rope slings. Paragraph (f)(4)(ii) requires that all welded end attachments of wire rope slings be proof tested by the manufacturer at twice their rated capacity prior to initial use, and that the employer retain a certificate of the proof test and make it available for examination.

Paragraph (g) of the Standard covers metal mesh slings. Paragraph (g)(1) requires each metal mesh sling to have a durable marking permanently affixed that states the rated capacity for vertical basket hitch and choker hitch loadings. Paragraph (g)(8)(ii) requires that once repaired, each metal mesh sling be permanently marked or tagged, or a written record maintained to indicate the date and type of the repairs made, and the person or organization that performed the repairs. Records of the repairs shall be made available for examination.

Paragraph (i) of the Standard covers synthetic web slings. Paragraph (i)(1) requires that synthetic web slings be marked or coded to show the rated capacities for each type of hitch, and type of synthetic web material used in the sling.

Paragraph (i)(8)(i) prohibits the use of repaired synthetic web slings until they have been proof tested by the manufacturer or equivalent entity. Paragraph (i)(8)(ii) requires the employer to retain a certificate of the proof test and make it available for examination.

The information on the identification tags, markings, and codings assist the employer in determining whether the sling can be used for the lifting task. The sling inspections enable early detection of faulty slings. The inspection and repair records provide employers with information about when the last inspection was made and about the type of the repairs made. This information provides some assurance about the condition of the slings. These records also provide the most efficient means for an OSHA compliance officer to determine that an employer is complying with the Standard. Proof-testing certificates give employers, employees, and OSHA compliance officers assurance that slings are safe to use. The certificates also provide the compliance officers with an efficient means to assess employer compliance with the Standard.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Forgings Machines, Inspection Certification Records (29 CFR 1910.218).

OMB Number: 1218–0228.

Frequency: Bi-weekly.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, local, or tribal government.

Number of Respondents: 27,700.

Number of Annual Responses: 1,440,788.

Estimated Time Per Response: Varies from 2 minutes for an employer to disclose certification records to 8 minutes for a manufacturing worker to conduct an inspection of each forging machine and guard or point-of-operation protection device bi-weekly.

Total Burden Hours: 187,264.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $0.

Description: The Standard on Forging Machines (29 CFR 1910.218) (the Standard) specifies several paperwork

requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose these requirements is to reduce employees' risk of death or serious injury by ensuring that forging machines used by them are in safe operating condition, and that they are able to clearly and properly identify manually operated valves and switches.

Inspection of Forging Machines, Guards, and Point-of-Operation Protection Devices (paragraphs (a)(2)(i) and (a)(2)(ii)). Paragraph (a)(2)(i) requires employers to establish periodic and regular maintenance safety checks, and to develop and keep a certification record of each inspection. The certification record must include the date of inspection, the signature of the person who performed the inspection, and the serial number (or other identifier) of the forging machine inspected. Under paragraph (a)(2)(ii), employers are to schedule regular and frequent inspections of guards and point-of-operation protection devices, and prepare a certification record of each inspection that contains the date of the inspection, the signature of the person who performed the inspection, and the serial number (or other identifier) of the equipment inspected. These inspection certification records provide assurance to employers, employees, and OSHA compliance officers that forging machines, guards, and point-of-operation protection devices have been inspected, assuring that they will operate properly and safely, thereby preventing impact injury and death to employees during forging operations. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

Identification of Manually Controlled Valves and Switches (paragraphs (c), (h)(3), (i)(1) and (i)(2)). These paragraphs require proper and clear identification of manually operated valves and switches on presses, upsetters, boltheading equipment, and rivet-making machines, respectively. Marking valves and switches provide information to employees to ensure that they operate the forging machines correctly and safely.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 05–16679 Filed 8–22–05; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of a Member to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the Appointment of an individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register.**

The following individuals are hereby appointed to a three-year term on the Department's Performance Review Board: John McWilliam; Felix Quintana; Corlis Sellers.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Bartels, Director, Office of Executive Resources and Personnel Security, Room C5508, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Avenue, NW., Washington, DC 20210, telephone: (202) 693–7628.

Signed at Washington, DC, this 16th day of August, 2005.

Elaine L. Chao,

Secretary of Labor.

[FR Doc. 05–16678 Filed 8–22–05; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D–11047]

Amendment to Prohibited Transaction Exemption (PTE) 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers

AGENCY: Employee Benefits Security Administration.

ACTION: Adoption of amendment to PTE 84–14.

SUMMARY: This document amends PTE 84–14, a class exemption that permits various parties that are related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are managed by "qualified professional asset managers" (QPAMs), which are independent of the parties in interest and which meet specified financial standards. Additional exemptive relief is provided for employers to furnish limited amounts of goods and services to a managed fund in the ordinary course of business. Limited relief is also provided for leases of office or commercial space between managed funds and QPAMs or contributing employers. Finally, relief is provided for transactions involving places of public accommodation owned by a managed fund. The amendment affects participants and beneficiaries of employee benefit plans, the sponsoring employers of such plans, and other persons engaging in the described transactions.

DATES: Except where otherwise indicated herein, the amendment is effective August 23, 2005.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta or Karen E. Lloyd, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8540 (not a toll-free number).

SUPPLEMENTARY INFORMATION: On September 3, 2003, a notice was published in the **Federal Register** (68 FR 52419) of the pendency before the Department of Labor (the Department) of a proposed amendment to PTE 84–14 (49 FR 9494, March 13, 1984, as corrected at 50 FR 41430, October 10, 1985). PTE 84–14 provides an exemption from certain of the restrictions of section 406 of ERISA, and from certain taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. The Department proposed to amend to PTE 84–14 on its own motion, pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

The notice of pendency gave interested persons an opportunity to comment on the proposed exemption. The Department received six comment letters. In general, the commenters expressed support for the proposed amendments. Upon consideration of all the comments received, the Department has determined to grant the proposed amendment, subject to certain modifications. These modifications and the major comments are discussed below.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of

[1] Section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), generally transferred the authority of the Secretary of Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This amendment has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. Pursuant to the terms of the Executive Order, it has been determined that this action is a "significant regulatory action." Accordingly, this action has been reviewed by OMB.

Paperwork Reduction Act

The information collections in the exemption, as re-stated and amended in the adoption of Amendment to PTE 84–14, and in the Proposed Amendment to Prohibited Transaction Exemption 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers have been combined in one ICR that is described in the Paperwork Reduction Act section of the Notice of the Proposed Amendment also published in this issue of the **Federal Register**.

Description of the Exemption

PTE 84–14 consists of four separate parts. The General Exemption, set forth in Part I, permits an investment fund managed by a QPAM to engage in a wide variety of transactions described in ERISA section 406(a)(1)(A) through (D) with virtually all parties in interest except the QPAM which manages the assets involved in the transaction and those parties most likely to have the power to influence the QPAM. In this regard, under section I(a), the exemption would not be available if a QPAM caused the investment fund to enter into a transaction with a party in interest dealing with the fund, if the party in interest or its "affiliate," (1) was authorized to appoint or terminate the QPAM as a manager of any of the plan's assets, (2) was authorized to negotiate the terms of the management agreement with the QPAM (including renewals or modifications thereof) on behalf of the plan, or (3) had exercised such powers in the immediately preceding one year. Additionally, under section I(d), the QPAM may not cause the investment fund which it manages to engage in a transaction with itself or a "related" party. Section V(h) provides generally that a party in interest and a QPAM are "related" if either entity (or parties controlling or controlled by either entity) owns a five percent or more interest in the other entity.

Part II of the exemption provides limited relief under both section 406(a) and (b) of ERISA for certain transactions involving those employers and certain of their affiliates which could not qualify for the General Exemption provided by Part I. Part III of the exemption provides limited relief under section 406(a) and (b) of ERISA for the leasing of office or commercial space by an investment fund to the QPAM, an affiliate of the QPAM, or a person who could not qualify for the General Exemption provided by Part I because it held the power of appointment described in section I(a). Part IV of the exemption provides limited relief under section 406(a) and 406(b)(1) and (2) of ERISA for the furnishing of services and facilities by a place of public accommodation owned by an investment fund managed by a QPAM, to all parties in interest, if the services and facilities are furnished on a comparable basis to the general public.

In the notice published September 3, 2003, the Department proposed to amend the General Exemption of PTE 84–14 in several respects. With respect to section I(a) (power of appointment), the Department proposed to delete the "one year look-back rule" under which the exemption would have been unavailable to a party in interest if it had exercised the power of appointment within the one-year period preceding the transaction. The Department also proposed to clarify that section I(a)'s power of appointment refers only to the power to appoint the QPAM as manager of the assets involved in the transaction, as opposed to any of the plan's assets. In addition, the Department proposed to modify section I(a) to make the class exemption available to a party in interest with respect to a plan investing in a commingled investment fund, notwithstanding that the party in interest has the authority to redeem or acquire units of such a fund on behalf of the plan, if the plan's interest in the fund represents less than 10% of the investment fund's total assets. Finally, the Department proposed to amend section V(c), the definition of affiliate as it applies to section I(a) and Part II, to delete those partnerships in which the person has less than a 10 percent interest and to only include highly compensated employees as defined in section 4975(e)(2)(H) of the Code.

With respect to section I(d) and the definition of "related" under section V(h), the Department proposed to amend section V(h) to provide that a QPAM is "related" to a party in interest for purposes of section I(d) if:

- The QPAM or the party in interest owns a 10 percent or more interest in the other entity;
- A person controlling or controlled by the QPAM or the party in interest owns a 20 percent or more interest in the other entity; or
- A person controlling, or controlled, by the QPAM or the party in interest owns less than a 20 percent interest in the other entity, but nevertheless exercises control over the management or policies of the other party by reason of its ownership interest.

In addition, the Department proposed to modify section V(h) to provide that generally determinations of whether the QPAM is "related" to a party in interest for purposes of section I(d) may be made as of the last day of the most recent calendar quarter. Finally, the Department proposed to amend section V(h)(2) to provide that shares held in a fiduciary capacity need not be considered in applying the percentage limitations.

With respect to the definition of QPAM, the Department proposed to clarify that the phrase in section V(a)(4) "as of the last day of its most recent fiscal year" only modifies the term "total client assets under its management and control in excess of $50,000,000," and does not refer to the shareholders' or partners' equity requirement.

The Department also proposed to adjust the $50 million of client assets under management standard utilized in section V(a)(4) to $85 million, to reflect the change in the Consumer Price Index. Additionally, the Department proposed to increase the shareholders' and partners' equity requirement from $750,000 to $1,000,000, to correspond to the preceding subsections of section V(a).

Finally, the Department proposed to clarify the exemption to specifically provide that a QPAM must be independent of an employer with respect to a plan whose assets are managed by the QPAM.

Written Comments

Comments on Proposed Amendments

QPAM Independence

A number of commenters addressed the Department's proposed clarification of the QPAM requirement that it must be independent of an employer with respect to a plan whose assets are managed by the QPAM. According to the commenters, many employers in the financial services industry believed, based on the advice of counsel, that they were eligible to serve as QPAMs for their own plans. One commenter stated that as in-house counsel it obtained written legal advice from outside ERISA counsel and, in good faith reliance on such advice, determined that the class exemption allowed an employer to act as QPAM for its own plan. According to the advice memorandum submitted to the Department for the record, the ERISA counsel noted that there are several exceptions to the availability of relief under Part I of the class exemption. The general exemption will not apply to transactions with parties in interest who have the power to appoint the QPAM. In addition, no relief is available for transactions with the QPAM or a person "related to" the QPAM. The memorandum concluded that there is no exception from the availability of Part I relief for situations in which the QPAM is both employer and asset manager.

Another comment submitted on behalf of an asset manager stated that its in-house counsel initially determined that the class exemption did not preclude the manager from acting as QPAM for its own plan based on legal advice from outside counsel; and, subsequently, this determination was confirmed by discussions in-house counsel had with outside counsel and with potential plan counterparties. Another commenter stated that, as in-house counsel to a large financial services organization, it concluded based upon its analysis that the class exemption permitted an investment manager to act as a QPAM for its own plan. In considering the issue, the commenter noted that the class exemption focuses on the relationship between the investment manager and the party in interest. According to the commenter, neither Part I, nor the related definitions and the general rules under Part V, make mention of the relationship between the plan sponsor and the investment manager.

The commenters stated further that they are unaware of any examples of abuse associated with an advisor acting as a QPAM for its own plan. In addition, these commenters argued that the other conditions of the exemption are sufficient to protect plans from abuse. These commenters urged the Department to reverse its position that a QPAM must be independent of an employer with respect to a plan whose assets are managed by the QPAM.

As to the assertion that many practioners were "unaware" of the scope of the independence requirement discussed in the paragraph above, the Department notes that the preamble to PTE 84–14 (49 FR 9497) states:

> This class exemption was developed, and is being granted, by the Department based on the essential premise that broad exemptive relief from the prohibitions of section 406(a) of ERISA can be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto, are the sole responsibility of an independent investment manager. [Emphasis added.]

In addition, the Department has received informal comments from other practitioners who were aware of the requirement that a QPAM must be independent of an employer with respect to a plan whose assets are managed by the QPAM and so advised their clients.

After carefully considering the entire record, the Department acknowledges that good faith efforts appear to have been made by the regulated community to comply with the QPAM independence requirement, based on advice of counsel. Although the Department is not revising the final amendment to permit financial services entities to act as QPAMs for their own plans, we are providing limited retroactive and transitional relief herein.[2] Accordingly, the independent fiduciary requirement of the QPAM definition will not apply for the period from December 21, 1982, through the date on which the Department grants a final amendment to the QPAM class exemption which specifically addresses relief for a financial institution to act as investment manager for its own in-house plan. In addition, by notice appearing elsewhere in this issue of the **Federal Register**, the Department is publishing a notice of proposed amendment to PTE 84–14 that would permit a financial institution to act as a QPAM for its own plan.

[2] The Department notes that the definition of independent fiduciary in the final amendment has been re-designated section V(o). The Department has inserted as section V(n) the amendment to the QPAM class exemption pursuant to PTE 2002–13 (67 FR 9483, March 1, 2002) which defines the term "employee benefit plan" or "plan."

Definition of QPAM

As part of the proposed amendment, the Department clarified that the language in section V(a)(4) "as of the last day of its most recent fiscal year" only modified the term "total client assets under its management * * *" and not the term "shareholders' or partners' equity." A commenter noted that the language "as of the last day of its most recent fiscal year" also appears in connection with the shareholders'/partners' equity requirement in another portion of section V(a)(4), and requested that the Department delete that language. The Department concurs with the commenter and has deleted the language.

Assets Involved in the Transaction

The Department proposed to amend section I(a), the power of appointment rule, to focus only on the power of appointment over the plan assets involved in the transaction. One commenter requested that the definition of affiliate in section V(c) be similarly amended. In this regard, an affiliate of a person is defined in section V(c) to include:

> (3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets. A named fiduciary (within the meaning of section 402(a)(2) of ERISA) of a plan and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of section I(a) if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

The commenter requested that the portion of the definition that refers to "any employee * * * who has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets" be amended to refer only to the plan assets involved in the transaction. Likewise, the commenter requested a similar amendment with respect to the language that refers to "a named fiduciary of a plan * * *" The Department concurs with this comment and has revised the final exemption accordingly.

"Related" Definition

The Department has proposed to amend the definition in section V(h) for purposes of determining whether a QPAM is "related" to a party in interest, as follows:

A QPAM is "related" to a party in interest * * * if, as of the last day of its most recent calendar quarter, (i) the QPAM owns a ten percent or more interest in the party in interest; (ii) a person controlling, or controlled by, the QPAM owns a twenty percent or more interest in the party in interest; (iii) the party in interest owns a ten percent or more interest in the QPAM; or (iv) a person controlling, or controlled by, the party in interest owns a twenty percent or more interest in the QPAM. Notwithstanding the foregoing, a party in interest is "related" to a QPAM if: (i) a person controlling, or controlled by, the party in interest owns less than a twenty percent interest in the QPAM and such person exercises control over the management or policies of the QPAM by reason of its ownership interest, or (ii) a person controlling, or controlled by, the QPAM owns less than a twenty percent interest in the party in interest and such person exercises control over the management or policies of the party in interest by reason of its ownership interest.

One commenter suggested that the threshold for determining whether a QPAM and a party in interest are related be increased from a 10 percent or more interest to a 20 percent or more interest. Another commenter suggested that the last sentence of the definition under which the QPAM and a party in interest are considered related parties with an ownership interest of less than 20 percent due to the exercise of actual control, be amended so that only ownership interests of less than 20 percent but greater than 10 percent would be excluded under this part of the definition.

The Department has determined not to adopt the commenter's suggestion to raise the ownership interest from 10 percent to 20 percent. The Department believes that it is not overly burdensome for the QPAM and the party in interest to keep track of ownership interests in each other. In addition, the Department views a 10 percent interest in either the QPAM or the party in interest by the other entity as a meaningful measure for determining whether a QPAM is related to a party in interest. Lastly, the Department has determined to adopt the second comment for ease of administration of this provision. However, the Department cautions that a QPAM that engages in a transaction with a party that has actual control over it (regardless of the percentage of ownership involved) might be engaging in a violation of 406(b) of ERISA for which the General Exemption does not provide relief.

Transitional Relief

Several commenters urged the Department to delay the effective date for certain of the proposed amendments in order to give parties more time to comply with the changes. In particular, transitional relief was requested for the client assets under management requirement and the shareholders/partners' equity requirement for QPAMs that are investment advisers registered under the Investment Advisers Act of 1940 (section V(a)(4)). One commenter requested that the client assets under management and shareholders' or partners' equity standards be effective as of the first fiscal year following the publication of the final amendment in the **Federal Register**. Another commenter requested two fiscal years for a QPAM to comply with the increased assets under management standard and one fiscal year for the increased shareholders'/partners' equity standard.

The Department concurs that transitional relief is appropriate in these cases to permit QPAMs to conform to the amended exemption. Accordingly, the effective date of the new client assets under management and the shareholders'/partners' equity standards of section V(a)(4) will be as of the last day of the first fiscal year beginning on or after the date of publication of this amendment in the **Federal Register**. The coordination of this transitional relief with section V(m) of the exemption, which defines "shareholders" or partners' equity," may be illustrated by the following example:

As of December 31, 2004, QPAM A had $55,000,000 in total client assets under its management and control, and $800,000 in shareholders' equity as demonstrated by the most recent balance sheet prepared within the immediately preceding two years. Based on these amounts, QPAM A, which operates on a calendar year basis and prepares audited balance sheets as of the last day of each calendar year, may continue to act as a QPAM until December 30, 2006 [assuming that this final amendment is published during 2005]. If QPAM A wishes to continue operating as a QPAM after that date, QPAM A: (i) must have total client assets under management in excess of $85,000,000 as of the last day of the most recent fiscal year preceding the transaction, and (ii) must have, as of the date of the transaction, shareholders' equity in excess of $1,000,000 as shown in the most recent balance sheet prepared within the immediately preceding two years.

Securities Lending Class Exemption Amendment

In October 2003, the Department proposed to amend and restate Prohibited Transaction Exemptions 81–6 and 82–63, relating to securities lending arrangements (68 FR 60715, October 23, 2003). The class exemption, if granted, would incorporate both PTEs 81–6 and 82–63 and would expand those class exemptions to additional parties, subject to modified conditions. It was brought to the attention of the Department that PTE 81–6 is referenced in section I(b)(1) of the QPAM class exemption. The Department intends that, following the finalization of the proposed amendment and restatement of PTEs 81–6 and 82–63, section I(b)(1) will continue to exclude transactions described therein from relief under the QPAM class exemption. Accordingly, the reference to PTE 81–6 in section I(b), as well as the references to other class exemptions therein, have been amended to include the phrase "as amended or superseded."

Comments Requesting Additional Amendments

Newly Formed Entities Serving as QPAMs

Under PTE 84–14, a QPAM that is an investment adviser registered under the Investment Advisers Act of 1940 must satisfy the assets under management test of section V(a)(4) as of the last day of the QPAM's most recent fiscal year. A commenter noted that it is difficult for newly-formed entities to satisfy this test and requested instead that the QPAM be permitted to satisfy the test based on its last fiscal quarter as demonstrated on a quarterly balance sheet.

The Department notes that the original QPAM class exemption required the QPAM to satisfy the client assets under management standard as of the last day of its most recent fiscal year to ensure that entities serving as QPAMs are established financial institutions which are large enough to discourage the exercise of undue influence upon their decisionmaking processes. Therefore, the Department has determined not to revise this condition.

Veto or Approval Power

Commenters on the original QPAM class exemption requested that plan officials be permitted to retain ultimate investment decision-making authority with respect to transactions negotiated by a QPAM. The Department did not adopt the suggestions of the commenters because of its view that retention of a veto or approval power would be inconsistent with the underlying concept of the QPAM exemption. The Department noted in the preamble to the QPAM class exemption that if exemptive relief were to be provided where the QPAM has less than ultimate discretion over acquisitions for an investment fund that it manages, the potential for decision making with regard to plan assets that would inure to the benefit of a party in interest would

be increased. A commenter with respect to the proposed amendments noted that in the INHAM class exemption, which was granted subsequent to the QPAM class exemption, approval power is reserved to the plan sponsor for transactions involving $5 million or more. The commenter requested that the Department likewise amend the QPAM class exemption to permit approval or veto by plan officials.

The Department is not persuaded by the argument in favor of retention of a veto or approval power by the plan sponsor or its designee. The relief contained in the QPAM class exemption was predicated upon the existence of an independent, professional asset manager who is solely responsible for the discretionary management of plan assets that are transferred to its control. The QPAM class exemption did not provide relief for transactions involving the assets of plans managed by in-house asset managers. Conversely, the INHAM class exemption provided more limited relief for plan assets managed by an in-house manager, subject to a number of conditions, which reflected the differences between the QPAM and the INHAM class exemptions. Thus, for example, relief under the INHAM class exemption is predicated upon an annual exemption audit conducted by an independent auditor to assure compliance with the conditions of the exemption. Although the INHAM class exemption permits the plan sponsor to retain a veto or approval power, the Department notes that the plan's assets under the INHAM class exemption, unlike the QPAM class exemption, remain under the management of an affiliate of the plan sponsor. Accordingly, the Department has determined not to revise this condition.

Section I(e)—20% Limitation

Section I(e) provides that a QPAM may not enter into a transaction with a party in interest with respect to any plan whose assets managed by the QPAM, when combined with the assets of other plans maintained by the same employer or affiliates of the employer, represent more than 20 percent of the total client assets managed by the QPAM at the time of the transaction. One commenter suggested that the Department's grant of the INHAM class exemption indicated that it was no longer concerned about the potential for undue influence by plan sponsors on managers with large amounts of plan assets under management. As a result, the commenter proposed that the 20 percent limitation contained in section I(e) of the QPAM class exemption be eliminated or increased.

The Department notes that the relief provided under both the QPAM exemption and the INHAM exemption, as well as the conditions and restrictions contained in each exemption, were designed to address the issues unique to in-house management and the retention of an independent manager. Since in-house managers primarily manage the assets of in-house plans, it would not have been practical for the Department to impose a 20 percent limitation similar to that found in the QPAM exemption. However, the Department developed other conditions and safeguards that enabled it to provide relief to in-house managers, consistent with the findings under section 408(a) of the Act. In this regard, the Department continues to believe that the 20 percent limitation plays a role in ensuring that the investment decisions of a QPAM are not improperly influenced by any one large plan client. Therefore, the Department has determined not to modify the 20 percent limitation in the QPAM class exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The Department finds that the amended exemption is administratively feasible, in the interests of plans and of their participants and beneficiaries, and protective of the rights of participants and beneficiaries of plans;

(3) The amended exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The amended exemption is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), effective August 23, 2005, the Department amends PTE 84–14 as set forth below:

Part I—General Exemption

Effective as of August 23, 2005, the restrictions of ERISA section 406(a)(1)(A) through (D) and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (D), shall not apply to a transaction between a party in interest with respect to an employee benefit plan and an investment fund (as defined in section V(b)) in which the plan has an interest, and which is managed by a qualified professional asset manager (QPAM) (as defined in section V(a)), if the following conditions are satisfied:

(a) At the time of the transaction (as defined in section V(i)) the party in interest, or its affiliate (as defined in section V(c)), does not have the authority to—

(1) Appoint or terminate the QPAM as a manager of the plan assets involved in the transaction, or

(2) Negotiate on behalf of the plan the terms of the management agreement with the QPAM (including renewals or modifications thereof) with respect to the plan assets involved in the transaction;

Notwithstanding the foregoing, in the case of an investment fund in which two or more unrelated plans have an interest, a transaction with a party in interest with respect to an employee benefit plan will be deemed to satisfy the requirements of section I(a) if the assets of the plan managed by the QPAM in the investment fund, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section V(c)(1) of the exemption) or by the same employee organization, and managed in the same investment fund, represent less than 10 percent of the assets of the investment fund;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 81–6 (46 FR 7527; January 23, 1981) (relating to securities lending arrangements) (as amended or superseded),

(2) Prohibited Transaction Exemption 83–1 (48 FR 895; January 7, 1983) (relating to acquisitions by plans of interests in mortgage pools) (as amended or superseded), or

(3) Prohibited Transaction Exemption 82–87 (47 FR 21331; May 18, 1982) (relating to certain mortgage financing arrangements) (as amended or superseded);

(c) The terms of the transaction are negotiated on behalf of the investment fund by, or under the authority and general direction of, the QPAM, and either the QPAM, or (so long as the QPAM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the QPAM, makes the decision on behalf of the investment fund to enter into the transaction, provided that the transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest;

(d) The party in interest dealing with the investment fund is neither the QPAM nor a person related to the QPAM (within the meaning of section V(h));

(e) The transaction is not entered into with a party in interest with respect to any plan whose assets managed by the QPAM, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section V(c)(1) of this exemption) or by the same employee organization, and managed by the QPAM, represent more than 20 percent of the total client assets managed by the QPAM at the time of the transaction;

(f) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the QPAM, the terms of the transaction are at least as favorable to the investment fund as the terms generally available in arm's length transactions between unrelated parties;

(g) Neither the QPAM nor any affiliate thereof (as defined in section V(d)), nor any owner, direct or indirect, of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of: any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any other crime described in section 411 of ERISA. For purposes of this section (g), a person shall be deemed to have been "convicted" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

Part II—Specific Exemption for Employers

Effective as of August 23, 2005, the restrictions of sections 406(a), 406(b)(1) and 407(a) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code, by reason of Code section 4975(c)(1)(A) through (E), shall not apply to:

(a) The sale, leasing, or servicing of goods (as defined in section V(j)), or to the furnishing of services, to an investment fund managed by a QPAM by a party in interest with respect to a plan having an interest in the fund, if—

(1) The party in interest is an employer any of whose employees are covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c),

(2) The transaction is necessary for the administration or management of the investment fund,

(3) The transaction takes place in the ordinary course of a business engaged in by the party in interest with the general public,

(4) Effective for taxable years of the party in interest furnishing goods and services after August 23, 2005, the amount attributable in any taxable year of the party in interest to transactions engaged in with an investment fund pursuant to section II(a) of this exemption does not exceed one (1) percent of the gross receipts derived from all sources for the prior taxable year of the party in interest, and

(5) The requirements of sections I(c) through (g) are satisfied with respect to the transaction;

(b) The leasing of office or commercial space by an investment fund maintained by a QPAM to a party in interest with respect to a plan having an interest in the investment fund, if—

(1) The party in interest is an employer any of whose employees are covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c),

(2) No commission or other fee is paid by the investment fund to the QPAM or to the employer, or to an affiliate of the QPAM or employer (as defined in section V(c)), in connection with the transaction,

(3) Any unit of space leased to the party in interest by the investment fund is suitable (or adaptable without excessive cost) for use by different tenants,

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building, integrated office park, or of the commercial center (if the lease does not pertain to office space),

(5) In the case of a plan that is not an eligible individual account plan (as defined in section 407(d)(3) of ERISA), immediately after the transaction is entered into, the aggregate fair market value of employer real property and employer securities held by investment funds of the QPAM in which the plan has an interest does not exceed 10 percent of the fair market value of the assets of the plan held in those investment funds. In determining the aggregate fair market value of employer real property and employer securities as described herein, a plan shall be considered to own the same proportionate undivided interest in each asset of the investment fund or funds as its proportionate interest in the total assets of the investment fund(s). For purposes of this requirement, the term "employer real property" means real property leased to, and the term "employer securities" means securities issued by, an employer any of whose employees are covered by the plan or a party in interest of the plan by reason of a relationship to the employer described in subparagraphs (E) or (G) of ERISA section 3(14), and

(6) The requirements of sections I(c) through (g) are satisfied with respect to the transaction.

Part III—Specific Lease Exemption for QPAMs

Effective as of August 23, 2005, the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of ERISA and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the leasing of office or commercial space by an investment fund managed by a QPAM to the QPAM, a person who is a party in interest of a

plan by virtue of a relationship to such QPAM described in subparagraphs (G), (H), or (I) of ERISA section 3(14) or a person not eligible for the General Exemption of Part I by reason of section I(a), if—

(a) The amount of space covered by the lease does not exceed the greater of 7500 square feet or one (1) percent of the rentable space of the office building, integrated office park or of the commercial center in which the investment fund has the investment,

(b) The unit of space subject to the lease is suitable (or adaptable without excessive cost) for use by different tenants,

(c) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the QPAM, the terms of the transaction are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, and

(d) No commission or other fee is paid by the investment fund to the QPAM, any person possessing the disqualifying powers described in section I(a), or any affiliate of such persons (as defined in section V(c)), in connection with the transaction.

Part IV—Transactions Involving Places of Public Accommodation

Effective as of August 23, 2005, the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of ERISA and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by an investment fund managed by a QPAM to a party in interest with respect to a plan having an interest in the investment fund, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

Part V—Definitions and General Rules

For purposes of this exemption:

(a) The term "qualified professional asset manager" or "QPAM" means an independent fiduciary (as defined in section V(o)) which is—

(1) A bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 that has the power to manage, acquire or dispose of assets of a plan, which bank has, as of the last day of its most recent fiscal year, equity capital (as defined in section V(k)) in excess of $1,000,000 or

(2) A savings and loan association, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, that has made application for and been granted trust powers to manage, acquire or dispose of assets of a plan by a State or Federal authority having supervision over savings and loan associations, which savings and loan association has, as of the last day of its most recent fiscal year, equity capital (as defined in section V(k)) or net worth (as defined in section V(l)) in excess of $1,000,000 or

(3) An insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan, which company has, as of the last day of its most recent fiscal year, net worth (as defined in section V(l)) in excess of $1,000,000 and which is subject to supervision and examination by a State authority having supervision over insurance companies, or

(4) An investment adviser registered under the Investment Advisers Act of 1940 that has total client assets under its management and control in excess of $50,000,000 as of the last day of its most recent fiscal year, and either (A) shareholders' or partners' equity (as defined in section V(m)) in excess of $750,000, or (B) payment of all of its liabilities including any liabilities that may arise by reason of a breach or violation of a duty described in sections 404 and 406 of ERISA is unconditionally guaranteed by—(i) A person with a relationship to such investment adviser described in section V(c)(1) if the investment adviser and such affiliate have shareholders' or partners' equity, in the aggregate, in excess of $750,000, or (ii) A person described in (a)(1), (a)(2) or (a)(3) of section V above, or (iii) A broker-dealer registered under the Securities Exchange Act of 1934 that has, as of the last day of its most recent fiscal year, net worth in excess of $750,000; and (C) effective as of the last day of the first fiscal year of the investment adviser beginning on or after August 23, 2005, substitute "$85,000,000" for "$50,000,000" and "$1,000,000" for "$750,000" in (a)(4)(A) or (B) of section V above;

Provided that such bank, savings and loan association, insurance company or investment adviser has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

(b) An "investment fund" includes single customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

(c) For purposes of section I(a) and Part II, an "affiliate" of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, 10 percent or more partner (except with respect to Part II this figure shall be 5 percent), or highly compensated employee as defined in section 4975(e)(2)(H) of the Code (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets involved in the transaction. A named fiduciary (within the meaning of section 402(a)(2) of ERISA) of a plan with respect to the plan assets involved in the transaction and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of section I(a) if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(d) For purposes of section I(g) an "affiliate" of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

(e) The term "control" means the power to exercise a controlling influence over the management or

policies of a person other than an individual.

(f) The term "party in interest" means a person described in ERISA section 3(14) and includes a "disqualified person," as defined in Code section 4975(e)(2).

(g) The term "relative" means a relative as that term is defined in ERISA section 3(15), or a brother, a sister, or a spouse of a brother or sister.

(h) A QPAM is "related" to a party in interest for purposes of section I(d) of this exemption if, as of the last day of its most recent calendar quarter: (i) the QPAM owns a ten percent or more interest in the party in interest; (ii) a person controlling, or controlled by, the QPAM owns a twenty percent or more interest in the party in interest; (iii) the party in interest owns a ten percent or more interest in the QPAM; or (iv) a person controlling, or controlled by, the party in interest owns a twenty percent or more interest in the QPAM. Notwithstanding the foregoing, a party in interest is "related" to a QPAM if: (i) a person controlling, or controlled by, the party in interest has an ownership interest that is less than twenty percent but greater than ten percent in the QPAM and such person exercises control over the management or policies of the QPAM by reason of its ownership interest; (ii) a person controlling, or controlled by, the QPAM has an ownership interest that is less than twenty percent but greater than ten percent in the party in interest and such person exercises control over the management or policies of the party in interest by reason of its ownership interest. For purposes of this definition:

(1) The term "interest" means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest if, other than in a fiduciary capacity, the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(i) The time as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after December 21, 1982, or a renewal that requires the consent of the QPAM occurs on or after December 21, 1982 and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction exempt by virtue of Part I or Part II at such time as the percentage requirement contained in section I(e) is exceeded, unless no portion of such excess results from an increase in the assets transferred for discretionary management to a QPAM. For this purpose, assets transferred do not include the reinvestment of earnings attributable to those plan assets already under the discretionary management of the QPAM. Nothing in this paragraph shall be construed as exempting a transaction entered into by an investment fund which becomes a transaction described in section 406 of ERISA or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(j) The term "goods" includes all things which are movable or which are fixtures used by an investment fund but does not include securities, commodities, commodities futures, money, documents, instruments, accounts, chattel paper, contract rights and any other property, tangible or intangible, which, under the relevant facts and circumstances, is held primarily for investment.

(k) For purposes of section V(a)(1) and (2), the term "equity capital" means stock (common and preferred), surplus, undivided profits, contingency reserves and other capital reserves.

(l) For purposes of section V(a)(3), the term "net worth" means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves.

(m) For purposes of section V(a)(4), the term "shareholders' or partners' equity" means the equity shown in the most recent balance sheet prepared within the two years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(n) The terms "employee benefit plan" and "plan" refer to an employee benefit plan described in section 3(3) of ERISA and/or a plan described in section 4975(e)(1) of the Code.

(o) For purposes of section V(a), the term "independent fiduciary" means a fiduciary managing the assets of a plan in an investment fund that is independent of and unrelated to the employer sponsoring such plan. For purposes of this exemption, the independent fiduciary will not be deemed to be independent of and unrelated to the employer sponsoring the plan if such fiduciary directly or indirectly controls, is controlled by, or is under common control with the employer sponsoring the plan. Notwithstanding the foregoing, for the period from December 21, 1982, through the date on which the Department grants a final amendment which addresses relief for financial institutions that serve as investment managers for their own plans, a QPAM managing the assets of a plan in an investment fund will not fail to satisfy the requirements of section V(a) solely because such fiduciary is the employer sponsoring the plan or directly or indirectly controls, is controlled by, or is under common control with the employer sponsoring the plan.

Signed at Washington, DC, this 11th day of August, 2005.

Ivan L. Strasfeld,

Director, Office of Exemption, Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 05–16702 Filed 8–22–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D–11270]

Proposed Amendment to Prohibited Transaction Exemption (PTE) 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers

AGENCY: Employee Benefits Security Administration, DOL.

ACTION: Notice of proposed amendment to PTE 84–14.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 84–14. The exemption permits various parties that are related to employee benefit plans to engage in transactions involving plan assets if, among other

conditions, the assets are managed by "qualified professional asset managers" (QPAMs), which are independent of the parties in interest and which meet specified financial standards. Additional exemptive relief is provided for employers to furnish limited amounts of goods and services to a managed fund in the ordinary course of business. Limited relief is also provided for leases of office or commercial space between managed funds and QPAMs or contributing employers. Finally, relief is provided for transactions involving places of public accommodation owned by a managed fund.

Currently, PTE 84–14 requires the QPAM managing the assets of a plan in an investment fund to be independent of, and unrelated to, the employer sponsoring such plan. However, as described in the notice of final amendment to PTE 84–14 contained in this issue of the **Federal Register**, limited retroactive and transitional relief is provided for financial service entities to act as QPAMS for their own plans. If this proposed amendment is granted, a QPAM may prospectively manage an investment fund containing the assets of its own plan or the plan of an affiliate, to the extent the conditions of the proposal are met.

The proposed amendment would affect participants and beneficiaries of employee benefit plans, the sponsoring employers of such plans, and other persons engaging in the described transactions.

DATES: Written comments must be received by the Department on or before October 7, 2005.

ADDRESSES: All written comments (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210 (attention: PTE 84–14 Amendment). Interested persons are also invited to submit comments to EBSA via e-mail or fax. Any such comments should be sent either by e-mail to *motta.christopher@dol.gov* or by fax to (202) 219–0204 by the end of the scheduled comment period. All comments received will be available for public inspection at the Public Documents Room, Employee Benefits Security Administration, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Christopher Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue, NW., Washington DC 20210, (202) 693–8540 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 84–14 (49 FR 9494, March 13, 1984, as corrected at 50 FR 41430, October 10, 1985, and amended elsewhere in this issue of the **Federal Register**). PTE 84–14 provides an exemption from certain of the restrictions of section 406 of ERISA, and from certain taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. The Department is proposing this amendment to PTE 84–14 on its own motion, pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Economic Analysis

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this action is a "significant regulatory action." Accordingly, this action has been reviewed by OMB.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Department is soliciting comments concerning the information collection request (ICR) included in PTE 84–14 and this Notice of Proposed Amendment to Prohibited Transaction Exemption (PTE) 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers. A copy of the ICR may be obtained by contacting Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone (202) 693–8410; Fax: (202) 219–4745. These are not toll-free numbers.

The Department has submitted a copy of the proposed information collection to OMB in accordance with 44 U.S.C. 3507(d) for review of its information collections. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

[1] Section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), generally transferred the authority of the Secretary of Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

e.g., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security Administration. Although comments may be submitted through October 24, 2005. OMB requests that comments be received within 30 days of publication of the Notice of Proposed Amendment to ensure their consideration.

The provisions for compliance with PTE 84–14 (49 FR 9494, March 13, 1984, as corrected at 50 FR 41430, October 10, 1985), a final amendment to PTE 84–14 published in this issue of the **Federal Register**, and this proposed amendment have been discussed in greater detail earlier in the preamble. Briefly, PTE 84–14 permits various parties in interest to employee benefit plans to engage in transactions involving plan assets if, among other requirements, the assets are managed by a QPAM. Such transactions include, for example, the leasing of office space by an investment fund to a QPAM or the furnishing of services and facilities by a place of public accommodation owned by an investment fund managed by a QPAM. The final amendment, among other things, provides limited retroactive and transitional relief from the sanctions of certain sections of ERISA and the Code for financial institutions such as banks, insurance companies, or registered investment advisers, that act as QPAMs for their own plans. The proposed amendment, if granted, would provide prospective relief for financial institutions to act as QPAMS for their own plans.

The Department included in the final amendment published in this issue of the **Federal Register** and this proposed amendment certain requirements intended to preserve plan assets and protect plan participant benefits with respect to transactions between a party in interest to a plan and an investment fund containing plan assets managed by a QPAM. PTE 84–14, as restated and amended in the final amendment, includes a requirement for a written agreement between a plan and the QPAM it has retained, and written guidelines between a QPAM and a property manager that a QPAM has retained. Because it is customary business practice for agreements related to the investment of plan assets or transactions relating to the leasing of space to be described in writing, no burden was estimated for these provisions of the final amendment. Accordingly, this ICR includes only the burden for provisions in the proposed amendment.

In order for a transaction to qualify for an exemption under the proposed amendment, a QPAM must, among other requirements, establish written policies and procedures that are designed to assure compliance with the conditions of the proposed amendment, including the steps adopted by the QPAM to measure compliance. Based on information in the 1999 Form 5500 Annual Report, the Department estimates that approximately 6,500 banks, savings institutions, insurance companies, and investment advisers currently acting as QPAMs for employee benefit plans might choose to act as QPAMs for their own plans. QPAMs are assumed to use a service provider, such as an attorney, to develop the written policies and procedures required under the proposed amendment. To meet the Department's requirements regarding written policies and procedures, service providers will most likely develop standardized language that can then be modified to include the specific steps adopted by a particular QPAM to assure compliance. If all 6,500 financial institutions choose to act as QPAMs for their own plans, the start-up cost, assuming one hour of a service provider's time, at $84 per hour, would be $546,000. The actual amount of time required, and the resulting cost burden, may be even lower because the Department has described the objective requirements of the exemption that are to be included in the policies and procedures, and because most service providers will handle multiple QPAMs, thereby reducing per-plan costs.

Going forward, the Department is not aware of a basis for estimating how many additional QPAMs will choose to handle investments for their own plans, but assumes the number to be small. Most QPAMs are believed to be large institutions that will take advantage of the proposed amendment soon after it is granted. For purposes of this ICR, the Department has assumed that an additional 1%, or 65 QPAMs, annually, at a cost of approximately $5,500, will establish policies and procedures in order to manage investments for their own plans.

Finally, under the proposed amendment, an independent auditor is required to conduct an exemption audit, on an annual basis, the results of which are presented in a written report to the plan. Because it is customary business practice for an independent auditor engaged by an entity such as a plan to provide a written report, the Department has not estimated a cost burden for this provision of the proposed amendment.

Type of Collection: New.

Agency: Department of Labor, Employee Benefits Security Administration.

Title: Proposed Amendment to PTE 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers.

OMB Control Number: 1210-NEW.

Affected Public: Business or other for profit; Not-for-profit institutions.

Respondents: 6,565.

Responses: 6,565.

Frequency of Response: One time.

Estimated Burden Hours: 0.

Estimated Capital/Startup Costs: $546,000.

Estimated Annual Costs (Operating & Maintenance): $5,500.

Estimated Total Annual Cost: $551,500.

The public is not required to respond to a collection of information that does not display a currently valid OMB control number.

Background

PTE 84–14, which was proposed on the Department's own motion on December 21, 1982, was granted as part of a continuing effort by the Department to improve the administration of the prohibited transaction rules of ERISA. The rules set forth in section 406 of ERISA prohibit various transactions between a plan and a party in interest (including a fiduciary) with respect to such plan. Unless a statutory or administrative exemption applies to the transaction, section 406(a) of ERISA prohibits, among other things: Sales, leases, loans or the provision of services between a party in interest and a plan, as well as a use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest. In addition, unless exempted, a fiduciary of a plan is not permitted to engage in any acts of self-dealing or make decisions on behalf of a plan if the fiduciary is in a conflict of interest situation.

The Department has frequently exercised its statutory authority under section 408(a) of ERISA to grant both individual and class exemptions from the prohibited transaction provisions where it has been able to find that the criteria for granting such exemptions have been satisfied. Based on its experience considering requests for individual and class exemptions, and in dealing with instances of abusive violations of the fiduciary responsibility rules of ERISA, the Department determined that as a general matter, transactions entered into on behalf of plans with parties in interest are most

likely to conform to ERISA's general fiduciary standards where the decision to enter into the transaction is made by an independent fiduciary. As granted, PTE 84–14 provides broad relief for various party in interest transactions that involve plan assets that are transferred to a qualified professional asset manager (QPAM) for discretionary management.

Description of Existing Relief

The relief provided by PTE 84–14 is described in four separate parts. The General Exemption, set forth in Part I, permits an investment fund managed by a QPAM to engage in a wide variety of transactions described in ERISA section 406(a)(1)(A) through (D) with virtually all parties in interest except the QPAM which manages the assets involved in the transaction and those parties most likely to have the power to influence the QPAM.

Part II of the exemption provides limited relief under both section 406(a) and (b) of ERISA for certain transactions involving those employers and certain of their affiliates which could not qualify for the General Exemption provided by Part I.

Part III of the exemption provides limited relief under section 406(a) and (b) of ERISA for the leasing of office or commercial space by an investment fund to the QPAM, an affiliate of the QPAM, or a person who could not qualify for the General Exemption provided by Part I because it held the power of appointment described in Part I(a).

Part IV of the exemption provides limited relief under sections 406(a) and 406(b)(1) and (2) of ERISA for the furnishing of services and facilities by a place of public accommodation owned by an investment fund managed by a QPAM, to all parties in interest, if the services and facilities are furnished on a comparable basis to the general public.

Part V of the exemption contains definitions for certain terms used in the exemption. In this regard, section V(a) defines the term "QPAM" as an "independent fiduciary which is a bank, savings and loan association, insurance company, or registered investment adviser, that meets certain financial conditions." Section V(o) of PTE 84–14, as adopted in the final amendment to PTE 84–14 published in this issue of the **Federal Register**, defines the term "independent fiduciary" to mean a fiduciary managing the assets of a plan in an investment fund that is independent of and unrelated to the employer sponsoring such plan. The definition additionally provides that a fiduciary will not be deemed to be independent of and unrelated to the employer sponsoring the plan if such fiduciary directly or indirectly controls, is controlled by, or is under common control with the employer sponsoring the plan. Lastly, section V(o) provides that, for the period from December 21, 1982, through the date on which the Department grants a final amendment which addresses relief for financial institutions that serve as investment managers for their own plans, a QPAM managing the assets of a plan in an investment fund will not fail to qualify as a QPAM solely because such fiduciary is the employer sponsoring the plan or directly or indirectly controls, is controlled by, or is under common control with the employer sponsoring the plan.

Description of the Proposed Amendment

The Department is proposing this amendment on its own motion in connection with its determination that the existing QPAM class exemption does not permit financial services entities to act as QPAMs for their own plans.[2] The proposed amendment, if granted, would provide prospective relief for a financial institution to act as QPAM for its own plan. This relief is set out in a newly designated Part V, which specifically provides relief for transactions described in Parts I, III and IV of PTE 84–14 that involve a QPAM-managed investment fund containing the assets of a plan sponsored by such QPAM. For purposes of this proposed amendment, the exemption's "Definitions" section has been re-designated as Part VI.

PTE 84–14 was developed and granted based on the essential premise that broad relief could be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto are the sole responsibility of an independent, discretionary, manager. As noted above, however, the proposed amendment described herein involves the investment of the assets of a QPAM's own plan in an investment fund managed by such QPAM. In the Department's view, retention of discretionary authority by the plan sponsor/QPAM would be inconsistent with the underlying concept of the QPAM exemption as originally adopted. In addition, there is no independent fiduciary present in this situation that would be responsible for monitoring the activities of the QPAM with respect to its own in-house plan.

In order to address this lack of independence, the proposed amendment relies on an "exemption audit," in addition to the other safeguards currently contained in the exemption. This audit is substantially similar to the audit required under PTE 96–23 (61 FR 15975 (Apr. 10, 1996)), which provides relief for various party in interest transactions that involve the assets of a plan managed by an in-house manager (INHAM). The proposed amendment requires that an independent auditor conduct an annual exemption audit to determine whether the written procedures adopted by the QPAM are designed to assure compliance with the conditions of the exemption. The Department believes that the involvement of an independent party in overseeing compliance with the exemption would serve as a meaningful safeguard without interfering with the QPAM's investment decisions. The audit is further intended to protect plans by ensuring that an investment manager, who may not otherwise have experience managing ERISA plan assets, complies with the provisions of ERISA and the requirements of this exemption.

Accordingly, section V(c) of the proposed amendment requires that the independent auditor conduct an exemption audit on an annual basis to review the written policies and procedures adopted by the QPAM. The purpose of this review is to ensure that such policies and procedures are consistent with the exemption's objective requirements. The independent auditor must also test a representative sample of transactions involving the QPAM's plan in order to make findings regarding whether the QPAM's is in operational compliance with the written policies and procedures adopted by the QPAM and the objective requirements of the exemption. The exemption further requires that the independent auditor make a determination as to whether the QPAM has satisfied the definition of a QPAM under the exemption, and issue a written report describing the steps performed by the auditor during the course of its review and the auditor's findings.[3] Although the proposed amendment limits the auditor's

[2] As described in the notice of final amendment to PTE 84–14 that appears elsewhere in this issue of the **Federal Register**.

[3] The Department also notes that an adverse finding in the auditor's report would not, in itself, render the exemption unavailable for any transaction engaged in by the QPAM on behalf of the plan. The Department cautions that the failure of the QPAM to take appropriate steps to address any adverse findings in an unsatisfactory audit would raise issues under ERISA's fiduciary responsibility provisions.

responsibilities to make findings on the QPAM's compliance with the objective requirements of the proposal, the QPAM remains responsible for assuring compliance with all of the applicable conditions of the exemption. Accordingly, the failure of the QPAM to comply with a condition of the exemption not described in Section VI(q) would, with respect to a specific transaction, render the exemption unavailable for that transaction.

As noted above, an independent auditor must review the written policies and procedures adopted by the QPAM for consistency with the exemption's objective requirements that apply to such transactions. These written policies and procedures must describe, for example, the requirements to qualify as a QPAM and the requirement that, with respect to transactions described in Part V, the QPAM must have discretionary authority or control over the plan assets that are involved in the transaction.

In addition, if a QPAM manages an investment fund that contains the assets of a plan sponsored by such QPAM, and the QPAM seeks to engage in a transaction described in Part I of the exemption on behalf of the fund, the QPAM's written policies and procedures must describe the objective requirements contained in Part I of the exemption. In this regard, the QPAM's written policies and procedures must describe the exemption's requirements that: (1) The transaction may not be entered into with any party in interest that has the power to appoint or terminate the QPAM as a manager of the plan assets involved in the transaction or negotiate the terms of the management agreement with such QPAM; (2) the transaction may not be entered into with the QPAM or a person related to the QPAM; and (3) the transaction is not described in any of the class exemptions listed in section I(b). The written policies and procedures must also describe the exemption's objective requirements regarding the QPAM's responsibility for: (1) Negotiating the terms of the transaction; and (2) deciding to enter into the transaction on behalf of the investment fund.

The class exemption contains certain other objective requirements that are applicable to transactions described in Part III of PTE 84–14, relating to the leasing of office or commercial space by an investment fund managed by a QPAM to the QPAM or other specified persons. Accordingly, the objective requirements applicable to Part III transactions include: (1) that the amount of space that may be covered by the lease does not exceed the limitation described in section III(a); and (2) that no commission or other fee may be paid by the investment fund to the QPAM or the persons specified in section III(d).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of ERISA and 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) If granted, the proposed amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the amendment; and

(4) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

The Department invites all interested persons to submit written comments on the proposed amendment to the address and within the time period set forth above. All comments received will be made a part of the record. Comments should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the above address.

Proposed Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), the Department proposes to amend PTE 84–14 as set forth below:

Part V—Specific Exemption Involving QPAM-Sponsored Plan

Effective as of the date of publication of the final amendment to PTE 84–14 in the **Federal Register**, the relief provided by Parts I, III or IV of PTE 84–14 from the applicable restrictions of section 406(a), section 406(b)(1) and (2), and section 407(a) of ERISA and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall apply to a transaction involving the assets of a plan sponsored by the QPAM if:

(a) The QPAM has discretionary authority or control with respect to the plan assets involved in the transaction;

(b) The QPAM adopts written policies and procedures that are designed to assure compliance with the conditions of the exemption;

(c) An independent auditor, who has appropriate technical training or experience and proficiency with ERISA's fiduciary responsibility provisions and so represents in writing, conducts an exemption audit (as defined in section VI(p)) on an annual basis. Following completion of the exemption audit, the auditor shall issue a written report to the plan presenting its specific findings regarding the level of compliance with the policies and procedures adopted by QPAM in accordance with section V(b);

(d) The transaction meets the applicable requirements set forth in Parts I, III, or IV of the exemption.

Section VI. Definitions

(o) For purposes of section V(a), the term "independent fiduciary" means a fiduciary managing the assets of a plan in an investment fund that is independent of and unrelated to the employer sponsoring such plan. For purposes of this exemption, the independent fiduciary will not be deemed to be independent of and unrelated to the employer sponsoring the plan if such fiduciary directly or indirectly controls, is controlled by, or is under common control with the employer sponsoring the plan. Notwithstanding the foregoing, a QPAM acting as a manager for its own plan or the plan of an affiliate (as defined in

section VI(c)(1)) will be deemed to satisfy the requirements of this section VI(o) if the requirements of Part V are met.

(p) Exemption Audit. An "exemption audit" of a plan must consist of the following:

(1) A review of the written policies and procedures adopted by the QPAM pursuant to section V(b) for consistency with each of the objective requirements of this proposed exemption (as described in section VI(q)).

(2) A test of a representative sample of the plan's transactions in order to make findings regarding whether the QPAM is in compliance with (i) the written policies and procedures adopted by the QPAM pursuant to section VI(q) of the exemption and (ii) the objective requirements of the exemption.

(3) A determination as to whether the QPAM has satisfied the definition of an QPAM under the exemption; and

(4) Issuance of a written report describing the steps performed by the auditor during the course of its review and the auditor's findings.

(q) For purposes of section VI(p), the written policies and procedures must describe the following objective requirements of the exemption and the steps adopted by the QPAM to assure compliance with each of these requirements:

(1) The definition of a QPAM in section V(a).

(2) The requirement of sections V(a) and I(c) regarding the discretionary authority or control of the QPAM with respect to the plan assets involved in the transaction, in negotiating the terms of the transaction and with respect to the decision on behalf of the investment fund to enter into the transaction.

(3) For a transaction described in Part I:

(A) That the transaction is not entered into with any person who is excluded from relief under section I(a), section I(d), or section I(e),

(B) That the transaction is not described in any of the class exemptions listed in section I(b),

(4) If the transaction is described in section III,

(i) That the amount of space covered by the lease does not exceed the limitations described in section III(a); and

(ii) That no commission or other fee is paid by the investment fund as described in section III(d).

Signed at Washington, DC, this 11th day of August, 2005.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 05–16681 Filed 8–22–05; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Labor Condition Application for Nonimmigrant Workers

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA), Office of National Programs is soliciting comments concerning the proposed extension of the collection for ETA form 9035—Labor Condition Application for Nonimmigrant Workers. A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before October 24, 2005.

ADDRESSES: William L. Carlson, Chief, Division of Foreign Labor Certification, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210. Mr. Carlson may be reached at (202) 693–3010; this is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Gregory Wilson, Program Analyst, Division of Foreign Labor Certification, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4312, Washington, DC 20210. Mr. Wilson may also be reached at (202) 693–3010; this is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Background

The Immigration and Naturalization Act (INA) requires that before any foreign worker may be admitted or otherwise provided status as an H–1B, H–1B1, or E–3 nonimmigrant the prospective employer must have filed with the Department of Labor (Department) a Labor Condition Application (LCA). Employers must state on the LCA that they will offer prevailing wages and working conditions, that there is not a strike or lockout in the course of a labor dispute in the occupational classification at the place of employment, and that they have provided notice of filing in conspicuous locations at the place of employment. Further, the employer must make certain documentation available for public examination. The Department's review of each LCA filed is limited by law solely to a review for completeness or "obvious inaccuracies." Complaints may be filed with the Department alleging a violation of the LCA process. If reasonable cause is found to believe a violation has been committed, the Department will conduct an investigation and, if appropriate, assess penalties. The INA places a limit on the number of foreign workers who can be admitted to the United States on H–1B, H–1B1, or E–3 visas. The INA generally limits H–1B workers to a maximum of a six-year duration of stay under H–1B status, although extensions are permitted for certain foreign workers on whose behalf a labor certification or employment-based immigrant petition has been pending for 365 days or more. The INA requires that the Department make available for public examination in Washington, DC, a list of employers which have filed LCAs.

II. Review Focus

Currently, the Department is soliciting comments concerning the proposed extension of the collection for ETA form 9035—Labor Condition Application for Nonimmigrant Workers. The Department is particularly interested in comments which:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information

including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed ICR can be obtained by contacting the office listed above in the addressee section of this notice.

III. Current Actions

Type of Review: Extension with change.

Agency: Employment and Training Administration, Labor.

Title: Labor Condition Application for Nonimmigrant Workers.

OMB Number: 1205–0310.

Affected Public: Businesses or other for-profit institutions; Federal government; State, local, or tribal government.

Form: ETA 9035.

Total Respondents: 200,000.

Frequency of Response: On occasion.

Total Responses: 325,200.

Average Burden Hours per Response: 45 minutes.

Estimate Total Annual Burden Hours: 279,170.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they will also become a matter of public record.

Dated: August 17, 2005.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 05–16691 Filed 8–22–05; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 05–129]

Privacy Act of 1974; Privacy Act System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Privacy Act system of records.

SUMMARY: The National Aeronautics and Space Administration proposes to establish a system of records titled "National Aeronautics and Space Administration Foreign National Management System." This system of records is to document, track, manage, analyze, and/or report on foreign access to NASA resources. Routine uses of this system of records will be to determine eligibility of foreign nationals, and U.S. citizens representing foreign entities, to access NASA facilities and resources. The records in this system of records are intended for the sole use of the U.S. Government and its contractors who support U.S. Government operations, policies, laws and regulations.

DATES: Submit comments 60 calendar days from the date of this publication.

ADDRESSES: Patti F. Stockman, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (202) 358–4787.

FOR FURTHER INFORMATION CONTACT: Patti F. Stockman, Privacy Act Officer, Office of the Chief Information Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546–0001, (202) 358–4787.

SUPPLEMENTARY INFORMATION: This publication is in accordance with the Privacy Act requirement that agencies publish each system of records in the **Federal Register**. Pursuant to Section 208 of the E-Government Act of 2002, NASA has conducted a Privacy Impact Assessment (PIA). A copy of the PIA can be obtained by contacting the NASA Privacy Act Officer at the address listed above. Authorization as an Information Collection under the Paperwork Reduction Act is being sought from OMB and will be noticed as a separate submission.

NASA 10 FNMS

SYSTEM NAME:

National Aeronautics and Space Administration Foreign National Management System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The centralized data system is located at the Extranet Security Portals Group, 1225 Clark Street, Suite 1103, Arlington, VA 22202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All non-U.S. citizens, to include Lawful Permanent Residents seeking access to NASA facilities, resources, laboratories, contractor sites, Federally Funded Research and Development Centers or NASA sponsored events for unclassified purposes to include employees of NASA or NASA contractors; prospective NASA or NASA contractor employees; employees of other U.S. Government agencies or their contractors of universities, of companies (professional or service staff), or of other institutions; foreign students at U.S. institutions; officials or other persons employed by foreign governments or other foreign institutions who may or may not be involved in cooperation with NASA under international agreements; permanent resident aliens; foreign media representatives; and representatives or agents of foreign national governments seeking access to NASA facilities, to include high-level protocol visits; or international relations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in this system include information about the individuals seeking access to NASA resources. Information about an individual may include, but is not limited to: name, home address, place of birth and citizenship, U.S. visitor/travel document numbers, employment information, Tax Identification Numbers (Social Security Number), and reason and length of proposed NASA access.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 304(a) of the National Aeronautics and Space Act, codified at 42 U.S.C. § 2455; Federal Property Management Regulation, 41 CFR Ch. 101; 14 CFR parts 1203 through 1203b; 14 CFR 1213; 15 CFR 744; 22 CFR 62; 22 CFR 120–130; 40 U.S.C. 1441, and 44 U.S.C. 3101, and Executive Order 9397.

PURPOSE(S):

Records are maintained and used by NASA to document, track, manage, analyze, and/or report on foreign visit and assignment access to NASA facilities including Headquarters, Field Offices, National Laboratories, Federally Funded Research and Development Centers, Contractor Sites, components facilities (NASA Management Office, Wallops Flight Facility, White Sands Test Facility, White Sands Complex, Independent Validation & Verification Facility, Michoud Assembly Center, Moffett Federal Airfield, Goldstone Deep Space Communications Complex, Goddard Institute for Space Studies, National Scientific Balloon Facility, Plum Brook Station).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

1. A record from this system may be disclosed to authorized contractors who

are responsible for NASA security and who require this information to perform their contractual obligations to NASA.

2. A record from this system may be disclosed to contractors, grantees, participants in cooperative agreements, collaborating researchers, or their employees, if required for the performance of their responsibilities with respect to national security, international visit and assignment, or foreign access.

3. A record from this system may be disclosed to a member of Congress submitting a request involving a constituent when the constituent has requested assistance from the member with respect to the subject matter of his or her own record. The member of Congress must provide a copy of the constituent's request for assistance.

4. A record from this system may be disclosed to foreign governments or international organizations if required by treaties, international conventions, or executive agreements.

5. A record from this system may be disclosed to members of a NASA Advisory Committee or Committees and interagency boards charged with responsibilities pertaining to international visits and assignments and/or national security when authorized by the individual or to the extent the committee(s) is so authorized and such disclosure is required by law.

6. A record from this system may be disclosed to Federal intelligence organizations, when required by applicable law.

7. A record from this system may be disclosed to Federal agencies for the purpose of determining preliminary visa eligibility when authorized by the individual or as required by law.

8. A record from this system may be disclosed to respond to White House inquiries when required by law.

9. A record from this system may be disclosed to a NASA contractor, subcontractor, grantee, or other Government organization involved in an investigation or administrative inquiry concerning a violation of a Federal or State statute or NASA regulation on the part of an officer or employee of the contractor, subcontractor, grantee, or other Government organization, when and to the extent the information is required by law.

10. A record from this system may be disclosed to an internal or external organization or element thereof, conducting audit activities of a NASA contractor or subcontractor to the extent required by law.

11. A record from this system may be disclosed to provide personal identifying data to Federal, State, local, or foreign law enforcement representatives seeking confirmation of identity of persons under investigation, to the extent necessary and required by law.

12. Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be stored in electronic format.

RETRIEVABILITY:

Records may be retrieved by name and other personal identifiers. Records are indexed by individual's name, file number, badge number, decal number, payroll number, passport or visa numbers, and/or Social Security Number.

SAFEGUARDS:

An approved security plan for this system has been established in accordance with OMB Circular A–130, Management of Federal Information Resources. Individuals will have access to the system only when and to the extent such access is legally authorized, each item of information is required for his or her job, and the access is in accordance with approved authentication methods. Only key authorized employees with appropriately configured system roles can access the system.

RETENTION AND DISPOSAL:

Records are stored in the Foreign National Management System and managed, retained and dispositioned in accordance with the guidelines defined in NASA Procedural Requirements (NPR) 1441.1D, NASA Records Retention Schedules, Schedule 1, item 35.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Security Management Division, National Aeronautics and Space Administration, Headquarters, Office of Security and Program Protection, 300 E. Street, SW., Washington, DC 20546–0001.

NOTIFICATION PROCEDURES:

Individuals inquiring about their records should notify the System Manager at the address given above.

RECORDS ACCESS PROCEDURES:

Individuals who wish to gain access to their records should submit their request in writing to the System Manager at the address given above. Requests must contain the following identifying data concerning the requestor: First, middle, and last name; date and place of birth; Visa/Passport/Social Security Number; period and place of visit/assignment/employment with NASA.

CONTESTING RECORD PROCEDURES:

The NASA regulations governing access to records and the procedures for contesting the contents and appealing initial determinations are set forth in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

Records, including official government documentation, are provided by individuals requesting access to NASA facilities and contractor sites, from existing databases containing this information at Federally Funded Research and Development Centers, and from other Federally funded sources located at NASA facilities.

Patricia L. Dunnington,

Chief Information Officer.

[FR Doc. 05–16713 Filed 8–22–05; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used to permit the public and other Federal agencies to use its official seal(s) and/or logo(s). The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before October 24, 2005, to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (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 the use of information technology; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Use of NARA Official Seals.

OMB number: 3095–0052.

Agency form number: N/A.

Type of review: Regular.

Affected public: Business or other for-profit, not-for-profit institutions, Federal government.

Estimated number of respondents: 10.

Estimated time per response: 20 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 3 hours.

Abstract: The authority for this information collection is contained in 36 CFR 1200.8. NARA's three official seals are the National Archives and Records Administration seal; the National Archives seal; and the Nationals Archives Trust Fund Board seal. The official seals are used to authenticate various copies of official records in our custody and for other official NARA business. Occasionally, when criteria are met, we will permit the public and other Federal agencies to use our official seals. A written request must be submitted to use the official seals, which we approve or deny using specific criteria.

Dated: August 17, 2005.

Shelly L. Myers,

Deputy Chief Information Officer.

[FR Doc. 05–16632 Filed 8–22–05; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection. The National Science Foundation (NSF) will publish periodic summaries of the proposed projects.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden 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 those who are to respond, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments on this notice must be received by October 24, 2005, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: *Title of Collection:* 2006 Survey of Doctorate Recipients.

OMB Approval Number: 3145–0020.

Expiration Date of Approval: February 28, 2005.

Type of Request: Intent to seek approval to reinstate an information collection for three years.

1. Abstract. The Survey of Doctorate Recipients (SDR) has been conducted biennially since 1973. The 2006 SDR will consist of a sample of individuals under the age 76 who have earned a research doctoral degree in a science, engineering or health field from an U.S. institution. The purpose of this longitudinal study is to provide national estimates on the doctoral science and engineering workforce and changes in employment, education and demographic characteristics. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to "* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The SDR is designed to comply with these mandates by providing information on the supply and utilization of nation's doctoral level scientists and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT data system, which produces national estimates of the size and characteristics of the country's science and engineering population. The Foundation uses this information to prepare congressionally mandated reports such as Women, Minorities and Persons with Disabilities in Science and Engineering and Science and Engineering Indicators. The NSF publishes statistics from the survey in many reports, but primarily in the biennial series, Characteristics of Doctoral Scientists and Engineers in the United States. A public release file of collected data, designed to protect respondent confidentiality, also will be made available to researchers on CD–ROM and on the World Wide Web.

The National Opinion Research Center at the University of Chicago will conduct the study for NSF. Data are obtained by mail questionnaire, computer-assisted telephone interviews and web survey beginning April 2006. The survey will be collected in conformance with the Privacy Act of 1974 and the individual's response to the survey is voluntary. NSF will insure that all information collected will be taken strictly confidential and will be used only for research of statistical purposes, analyzing data, and preparing scientific reports and articles.

2. Expected Respondents. A statistical sample of approximately 43,000 individuals with U.S. earned doctorates in science, engineering and health will be contacted in 2006. The total response rate in 2003 was 82%.

NSF is also considering sampling 1,500 additional U.S. doctorates that receives their degrees in the 2001, 2002, 2003, 2004, and 2005 academic years, who are non U.S. citizens, and indicated they planned on leaving the country after they received their doctorate.

3. Estimate of Burden. The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. We estimate that the total annual burden will be 18,000 hours during the year. If the additional 1,500 respondents who had plans to leave the United States are included in the sample, that will increase the burden an additional 700 hours to a total of 18,700 hours.

Dated: August 17, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–16643 Filed 8–22–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: Under the paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection. The National Science Foundation (NSF) will publish periodic summaries of the proposed projects.

Comments: Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Foundation, including whether the information will have practical utility; (b) the accuracy of the Foundation's estimate of the burden 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 those who are to respond, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments on this notice must be received by October 24, 2005, to be assured consideration. Comments received after that date will be considered to the extent practicable. Send comments to address below.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: 2006 National Survey of Recent College Graduates.

OMB Approval Number: 3145–0077.

Expiration Date of Approval: September 30, 2005.

Type of Request: Intent to seek approval to reinstate an information collection for three years.

1. Abstract

The National Survey of Recent College Graduates (NSRCG) has been conducted biennially since 1974. The 2006 NSRCG will consist of a sample of individuals who have completed bachelor's and master's degrees in science and engineering from U.S. institutions. The purpose of this study is to provide national estimates on the new entrants in the science and engineering workforce and to provide estimates on the characteristics of recent bachelor's and master's graduates with science and engineering degrees. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, as subsequently amended, includes a statutory charge to "* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The NSRCG is designed to comply with these mandates by providing information on the supply and utilization of the nation's recent bachelor's and master's level scientist and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT data system, which produces national estimates of the size and characteristics of the country's science and engineering population. The Foundation uses this information to prepare congressionally mandated reports such as Women, Minorities and Persons with Disabilities in Science and Engineering and Science and Engineering Indicators. NSF publishes statistics from the survey in many reports, but primarily in the biennial series, Characteristics of Recent Science and Engineering Graduates in the United States. A public release file of collected data, designed to protect respondent confidentiality, also is expected to be made available to researchers on CD–ROM and on the World Wide Web.

The U.S. Census Bureau will conduct the study for NSF. Data are obtained by mail questionnaire, computer assisted telephone interviews and/or web survey beginning April 2006. The survey will be collected in conformance with the Privacy Act of 1974 and the individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

2. Expected Respondents

A statistical sample of approximately 27,000 bachelor's and master's degree recipients in science, engineering, and health will be contacted in 2006. The total response rate in 2003 was 66%.

3. Estimate of Burden

The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. We estimate that the total annual burden will be 11,250 hours during the year.

Dated: August 17, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–16644 Filed 8–22–05; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public or other Federal agencies to comment on this proposed continuing information collection.

DATES: Written comments (see below for details) on this notice must be received by October 24, 2005, to be assured of consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

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 of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne H. Plimpton, Reports Clearance Officer, via surface mail: National Science Foundation, ATTN: NSF Reports Clearance Officer, Suite 295, 4201 Wilson Boulevard, Arlington, VA 22230; telephone (703) 292–7556; e-mail *splimpto@nsf.gov;* or FAX (703) 292–9188. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern time, Monday throught Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: 2006 National Survey of College Graduates.

OMB Approval Number: 3145–0141.

Expiration Date of Approval: April 30, 2006.

Type of Request: Intent to seek approval to extend an information collection for three years.

1. *Abstract:* The National Survey of College Graduates (NSCG), formerly called the National Survey of Natural and Social Scientists and Engineers, has been conducted biennially since the 1970's. the 2006 NSCG will consist of a sample of individuals under age 76 who had responded to the 2003 NSCG and were identified as having a degree in science, engineering or health field at the bachelor's degree level or higher. The purpose of this longitudinal study is to provide national estimates on the science and engineering workforce and changes in employment, education and demographic characteristics. The study is one of three components of the Scientists and Engineers Statistical Data System (SESTAT), which produces national estimates of the size and characteristics of the nation's science and engineering population.

The National Science Foundation Act of 1950, as subsequently amended, include a statutory charge to "* * * provide a central clearinghouse for the collection, interpretation, and analysis of data on scientific and engineering resources, and to provide a source of information for policy formulation by other agencies of the Federal Government." The NSCG is designed to comply with these mandates by providing information on the supply and utilization of the nation's scientist and engineers. Collected data will be used to produce estimates of the characteristics of these individuals. They will also provide necessary input into the SESTAT labor force data system, which produces national estimates of the size and characteristics of the country's science and engineering population. The Foundation uses this information to prepare congressionally mandated reports such as Women, Minorities and Persons with Disabilities in Science and Engineering and Science and Engineering Indicators. A public release file of collected data, designed to protect respondent confidentiality, will be made available to researchers on CD–ROM and on the World Wide Web.

The Bureau of the Census, as in the past, will conduct the study for NSF. Questionnaires will be mailed in April 2006 and nonrespondents to the mail questionnaire will be followed up by computer-assisted telephone interviewing and/or web survey. The survey will be collected in conformance with the Privacy Act of 1974 and the individual's response to the survey is voluntary. NSF will insure that all information collected will be kept strictly confidential and will be used only for research or statistical purposes, analyzing data, and preparing scientific reports and articles.

2. *Expected Respondents:* A statistical sample of approximately 60,000 persons, identified as having at least one degree at the bachelor's degree level or higher in science, engineering, or health, will be contacted.

3. *Burden on the Public:* The amount of time to complete the questionnaire may vary depending on an individual's circumstances; however, on average it will take approximately 25 minutes to complete the survey. NSF estimates that the total annual burden will be 25,000 hours during the year.

Dated: August 17, 2005.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 05–16645 Filed 8–22–05; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499; License Nos. NPF–76 and NPF–80]

In the Matter of Centerpoint Energy, Inc., Texas Genco, LP (South Texas Project, Units 1 and 2); Order Approving Application Regarding Indirect License Transfers

I

STP Nuclear Operating Company (STPNOC or the licensee) and owners Texas Genco, LP (Texas Genco or the applicant), the City Public Service Board of San Antonio (CPS), and the City of Austin, Texas (COA) are holders of Facility Operating License Nos. NPF–76 and NPF–80, which authorize the possession, use, and operation of the South Texas Project, Units 1 and 2 (the facility or STP). STPNOC is licensed by the U.S. Nuclear Regulatory Commission (NRC or Commission) to operate STP. The facility is located at the licensees' site in Matagorda County, Texas.

II

By application dated June 28, 2005, as supplemented by letter dated August 4, 2005, (collectively referred to herein as the application), STPNOC, acting on behalf of Texas Genco, requested that the NRC, pursuant to 10 CFR 50.80, consent to the proposed indirect transfer of control of the STP licenses to the extent held by Texas Genco. Texas Genco is a 44 percent owner and non-operating licensee of STP.

According to the application filed by STPNOC on behalf of Texas Genco, Texas Genco is indirectly owned by Texas Genco Holdings, Inc., which in turn is wholly owned by Texas Genco LLC. Texas Genco LLC is owned by investment funds affiliated with The Blackstone Group, Hellman & Friedman LLC, Kohlberg Kravis Roberts & Co. L.P.,

and Texas Pacific Group (the Investment Funds) and certain members of the management team (Management owners).

As stated in the application, the ultimate owners of Texas Genco are proposing a corporate restructuring such that several new entities would be interposed between (i) the Investment Funds and Management owners and (ii) Texas Genco LLC. This proposed restructuring is in anticipation of a proposed initial public offering of a minority interest in Texas Genco Inc. Texas Genco Inc. was incorporated on May 20, 2005, as a wholly-owned subsidiary of another new entity, Texas Genco Sponsor LLC. Immediately prior to the initial public offering, Texas Genco Sponsor LLC and Texas Genco Inc. will form a new limited liability company, Texas Genco Holdings LLC.

Following certain transactions described in the application, and following the initial public offering, Texas Genco Inc. will become the sole managing member of Texas Genco Holdings LLC, and Texas Genco Holdings LLC will become the sole owner of Texas Genco LLC and the indirect owner of licensee Texas Genco, which shall at all times continue to be a licensed owner of STP. According to the application, the Investment Funds and Management owners would control Texas Genco Inc. through their ownership of a majority of the voting power in Texas Genco Inc., and continue to ultimately control Texas Genco.

Approval of the indirect transfer of the facility operating licenses was requested by STPNOC pursuant to 10 CFR 50.80. Notice of the request for approval and an opportunity for a hearing was published in the **Federal Register** on July 25, 2005 (70 FR 42592). No comments or hearing requests were received.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by STPNOC and other information before the Commission, the NRC staff concludes that the proposed transactions and resulting indirect transfer of control of Texas Genco will not affect the qualifications of Texas Genco as a holder of the STP licenses, and that the indirect transfer of control of the licenses as held by Texas Genco, to the extent effected by the proposed transactions discussed above, is otherwise consistent with the applicable provisions of laws, regulations, and orders issued by the NRC, pursuant thereto.

The findings set forth above are supported by a safety evaluation dated August 16, 2005.

III

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended (the Act), 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234; and 10 CFR 50.80, *it is hereby ordered* that the application regarding the indirect license transfers is approved, subject to the following condition:

> Should the proposed indirect license transfer not be completed within one year from the date of issuance, this Order shall become null and void, provided, however, upon written application and good cause shown, such date may in writing be extended.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated June 28, 2005, as supplemented by letter dated August 4, 2005, and the safety evaluation dated August 16, 2005, which are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland and accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland this 16th day of August 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4596 Filed 8–22–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271; License No. DPR–28]

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc.; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission (NRC or Commission) has issued a Director's Decision with regard to a petition dated July 29, 2004, filed by Mr. Paul Blanch and Mr. Arnold Gundersen, hereinafter referred to as the "Petitioners." The petition was supplemented on December 8, 2004. The petition concerns the operation of the Vermont Yankee Nuclear Power Station (Vermont Yankee).

The petition requested that the NRC issue a Demand for Information requiring Entergy Nuclear Vermont Yankee, LLC, and Entergy Nuclear Operations, Inc. (Entergy or the licensee) to provide information that clearly and unambiguously describes how Vermont Yankee complies with the General Design Criteria (GDC) specified in Title 10 of the Code of Federal Regulations (10 CFR) Part 50 Appendix A, or the draft GDC published by the Atomic Energy Commission in 1967.

As the basis for their request, the Petitioners stated that this information is essential for two NRC regulatory activities at Vermont Yankee: (1) the NRC's review of Entergy's application for an extended power uprate (EPU), and (2) the NRC's engineering assessment. The Petitioners stated that until the design bases are clearly identified, any inspection or assessment is meaningless.

By teleconference on August 26, 2004, the Petitioners discussed the petition with the NRC's Petition Review Board. This teleconference gave the Petitioners and the licensee an opportunity to provide additional information and to clarify issues raised in the petition.

By letter dated May 13, 2005, the NRC staff requested Entergy provide information related to the petition. Entergy responded by letter dated June 14, 2005, and the information provided was considered by the staff in its evaluation of the petition.

The NRC staff sent a copy of the proposed Director's Decision to the Petitioners and to the licensee for comment by letters dated May 17, 2005. The staff did not receive any comments on the proposed Director's Decision.

The Director of the Office of Nuclear Reactor Regulation has determined that the request to issue a Demand for

Information to the licensee is denied. The reasons for this decision are explained in the Director's Decision pursuant to 10 CFR 2.206 (DD–05–02), the complete text of which is available for inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, or electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html*.

The Director's Decision addresses several issues related to the Vermont Yankee design and licensing basis including: (1) Whether the licensee's designation of Appendix F of the Updated Final Safety Analysis Report (UFSAR) as "historical information" meets the intent of 10 CFR 50.71(e) regarding maintenance of design basis information, and (2) whether a compilation of Vermont Yankee's current design conformance to the draft GDCs is necessary for licensing reviews and inspections.

With respect to the first issue, the NRC staff concluded that the designation of UFSAR Appendix F as historical information is consistent with the applicable industry guidance, and would meet the intent of 10 CFR 50.71(e) regarding maintenance of design basis information, if the relevant information, consistent with the definition of "design bases" in 10 CFR 50.2, is contained in other portions of the UFSAR that are updated to reflect current plant design. Following the licensee's next update of the UFSAR to add the cross references discussed in Section II.A of the Director's Decision, the NRC staff will evaluate if any enforcement action is warranted.

With respect to the second issue, the NRC staff concluded that the NRC licensing review process provides reasonable assurance that the plant continues to meet the intent of the draft GDC and adequate protection of public health and safety is assured. The NRC also concluded that it did not need a compilation of the Vermont Yankee's current conformance to the draft GDC to review the application for an EPU or to conduct the Engineering Team Inspection (inspection was completed in September 2004).

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the director's decision in that time.

Dated at Rockville, Maryland, this 16th day of August 2005.

For the Nuclear Regulatory Commission.

R. William Borchardt,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4594 Filed 8–22–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Joseph M. Farley Nuclear Power Plant, Units 1 and 2; Exemption

1.0 Background

The Southern Nuclear Operating Company (SNC, the licensee) is the holder of Renewed Facility Operating License Nos. NPF–2 and NPF–8 which authorizes operation of Joseph M. Farley Nuclear Power Plant (FNP), Units 1 and 2. The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors located in Houston County, Alabama.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) Part 50, Section 50.48, "Fire Protection," requires that each operating nuclear power plant have a fire protection plan that satisfies General Design Criterion (GDC) 3, "Fire Protection," of appendix A to part 50. Section 50.48(b) also references Appendix R, "Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979," to part 50, which establishes fire protection features required to satisfy GDC 3 with respect to certain generic issues for nuclear power plants licensed to operate before January 1, 1979. On December 29, 1986, the NRC staff granted SNC Exemption Request 1–3, "Service Water Intake Structure—Fire Area 72," from certain requirements of Appendix R, Section III.G.2.c that requires fire detection and fire suppression capabilities and the enclosure of cables, equipment and associated non-safety circuits of one redundant train of safe shutdown equipment in a one-hour rated fire barrier. The Exemption issued on December 29, 1986, listed a total of ten items specific to Fire Area 72 that were part of Exemption Request 1–3. Exemption Request 1–3 was included in SNC's request, dated March 13, 1985, as supplemented, and is applicable to Fire Area 72 for the Service Water Intake Structure (SWIS) which is common to FNP, Units 1 and 2.

By letters dated August 28, 2003, December 28, 2004, and June 9, 2005, SNC submitted a proposed revision to Exemption Request 1–3. SNC stated in its August 28, 2003, letter that the proposed revisions to Exemption Request 1–3 would clarify FNP's fire protection licensing basis, delete unnecessary attributes of the prior approved exemption, and revise the remaining prior exemption attributes to remove references to one-hour Kaowool fire barrier material. SNC also stated that the proposed revision to Exemption Request 1–3 is part of SNC's comprehensive plan to respond to concerns about Kaowool fire barrier material. SNC's August 28, 2003, letter re-listed the Exemption Request 1–3 items and numbered them as 1 through 9 and "Addendum to Request" for ease of reference. The August 28, 2003, letter also added an item designated as "Other" that was not explicitly addressed in the December 29, 1986, NRC Safety Evaluation. Therefore, a total of 11 items (1 through 9, "Addendum to Request", and "Other") comprise the revised exemption request in SNC's August 28, 2003, letter.

3.0 Discussion

Pursuant to 10 CFR 50.12, "Specific Exemptions," the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present. These special circumstances are described in 10 CFR 50(a)(2)(ii), in that the application of these regulations in this circumstance is not necessary to achieve the underlying purpose of the regulations.

The underlying purpose of Appendix R, Section III.G, "Fire protection of safe shutdown capability," is to provide features capable of limiting fire damage so that: (1) one train of systems necessary to achieve and maintain hot shutdown conditions from either the control room or emergency control station(s) is free of fire damage; and (2) systems necessary to achieve and maintain cold shutdown from either the control room or emergency control

station(s) can be repaired within 72 hours.

In SNC's letter dated August 28, 2003, SNC stated that they recognize FNP, Unit 1 was licensed to operate prior to January 1, 1979, is subject to Appendix R to 10 CFR Part 50 and requires an exemption for any deviation to the rule, but that FNP, Unit 2 was licensed to operate after January 1, 1979, and would require a deviation from any commitment to comply with the rule. SNC stated that they did not distinguish between an exemption request and deviation request (license amendment) in their August 28, 2003, letter for the two units because the subject matter of the original Exemption Request 1–3 and this revised exemption is located in an area of the plant that services both units, and because the original Exemption Request 1–3 did not separately provide for a deviation (license amendment).

Overview of Approach Used by Licensee

For this specific fire protection application, SNC proposes plant and fire protection program modifications under FNP's current license conditions, and has performed deterministic re-analyses and a risk-informed, performance-based evaluation to revise existing Exemption Request 1–3 for the SWIS Fire Area 72.

The changes proposed by SNC to Exemption Request 1–3 will (1) Remove some conditions in the 1986 Exemption Request 1–3; (2) eliminate some manual actions; (3) define new fire areas; (4) modify the success criterion for the ability to remove decay heat and safely shutdown in the event of a fire in the SWIS; and (5) remove reliance on FNP, Unit 1 lube and cooling water pumps associated with the service water pumps.

As reflected in 10 CFR 50.48(c), the NRC has adopted National Fire Protection Association Standard 805, 2001 Edition (NFPA 805), with a few exceptions, as a risk-informed, performance-based alternative to NRC fire protection requirements in 10 CFR 50.48(b) and as an optional new licensing basis for plants licensed after 1979. Licensees who propose to maintain a complete fire protection program that complies with 10 CFR 50.48(c) as an alternative to 10 CFR 50.40(b) must complete their implementation of the methodology outlined in NFPA 805 for the entire plant and submit a application for a license amendment in accordance with the regulations. Although SNC has not proposed to revise its complete FNP fire protection program in accordance with 10 CFR 50.48(c) and NFPA 805, SNC has used the methodology of NFPA 805 for certain specific issues in its proposed revision to Exemption Request 1–3, as discussed below. The NRC had also previously issued Regulatory Guide (RG) 1.174 (Revision 1), "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis". SNC has used risk-informed, performance-based analysis tools and has used RG 1.174 for the risk acceptance criteria.

In general, SNC conducted a review of the SWIS which included deterministic re-analyses and an analysis using the risk-informed, performance-based methods. SNC concluded that the review and analysis showed that some of the conditions in existing Exemption Request 1–3 were unnecessary, that the licensee would no longer rely upon some conditions in the exemption by upgrading a dividing wall and defining new fire areas, by modifying lubrication and cooling support for Service Water pumps and other program changes, and that, by plant modifications and re-analysis, show that by performing the above modifications, removal of the reliance on Kaowool would maintain or enhance safety while reducing unnecessary regulatory burden. The review and analysis conducted by SNC reflected a combination of planned modifications to FNP, deterministic re-analyses, and combined risk-informed and fire modeling analyses.

Area Description

The SWIS structure is located outside of the nuclear main power block and its support buildings. It is common to FNP, Units 1 and 2 and contains cables, pumps, valves, and other equipment necessary for the service water system. The SWIS supplies cooling water from the Service Water pond to the various essential components in both the nuclear main power block and balance of plant systems which require heat removal for proper operation during normal and accident conditions including the cooling certain plant equipment needed to achieve and maintain safe shutdown in the event of a fire. Each reactor unit has five pumps, two each in redundant Trains A and B, and a swing pump that can be aligned to either train. These pumps are spaced between five and six feet apart, on centers, and are protected by automatic fire suppression and detection systems. Redundant Train A and Train B cables supply power and controls to the pumps and support equipment. These cables are in close proximity where they enter the SWIS in the northeast corner of the building. Motor operated valves located in the strainer pit direct the pump flow for Trains A and B. These valves are horizontally separated 6 feet 6 inches on center on the FNP, Unit 1 side and 5 feet on center on the FNP, Unit 2 side of the strainer pit.

In its letter dated August 28, 2003, SNC stated that power cables in the SWIS are contained in conduit and all cables in the SWIS are qualified to the Institute of Electrical and Electronics Engineers (IEEE) 383 standard. In its letter dated December 28, 2004, SNC further stated that power and control cables have jacket and insulation materials that are qualified to the IEEE–383 standard and utilize thermoset materials. SNC stated that nearly all cables in the SWIS have thermoset plastic jacket and insulation material. SNC identified eight low-voltage polyvinyl chloride (PVC) PVC/PVC cables in a tray along the north and west wall that are thermoplastic. These cables are not located in trays and SNC stated that portions of the cable will be removed to meet the fire model analysis.

SNC will upgrade the nominal 18 inch concrete wall between Fire Zone 72A and Fire Zones 72B, C, D and E to meet the requirements of FNP's Fire Protection Program for a minimum 3-hour fire area boundary. The upgrade to the wall includes sealing penetrations and replacing un-rated doors with 3-hour rated fire doors. Three new fire areas will be defined, 72A, 72B/72C and 72D/72E. These changes will improve fire safety and defense-in-depth by reducing potential fire propagation paths between the pump deck and switchgear rooms, as well as between redundant switchgear rooms.

Fire Areas 73 and 74 remain unchanged with respect to this exemption request revision. On the FNP, Unit 1 side of the SWIS pump deck, floor curbs are located between the B- and C-Pumps and the C- and D-Pumps. SNC will provide a new floor curb to be located between the FNP, Unit 1 E-Pump and the east wall of the SWIS. On the FNP, Unit 2 side of the SWIS pump deck, floor curbs are located between the B- and C-Pumps and the C- and D-Pumps. These floor curbs and the slope of the floor help to confine a lubricant spill from one of the Service Water pumps and limit fire damage to adjacent pumps.

A concrete wall from floor to ceiling is located between the FNP, Unit 1 and FNP, Unit 2 Service Water pumps at the pump deck level. Radiant heat shields are provided on each side of the FNP, Unit 1 and FNP, Unit 2 swing Service Water pumps (C-Pump) to provide radiant heat shielding to and from adjacent Service Water pumps.

Fire Protection Equipment

The SWIS is provided with an area-wide smoke detection system located in all areas of the SWIS including the pump motor area, under the pump motor deck, in the battery rooms, in the stairways, and in the strainer area. The smoke detection system provides a local alarm and annunciates in the control room. In addition, activation of any smoke detector trips the clappers for all three preaction sprinkler systems. Tripping the clappers charges the preaction sprinkler systems with fire water.

The SWIS is also protected by automatic preaction sprinkler systems. Two preaction systems provide coverage to the entire pump deck, the area in the strainer pit beneath the pump deck, and to safety-related cabling in the upper northeast corner of the Service Water pump room. In addition, a third preaction 'spray' system for local application protects the Service Water pumps. Local carbon dioxide fire suppression systems are provided in the switchgear and transfer switch panels in Fire Zones 72B, 72C, 72D and 72E.

Upon receipt of an alarm, the Control Room would dispatch the Fire Brigade to the SWIS. Manual fire fighting equipment consisting of hose stations and portable fire extinguishers is available inside the SWIS. In addition, two fire hose/hydrant houses are located directly outside of the SWIS within the security fence. Therefore, all areas of the SWIS can be reached with an effective hose stream.

Operability and surveillance requirements for fire protection systems, including those provided for the SWIS are provided by the FNP Final Safety Analysis Report . The operability of the SWIS fire protection systems will continue to ensure defense-in-depth is maintained.

Combustible Controls

Processes and procedures are in place at FNP to address housekeeping and control of combustible loading throughout the plant. This includes housekeeping and combustible loading control in the SWIS. The procedures provide guidance for bringing combustibles into a fire area for any plant activity including guidance for determining the amount and type of fire extinguishing equipment in the event of temporary increases in potential fire loading.

SNC will implement additional specific transient combustible controls to restrict transient combustibles from being stored/located in the northeast corner and in the vicinity of the Service Water pumps. Configuration control will be maintained (from a fire protection program perspective) over the type and quantity of lubrication oil used in the Service Water pump motors. SNC will implement precautions to limit the amount of lubricant in the vicinity of the Service Water pumps during lubricant changes by removing the drained lubricant from the area prior to bringing the new (unused) lubricant into the area.

This will provide additional assurance that the conditions of the risk-informed, performance based evaluation are met and that defense-in-depth is maintained in the area.

Fire Modeling

SNC's evaluation uses the concepts from NFPA 805 for fire modeling. NFPA 805 presents two concepts, the maximum expected fire scenario (MEFS) and limiting fire scenario (LFS). The MEFSs or worst case credible scenarios are identified by considering the fire types that have a reasonable likelihood of occurrence. The LFSs are developed by altering one or more input parameters to MEFSs to determine the threshold at which a target would exceed the critical temperature or radiant heat flux. The purpose of determining an LFS was to perform a sensitivity analysis and demonstrate adequate margin between parameters when determining MEFS and LFS.

Three scenarios were evaluated by the licensee, (1) transient combustible material fire in the northeast corner of the SWIS, (2) FNP, Unit 1 Service Water pump fire, and (3) FNP, Unit 2 Service Water pump fire. These scenarios were chosen since they were believed to be the most likely to affect multiple trains of systems. Consolidated Model of Fire Growth and Smoke Transport (CFAST) (Peacock *et al.*, 2004), HEATING Version 7.3 (Childs, 1998), and empirical correlations (thermal plume and radiant heat flux) were used to model the fires. The hot gas layer temperature and radiant heat flux exposure to the safety-related cable trays and junction boxes were determined for the MEFSs. The licensee evaluated other fire scenarios such as smaller quantities of lubricant oil, motor windings, and other cable trays and concluded that the MEFS for these fire scenarios would not have resulted in target damage.

The preaction sprinkler system actuation was evaluated for each fire scenario although sprinkler actuation was not directly credited in the fire modeling analysis except for defense-in-depth considerations.

In Scenario 1, transient combustible material fire in the northeast corner of the SWIS (Item 4 and Item "Other" of the revised Exemption Request 1–3), CFAST was used to calculate the maximum hot gas layer temperature and layer height above the floor. Localized target exposure temperatures to cable tray targets (Train A and Train B cables in the northeast corner) were calculated using thermal plume correlations. This simulation assumed there was no Kaowool fire barrier protecting the Train A or B cable trays. The results of the CFAST fire simulation for an MEFS indicate that the maximum hot gas layer temperature would be below the cable damage temperature and that there would be no significant radiant exposure to targets located in the SWIS. Based on the fire modeling results, SNC concluded that the modeled SWIS targets would not be adversely impacted by an MEFS.

In Scenario 2, FNP, Unit 1 pump fire scenario (Item 9 of the revised Exemption Request 1–3), the effects of a lubricant oil pool fire, located between the FNP, Unit 1 Service Water pumps and the south wall of the SWIS were modeled. CFAST was used to calculate the maximum hot gas layer temperature and layer height above the floor, and thermal radiation heat transfer correlations were used to calculate target exposure to radiant heat flux. The targets evaluated in this scenario are cable trays (Train–A), using hot gas layer information from CFAST and pump motor junction boxes using thermal radiation from the heat transfer correlations. The results of the CFAST fire simulation indicate that the local targets on the Pump Deck would be immersed by the hot gas layer. However, the calculated hot gas layer temperature is lower than the damage temperature of the cable. The radiation heat transfer calculation shows that the fire originating from a lubricating oil spill could cause the incident heat flux at a second tier pump (*i.e.*, pump adjacent to the pump where the spill occurs) or the Train A cable trays along the east wall to exceed critical heat flux levels; however, the duration of the fire is not sufficient for the flux to cause the target surface temperature to exceed the critical cable temperature based on the analysis using the HEATING7 model. Therefore, based on this analysis at least one Service Water pump would not be adversely impacted by this fire scenario.

In Scenario 3, FNP, Unit 2 pump fire scenario (Item 9 of the revised Exemption Request 1–3), the effects of a lubricant oil pool fire, located between the FNP, Unit 2 Service Water pumps and the south wall of the SWIS were modeled. The targets evaluated in this scenario are pump motor junction

boxes. There are no cable tray targets modeled in this fire scenario. Scenario 3 is bounded by Scenario 2 because the pumps on FNP, Unit 2 contain less oil and would define a fire of shorter duration than in Scenario 2. Therefore, based on this analysis at least one Service Water pump would not be adversely impacted by this fire scenario.

A sensitivity analysis was performed for Scenarios 1, 2, and 3 to demonstrate the sensitivity of the results of the calculations to variations in the MEFSs input parameters. The sensitivity analysis of the results to the assumptions regarding the composition of the transient fuel package and the impact of ventilation conditions in the SWIS was examined. The results clarify the degree of conservatism inherent in the calculation and the margin between the MEFS and the LFS. The calculations were compared over a parameter spread that included conditions that would result in failure of the target. The licensee concluded that the sensitivity analysis demonstrates that the results and conclusions would not change with the exception of adjacent pump motor junction box targets. As a result, these targets are assumed to fail in the analysis.

Risk Assessment

RG 1.174 specifies that the risk associated with a plant change be determined by considering the change in Core Damage Frequency (CDF) and Large Early Release Frequency (LERF) that result from the plant change. These changes in CDF and LERF are calculated by comparing the CDF and LERF values for the pre- and post-change locations within the fire area that will be affected by the change to ensure that all contributors to risk are included. Thus, the fire risk analysis focused only on elements of the SWIS that had been or were proposed to be changed from SNC's current licensing basis. These elements were associated with pump/motor lubricant fires (one for each pump or ten cases in all).

The FNP plant-specific Level 1 and Level 2 Probabilistic Risk Assessment (PRA) Model was used, with modifications, to evaluate the impacts on plant risk of postulated fires originating in the SWIS. The modifications involved two changes that are summarized below. The analysis did not add any fire specific operator actions or recoveries to the base plant PRA Model.

The scope of analyses that were performed by SNC for the changes to Exemption Request 1–3 included a re-analysis of the service water system performance. SNC's re-analysis concluded that a single service water pump per unit was sufficient to satisfy the system performance requirements for fire protection safe shutdown. The re-analysis results were incorporated into the PRA Model by lowering the number of Service Water pumps per train required for system success from two to one. The total plant CDF from internal events that is reported below reflects this change in the success criterion.

The licensee modified the plant PRA model to take advantage of recent vendor data related to reactor coolant pump (RCP) seal performance. The specific data is related to seal performance given loss of motor bearing cooling. The licensee stated their model assumed increased seal leakage will begin at 15 minutes after loss of all RCP seal cooling based on information in WCAP–16141, "RCP Seal Leakage PRA Model Implementation Guidelines for Westinghouse PWRs" and that they credit recovery of RCP seal injection using the standby train of Component Cooling Water and charging through operator action done by procedures and performed from the main control room. Leakage due to loss of motor bearing cooling is an additional contribution to CDF with respect to the RCP seal loss-of-coolant accident (LOCA) PRA model. When these two leakage models are combined, the resultant CDF contribution slightly exceeds that from an equivalent application via the Rhodes RCP seal LOCA model, *i.e.*, it is conservative. The total plant CDF from internal events that is reported below reflects this change in the success criterion.

The performance of the PRA quantifications with the changes described above applied the same techniques and processes as used for the Fire IPEEE. This basically involved the setting of certain model basic events to "TRUE" by translating the fire modeling results for the MEFS into plant equipment damage states. SNC developed a fire ignition frequency for each fire scenario by partitioning the generic fire frequencies from the Electric Power Research Institute Fire Events Database. The resulting CDF for each of the fire scenarios was aggregated to obtain the cumulative risk for the proposed change. A separate calculation for the "baseline" CDF was not developed. Instead, the CDF for the changed configuration was taken as a conservative surrogate for the increase in risk.

The total plant CDF from internal events for FNP, Unit 1 and 2 is 3.86E–05/yr and 5.81E–05/yr, respectively based on one Service Water pump as the success criterion. A comparison of the Fire IPEEE results with the internal events PRA results that were applicable at that time shows that the FNP, Unit 1 Fire CDF was approximately 20 percent higher than the corresponding FNP, Unit 1 internal events CDF. This would result in an estimated total plant risk of 8.5E–05/yr.

The FNP, Unit 2 Fire CDF was approximately 10 percent less than the corresponding Unit 2 internal events CDF. This would result in an estimated total plant risk for FNP, Unit 2 of 1.1E–04/yr.

The CDF and LERF for the changed configuration was taken as a conservative surrogate for the increase in risk, *i.e.* the baseline CDF and LERF was assumed to be zero such that delta CDF and LERF was conservatively estimated as the total CDF and total LERF for the changed contribution (no subtraction of baseline value). As a result, the licensee's risk analysis determined that a conservative estimate of the CDF associated with the ten cases would be approximately 6.5E–07/yr per unit. The licensee reports that the CDF for the cases ranged from 2.08E–08/yr per unit to 1.34E–07/yr per unit with no one case dominating as a contributor relative to the rest. Based on the estimate for total CDF, this places the proposed change in Region III of the RG 1.174 acceptance criteria for CDF.

In order to gain further insights, the fire areas that were the dominant contributors to risk from the Fire IPEEE were requantified using the current plant PRA model. This re-quantification of dominant fire areas provided a cumulative CDF of 4.98E–05/yr and 5.87E–05/yr for FNP, Units 1 and 2, respectively. Using these updated values, the estimated total plant risk for FNP, Units 1 and 2 is 8.84E–05/yr and 1.17E–04/yr, respectively.

The licensee stated that the contribution to LERF from a SWIS fire is the result of core damage combined with failure of containment isolation. The conditional probability of containment isolation failure (crediting only check valves and fail closed air-operated valves) is 2.13E–4. The licensee stated that this resulted in a total LERF contribution from the seven SWIS fire scenarios analyzed for FNP, Unit 1 of 1.38E–10/yr per unit. This indicates the same LERF for FNP, Unit 2 since both units have the same CDF. SNC concluded that the LERF associated with the proposed change is negligible given the acceptance criteria of RG 1.174. RG 1.174, Section 2 also requires consideration of five key principles that the change is expected to

meet. SNC concluded that all of the five principles have been met.

Defense-in-Depth

10 CFR Part 50, Appendix R, section II states that a licensee's fire protection program extend the concept of defense-in-depth to fire protection with the following objectives:

I. To prevent fires from starting,

II. To detect rapidly, control, and extinguish promptly those fires that do occur, and

III. To provide protection for structures, systems and components important to safety so that a fire that is not promptly extinguished by the fire suppression activities will not prevent the safe shutdown of the plant.

RG1.174 also identifies factors to be considered when evaluating defense-in-depth for a risk-informed change.

SNC has evaluated defense-in-depth and stated the following:

Fire prevention is strengthened by SNC's commitment to enhance the transient combustible control program in the SWIS northeast corner and in the vicinity of the Service Water pumps.

SNC proposes no changes to the existing fire detection and automatic fire suppression systems in the SWIS and will continue to control these systems to maintain defense-in-depth. Protection for structures, systems and components is weakened by the elimination of the reliance on the Kaowool fire barrier in the northeast corner of the SWIS and the strainer pit. However, the elimination of the reliance on Kaowool has been evaluated by SNC in accordance with RG 1.174 or by deterministic re-analysis. Protection for structures, systems and components is strengthened by reducing the population of equipment requiring protection due to deterministic re-analyses (*i.e.*, single Service Water pump and motor operated valve circuit analysis) and plant modifications (FNP, Unit 2 elimination of lube and cooling pumps); and by modifying the existing barriers between the pump deck and switchgear rooms and between disconnect switch rooms to 3-hour fire rated barriers; and by installing a floor curb on the FNP, Unit 1 side of the pump deck to limit fire exposure to the Train A cables along the east wall.

Safety Margins

RG 1.174 provides acceptable guidelines to ensure sufficient safety margins are maintained. RG 1.174 states that the proposed change provide sufficient margin to account for analysis and data uncertainty. The licensee concluded that for Scenario 1, a heat release rate to four times that modeled in the MEFS is needed to reach the LFS; for Scenario 2 an increase in combustible oil lubricant volume of 75 percent for a C-pump fire scenario and an increase four times the volume of combustible oil lubricant for an A-,B-,D- or E-pump fire scenario are needed to reach the LFS; and for Scenario 3 a minimum increase five times the volume of combustible oil lubricant to reach the LFS.

SNC addressed uncertainty for Exemption Request 1–3, Item 9 and Item "Other" by considering the degree to which the fire models/calculations used bound the uncertainty in the input parameters. The licensee conducted an evaluation on the input parameters and concluded that the models/calculations that were used bounded the uncertainty except for the limiting oxygen index (LOI) parameter. However, the licensee concluded that the LOI assumption below a certain threshold is not possible for the temperatures predicted and is therefore not credible.

Uncertainty was further addressed by determining an LFS for each fire scenario. The LFS was determined by increasing one or more of the parameters that characterize the fire used for the MEFS until a failure condition is attained.

A sensitivity analysis was also conducted to determine that the conclusions would not be altered. In the case of the SWIS fire scenarios, sensitivity was conducted on the natural and forced ventilation conditions, the composition of the transient Class A fuel package (for Scenario 1) and the absorptance of the targets. As a result of the sensitivity analysis, SNC determined that some adjacent pump motor targets could be heated to the critical temperature. SNC then conservatively concluded that these targets would fail despite the results of the MEFS to the contrary. SNC concluded that other targets were not affected.

Evaluation of Exemption Request 1–3 Items

The NRC staff examined the licensee's submittals to determine if the revised Exemption Request 1–3 in Fire Area 72 of the SWIS would meet the underlying purpose of the 10 CFR part 50, appendix R rule.

The NRC staff has evaluated each of the revised items of Exemption Request 1–3 on a case by case basis by ensuring adherence to the fire modeling approach discussed in NFPA 805, ensuring that RG 1.174 criteria are met, assessing that a reasonable balance among the elements of defense-in-depth is maintained, and ensuring safety margins are maintained, where appropriate.

Item 1

SNC proposes to implement modifications to each of the five FNP, Unit 2 service water pumps by December 2006 that will result in removing the need for the redundant lubricating oil and coolant pumps, valves and control stations for FNP, Unit 2. The licensee concluded that modifications will eliminate the need to consider fire-induced impacts from a fire on the FNP, Unit 2 lubricating oil and coolant pumps, valves and their control stations as well as removing these pumps as ignition sources and combustible loadings. Based on the plant modifications, SNC concluded that the conditions of Exemption Request 1–3, Item 1 will no longer be applicable following completion of those plant modifications. On these bases, the NRC staff concludes that, upon completion of the modifications to the pumps as discussed above, there will be no further need for the exemption provided in the first paragraph of Section 2.3 of the NRC staff's December 29, 1986, exemption and, accordingly, it would be deleted.

Item 2: FNP, Unit 2 Side of Strainer Pit

For the strainer inlet valves and swing pump discharge valves in the FNP, Unit 2 side of the strainer pit, SNC stated in its December 28, 2004, response to question 26 and in its June 9, 2005, response to question 2, that it had performed a deterministic re-analysis on the cables for these valves. SNC's review of the circuitry located in the strainer pit determined that spurious operation of the valves could not result if the power cables to the valve motors and control cables to the valve position switches were subjected to hot shorts, open circuits, or shorts to ground. SNC stated that power is removed during normal operation from swing service water pump discharge valves Q2P16V507–A and Q2P16V506–B and that spurious operation of the valves due to a 3-phase hot short does not require evaluation in accordance with the guidance in Generic Letter 86–10, Section 5.3.1. SNC stated that the main and control power to strainer inlet valves Q2P16V511–A and Q2P16V508–B is not isolated during normal operation and that open circuits or short circuits will not result in spurious operation of the valves and that a 3-phase hot short does not require evaluation in accordance with the guidance in Generic Letter 86–10, Section 5.3.1. The licensee further states that for the control cables to limit switches, hot shorts, open circuits or shorts to ground could not result in

spurious operation because the cables do not contain the conductors necessary to energize the motor starters due to open control room switch contacts. Based on SNC's analysis, SNC concluded that reliance on Kaowool as part of the basis for Exemption Request 1–3, Item 2 is no longer necessary. The NRC staff concludes that on the basis of SNC's deterministic-based findings that the valves will not be repositioned due to a fire, the fire detection and suppression features for Fire Area 72A and the defense-in-depth measures as discussed above, that a continued exemption from the requirements of appendix R, section III.G.2.c for this item is acceptable.

Item 3: FNP, Unit 1 side of strainer pit

For the strainer inlet valves and swing pump discharge valves in the FNP, Unit 1 side of the strainer pit, SNC stated in its December 28, 2004, response to question 26 and in its June 9, 2005, response to question 2, that it had performed a deterministic re-analysis on the cables for these valves. SNC's review of the circuitry located in the strainer pit determined that spurious operation of the valves could not result if the power cables to the valve motors and control cables to the valve position switches were subjected to hot shorts, open circuits, or shorts to ground. SNC stated that power is removed during normal operation from swing service water pump discharge valves Q1P16V507–A and Q1P16V506–B and that spurious operation of the valves due to a 3-phase hot short does not require evaluation in accordance with the guidance in Generic Letter 86–10, Section 5.3.1. SNC stated that the main and control power to strainer inlet valves Q1P16V511–A and Q1P16V508–B is not isolated during normal operation and that open circuits or short circuits will not result in spurious operation of the valves and that a 3-phase hot short does not require evaluation in accordance with the guidance in Generic Letter 86–10, Section 5.3.1. The licensee further states that for the control cables to limit switches, hot shorts, open circuits or shorts to ground could not result in spurious operation because the cables do not contain the conductors necessary to energize the motor starters due to open control room switch contacts. Based on SNC's analysis, SNC concluded that reliance on Kaowool as part of the basis for Exemption Request 1–3, Item 3 is no longer necessary. The NRC staff concludes that on the basis of SNC's deterministic-based findings that the valves will not be repositioned due to a fire, the fire detection and suppression features for Fire Area 72A and the defense-in-depth measures as discussed above, that a continued exemption from the requirements of Appendix R, Section III.G.2.c for this item is acceptable.

Item 4: Discharge Valves to Wet Pit and Storage Pond Flume

For Fire Zone 72A, SNC performed a deterministic re-analysis on the redundant safe shutdown service water Train A and Train B cables, associated with service water discharge to the wet pit and storage pond flume, shared by Unit 1 and Unit 2. The December 29, 1986, exemption, page 11, first paragraph, reflected SNC's original finding that there was a potential for these valves to be mis-positioned by fire effects and that this could be acceptably dealt with by manually realigning the valves, if needed, within a required 24-hour period. SNC's submittals, specifically its June 9, 2005, submittal states that the main and control power to valves QSP16V505–A, QSP16V507–A, QSP16V506–B and QSP16V508–B is not isolated during normal operation and that open circuits or short circuits will not result in spurious operation of the valves and that a 3-phase hot short does not require evaluation in accordance with the guidance in Generic Letter 86–10, Section 5.3.1. SNC further states that for the control cables to limit switches, hot shorts, open circuits or shorts to ground could not result in spurious operation because the cables do not contain the conductors necessary to energize the motor starters due to open control room switch contacts. For the control cables to control room switches and other interlocks, the licensee concluded from its deterministic analysis that hot shorts could result in spurious operation of the valves. However, the licensee used fire modeling, as discussed in the section above on the modeling of fire scenarios, to demonstrate that fire induced cable damage from a fire could not result in spurious operation of both trains of valves and that there would not be a need to perform the long-term manual operator actions previously relied upon. Based on SNC's analysis, SNC concluded that reliance on Kaowool as part of the basis for Exemption Request 1–3, Item 4 is no longer necessary. The NRC staff concludes that on the basis of SNC's deterministic and fire modeling analysis results as discussed above, the fire detection and suppression features for Fire Area 72, defense-in-depth measures as discussed above, and enhanced combustible controls, that a continued exemption from the requirements of appendix R, section III.G.2.c for this item is acceptable.

Items 5 and 6: Swing Service Water Pumps

SNC's compliance strategy is unchanged for these two items. Therefore, the previous portion of the exemption issued on page 11, paragraphs two and three, of the December 29, 1986, exemption is unchanged and remains in effect. Accordingly, there is no further consideration in this Safety Evaluation for this item.

Item 7: Swing Service Water Pump Cables in Fire Zones 72D and 72E

SNC states in its August 28, 2003, submittal that the current exemption and its bases (included on page 11, last paragraph, and page 12, first paragraph of the December 29, 2005, exemption) remain unchanged because they do not involve Kaowool. The previous conditions for this item discussed in the NRC letter dated December 29, 1986, remain unchanged and there is no further consideration in this safety evaluation of those conditions. However, SNC has committed to implement plant modifications that will upgrade certain fire barriers to 3-hour fire ratings as previously discussed in this exemption. The creation of the three hour fire barriers will enhance the overall defense-in-depth of the SWIS.

Item 8: Swing Service Water Pump Cables in Fire Zones 72B and 72C

SNC states in its August 28, 2003, submittal that the current exemption and its bases (included on page 12, second paragraph, of the December 29, 2005, exemption) remain unchanged because they do not involve Kaowool. The previous condition for this item discussed in the NRC letter dated December 29, 1986, remains unchanged and there is no further consideration in this safety evaluation of those conditions. However, SNC has committed to implement plant modifications that will upgrade certain fire barriers to 3-hour fire ratings as previously discussed in this exemption. The creation of the 3-hour fire barriers will enhance the overall defense-in-depth of the SWIS.

Item 9: Raceways for Train A Service Water Pumps

The exemption for service water pumps that was included on page 12, third paragraph of the December 29, 1986, exemption was based, in part, on the raceways servicing the Train A service water pumps for both units being protected with a Kaowool blanket

fire barrier. SNC performed an evaluation for these raceways using a combined fire modeling and risk assessment analysis approach to revise the conditions for Exemption Request 1–3, Item 9. This approach does not take any credit for the Kaowool fire barrier and is addressed in the above Fire Modeling section discussion of scenarios 2 and 3. Based on SNC's Fire Modeling analysis, SNC concluded that at least one service water pump would not be adversely impacted by this fire scenario. As discussed in the above Risk Assessment section, SNC has also concluded that a single service water pump per unit is sufficient to satisfy the system performance requirements for fire protection. The NRC staff concludes that on the basis of SNC's deterministic and fire modeling analysis results as discussed above, the fire detection and suppression features for Fire Area 72, defense-in-depth measures as discussed above, and enhanced combustible controls, that a continued exemption from the requirements of appendix R, section III.G.2.c for this item is acceptable.

Addendum to Exemption Request 1–3, Fire Area 72

SNC included an Addendum to Exemption Request 1–3 in its October 18, 1985, submittal wherein SNC noted that adequate coordination was not provided between certain safe shutdown and non-safe shutdown circuits. The December 29, 1986, exemption noted that a design change had been initiated to improve breaker coordination, which would eliminate the concern. SNC's August 28, 2003, submittal stated that the design change had been completed. Accordingly, the NRC staff finds that the conditions requiring the exemption item that begins with the last paragraph of page 12 of the December 29, 1986, exemption are no longer present and, accordingly, this part of the exemption is no longer necessary.

SWIS Northeast Corner Raceways

SNC stated in its August 23, 2003, submittal that in addition to the nine situations that were addressed in the exemption issued on December 29, 1986, that it had also considered the FNP, Units 1 and 2 redundant Train A and Train B cables near the ceiling of the northeast corner of the SWIS. The northeast corner of the SWIS includes a "pinch-point" where FNP, Units 1 and 2 Train A and Train B cables approach each other as they run along perpendicular walls from the corner. The cables are 20 feet above the strainer pit floor. SNC performed an evaluation using fire modeling as discussed in the above Fire Modeling section, scenario one, to support the addition of this condition to the exemptions for Fire Area 72. Based on the fire modeling results, SNC concluded that the cables would not be adversely impacted by an SNC's analysis to support this exemption item and SNC's program modifications, SNC concluded that it is unlikely the cables of interest would be damaged by a maximum expected fire scenario. The NRC staff concludes that on the basis of SNC's fire modeling analysis results as discussed above, the fire detection and suppression features for Fire Area 72, defense-in-depth measures as discussed above, and enhanced combustible controls, that an exemption from the requirements of Appendix R, Section III.G.2.c for this item is acceptable.

Modifications

SNC will implement programmatic and design modifications as outlined in letters dated August 28, 2003, and December 28, 2004. These modifications include: (1) Modification of the FNP, Unit 2 service water pumps to eliminate their reliance on lubrication and cooling support pumps, (2) upgrading of the nominal 18-inch concrete wall between Fire Zone 72A and Fire Zones 72B, C, D and E to meet the requirements of FNP's Fire Protection Program for a minimum 3-hour fire area boundary. Penetrations will be sealed, un-rated doors will be replaced by 3-hour rated fire doors, and three new fire areas will be defined, 72A, 72B/72C and 72D/72E. In addition, the scope of the barrier surveillance program will be enhanced to ensure that the conditions of the risk-informed, performance-based assessment are maintained, (3) installation of a new floor curb on the FNP, Unit 1 pump deck to prevent liquid spill fires associated with the FNP, Unit 1 pumps from pooling beneath the Train A cable tray located near the east wall, (4) specific transient combustible controls will be implemented to restrict transient combustibles from being stored or located in the SWIS northeast corner and in the vicinity of the service water pumps. Configuration control will be maintained (from a fire protection program perspective) over the type and quantity of lubrication oil used in the service water pump motors. Precautions will be implemented to limit the amount of lubricant in the vicinity of the service water pumps during lubricant changes by removing the drained lubricant from the area prior to bringing the new (unused) lubricant into Fire Zone 72A. Transient fuel packages associated with maintenance activities will be controlled via procedural changes, and (5) SNC identified eight low-voltage PVC/PVC cables in a tray along the north and west wall that are thermoplastic. SNC stated that portions of the cable will be removed to meet the fire model analysis.

The evaluation that SNC prepared assesses the impact of the change. This evaluation uses a combination of risk-insights and deterministic methods to show that sufficient safety margins and defense-in-depth are maintained.

The results of the risk-informed portions of the analysis are consistent with a change that would be acceptable when compared to the acceptance criteria described in RG 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," Revision 1.

The NRC staff examined SNC's rationale to support the changes to Exemption Request 1–3 and concludes that adequate defense in depth and safety margins exist and that the underlying purpose of Appendix R, Section III.G.2.c is met. Fire modeling demonstrates that it is unlikely that the cables of interest in the northeast corner will be damaged by a fire and that at least one service water pump for each unit will not be damaged by a fire. Also, fire detection and automatic fire suppression systems in the areas of interest remain to provide defense-in-depth. Based upon the above considerations, the NRC staff concludes that the revisions to Exemption Request 1–3 meet the underlying purpose of the rule. Therefore, the NRC staff concludes that pursuant to 10 CFR 50.12(a)(2) this exemption is acceptable.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the changes to Exemption Request 1–3 are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants SNC a revised exemption 1–3 from the requirements of appendix R, section III.G.2.c to 10 CFR Part 50 to provide 1-hour fire separation in Fire Area 72 for the FNP, Units 1 and 2, subject to the full implementation of the programmatic and plant design modifications discussed above. Acceptance of this revised Exemption Request 1–3 is based on the programmatic and plant design modifications, the deterministic re-analyses, the risk-informed plant change evaluation and its results specific to the

SWIS, enhanced controls on transient combustibles, the existing fire detection and automatic fire suppression capability to maintain defense-in-depth, and the availability of manual fire fighting and associated fire fighting equipment.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (70 FR 46892).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of August, 2005.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. E5–4597 Filed 8–22–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of August 22, 29, and September 5, 12, 19, 26, 2005.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 22, 2005

There are no meetings scheduled for the Week of August 22, 2005.

Week of August 29, 2005—Tentative

There are no meetings scheduled for the Week of August 29, 2005.

Week of September 5, 2005—Tentative

Wednesday, September 7, 2005:

9 a.m.—Discussion of Security Issues (Closed—Ex. 1).

1:30 p.m.—Discussion of Security Issues (Closed—Ex. 3).

Week of September 12, 2005—Tentative

There are no meetings scheduled for the Week of September 12, 2005.

Week of September 19, 2005—Tentative

There are no meetings scheduled for the Week of September 19, 2005.

Week of September 26, 2005—Tentative

There are no meetings scheduled for the Week of September 26, 2005.

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: Michelle Schroll, (301) 415–1662.

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: August 18, 2005.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 05–16777 Filed 8–19–05; 10:22 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions:

Form 8–A; OMB Control No. 3235–0056; SEC File No. 270–54.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form 8–A is a registration statement for certain classes of securities pursuant to Section 12(b) and 12(g) of the Securities Exchange Act of 1934. Section 12(a) requires securities traded on national exchanges to be registered under the Exchange Act. Section 12(b) establishes the registration procedures. Section 12(g), and Rule 12g–1 promulgated thereunder, extend the Exchange Act registration requirements to issuers engaged in interstate commerce, or in a business affecting interstate commerce, and having total assets of $10,000,000 or more and a class of equity security held of record by 500 or more people. The respondents are companies offering securities. The information must be filed with the Commission on occasion. Form 8–A is a public document and filing is mandatory. The form takes approximately 3 hours to prepare and is filed by 1,760 respondents for a total of 5,280 annual burden hours.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 15, 2005.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4579 Filed 8–22–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27029; 812–12930]

ACM Income Fund, Inc., et al.; Notice of Application

August 16, 2005.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 ("Act") for an exemption from sections 12(d)(1)(A) and (B) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: The applicants request an order that would permit certain registered management investment companies to invest uninvested cash and cash collateral in (i) affiliated money market funds or (ii) affiliated private investment companies excluded from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act that comply with rule 2a–7 under the Act.

Applicants: ACM Income Fund, Inc.. ACM Managed Dollar Income Fund, Inc., ACM Managed Income Fund, Inc., AllianceBernstein Americas Government Income Trust, Inc., AllianceBernstein Balanced Shares, Inc., AllianceBernstein Bond Fund, Inc., AllianceBernstein Global Strategic Income Trust, Inc., AllianceBernstein Growth and Income Fund, Inc., AllianceBernstein Global Health Care Fund, Inc., AllianceBernstein Institutional Funds, Inc., AllianceBernstein International Premier Growth Fund, Inc., AllianceBernstein Mid-Cap Growth Fund, Inc., AllianceBernstein Multi-Market Strategy Trust, Inc., AllianceBernstein Large Cap Growth Fund, Inc., AllianceBernstein Quasar Fund, Inc., AllianceBernstein Global Technology Fund, Inc., AllianceBernstein Variable Products Series Fund, Inc., AllianceBernstein Worldwide Privatization Fund, Inc., AllianceBernstein Focused Growth and Income Fund, Inc., AllianceBernstein Utility Income Fund, Inc., The AllianceBernstein Portfolios, and all existing and future registered management investment companies for which Alliance Capital Management L.P. ("ACM") or an entity controlling, controlled by, or under common control with ACM serves in the future as an investment adviser (collectively, the "Investment Companies"); and ACM.

Filing Dates: The application was filed on February 14, 2003 and amended on April 14, 2005 and August 4, 2005.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 12, 2005, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303; Applicants, c/o Emilie D. Wrapp, Alliance Capital Management, L.P., 1345 Avenue of the Americas, New York, NY 10105.

FOR FURTHER INFORMATION CONTACT: John Yoder, Attorney-Adviser, at (202) 551–6878 or Mary Kay Frech, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Desk, 100 F Street, NE., Washington DC 20549–0102 (telephone (202) 551–5850).

Applicants' Representations

1. Each of the Investment Companies, other than ACM Income Fund, Inc., ACM Managed Dollar Income Fund, Inc., and ACM Managed Income Fund, Inc., is registered under the Act as an open-end management investment company. ACM Income Fund, Inc., ACM Managed Dollar Income Fund, Inc., and ACM Managed Income Fund, Inc. are registered under the Act as closed-end management investment companies. Most of the open-end Investment Companies are series companies consisting of one or more series, each with separate investment objectives and policies. As used herein, the term "Fund" refers to each separate series of an Investment Company that is organized as a series company or, for an Investment Company that is not organized as a series company, that Investment Company.[1] ACM is an investment adviser registered under the Investment Advisers Act of 1940 and serves as investment adviser to each Fund. Each Fund has, or may be expected to have, cash that has not been invested in portfolio securities ("Uninvested Cash"). Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments or money from investors. Certain Funds also may participate in a securities lending program ("Securities Lending Program") under which a Fund may lend its portfolio securities to registered broker-dealers or other institutional investors. The loans are secured by collateral, including cash collateral ("Cash Collateral" and together, with Uninvested Cash, "Cash Balances"), equal at all times to at least the market value of the securities loaned.

2. Applicants request an order to permit: (i) Each of the Funds to use their Cash Balances to purchase shares of one or more of the Funds that are money market funds and comply with rule 2a–7 under the Act (the "Registered Money Market Funds") or shares of private investment companies advised by ACM that are excluded from the definition of investment company pursuant to section 3(c)(1) or 3(c)(7) of the Act and comply with rule 2a–7 under the Act (the "Non-Registered Money Market Funds") (the Registered Money Market Funds and the Non-Registered Money Market Funds, collectively, the "Money Market Funds") (such Funds, including Registered Money Market Funds that purchase shares of other Money Market Funds, are referred to as the "Investing Funds"); and (ii) the Money Market Funds to sell their shares to, and purchase (redeem) such shares from, the Investing Funds.

3. The investment of Cash Balances in shares of the Money Market Funds will be made only in accordance with each Investing Fund's investment restrictions and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no investment company may acquire securities of a registered investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

[1] All existing Funds that currently intend to rely on the requested order are named as applicants. Any other existing or future Funds that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Investing Funds to use their Cash Balances to acquire shares of the Registered Money Market Funds in excess of the percentage limitations in section 12(d)(1)(A), provided however, that in all cases an Investing Fund's aggregate investment of Uninvested Cash in shares of the Money Market Funds will not exceed 25% of the Investing Fund's total assets at any time. Applicants also request relief to permit the Registered Money Market Funds to sell their securities to the Investing Funds in excess of the percentage limitations in section 12(d)(1)(B).

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that there is no threat of redemption to gain undue influence over the Registered Money Market Funds due to the highly liquid nature of each Registered Money Market Fund's portfolio. Applicants state that the proposed arrangement will not result in inappropriate layering of fees. Shares of the Money Market Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act or service fee (as defined in NASD Conduct Rule 2830(b)(9)). If a Money Market Fund offers more than one class of shares in which an Investing Fund may invest, the Investing Fund will invest its Cash Balances only in the class with the lowest expense ratio at the time of investment. In connection with approving any advisory contract for an Investing Fund, the board of directors or trustees of each Investing Fund ("Board"), including a majority of the directors/trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), will consider to what extent, if any, the advisory fees charged to the Investing Fund by ACM should be reduced to account for reduced services provided to the Investing Fund by ACM as a result of the investment of Uninvested Cash in a Money Market Fund. In this regard, ACM will provide the Board with specific information regarding the approximate cost to ACM of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Funds. Applicants represent that no Money Market Fund whose shares are held by an Investing Fund will acquire securities of any other investment company, or company relying on section 3(c)(1) or 3(c)(7) of the Act, in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the investment company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, any person 5% or more of whose outstanding securities are directly or indirectly owned, controlled, or held with power to vote by the other person, any person directly or indirectly controlling, controlled by, or under common control with the other person, and any investment adviser to the investment company. Because the Investing Funds and the Money Market Funds have ACM as their investment adviser, they may be deemed to be under common control and thus affiliated persons of each other. In addition, if an Investing Fund purchases more than 5% of the voting securities of a Money Market Fund, the Money Market Fund and the Investing Fund may be affiliated persons of each other. As a result, if a Money Market Fund were deemed to be an affiliated person of an Investing Fund, section 17(a) would prohibit the sale of the shares of Money Market Funds to the Investing Funds, and the redemption of the shares by the Investing Funds.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Money Market Funds by the Investing Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that shares of the Money Market Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Investing Funds will retain their ability to invest Cash Balances directly in money market instruments as authorized by their respective investment objectives and policies. Applicants state that a Money Market Fund has the right to discontinue selling shares to any of the Investing Funds if the Money Market Fund's Board determines that such sale would adversely affect the Money Market Fund's portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has approved the joint arrangement. Applicants state that the Investing Funds and the Money Market Funds, by participating in the proposed transactions, and ACM, by managing the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

8. In considering whether to approve a joint transaction under rule 17d–1, the Commission considers whether the investment company's participation in the joint transaction is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants state that the investment by the Investing Funds in shares of the Money Market Funds would be on the same basis and no different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet the standards for an order under rule 17d–1.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed by the Investing

Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1 under the Act, or service fee (as defined in rule 2830(b)(9) of the NASD Conduct Rules) or if such shares are subject to any such fee, ACM will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund.

2. Prior to reliance on the order with respect to Uninvested Cash, an Investing Fund will hold a meeting of the Board for the purpose of voting on the advisory contract under section 15 of the Act. In that context, before approving any advisory contract for the Investing Fund, the Board, including a majority of the Independent Trustees, taking into account all relevant factors, shall consider to what extent, if any, the advisory fees charged to the Investing Fund by ACM should be reduced to account for reduced services provided to the Investing Fund by ACM as a result of the Uninvested Cash being invested in the Money Market Funds. In connection with this consideration, ACM will provide the Board with specific information regarding the approximate cost to ACM of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Investing Fund that can be expected to be invested in the Money Market Funds. The minute books of the Investing Fund will record fully the Board's considerations in approving the advisory contract, including the considerations relating to fees referred to above.

3. Investment of Cash Balances in shares of the Money Market Funds will be in accordance with each Investing Fund's respective investment restrictions and will be consistent with each Investing Fund's investment policies set forth in its prospectus and statement of additional information.

4. Each Investing Fund and each Money Market Fund relying on the order will be advised by ACM. An Investing Fund that is subadvised, but not advised, by ACM may rely on the order provided that ACM manages the Cash Balances and the Investing Fund is in the same group of investment companies (as defined in section 12(d)(1)(G) of the Act) as the Money Market Fund in which the Investing Fund invests its Cash Balances.

5. No Money Market Fund whose shares are held by an Investing Fund shall acquire securities of any other investment company, or company relying on section 3(c)(1) or 3(c)(7) of the Act, in excess of the limits contained in section 12(d)(1)(A) of the Act.

6. Before an Investing Fund may participate in the Securities Lending Program, a majority of the Board, including a majority of the Independent Trustees, will approve the Investing Fund's participation in the Securities Lending Program. The Board also will evaluate the Securities Lending Program and its results no less frequently than annually and determine that any investment of Cash Collateral in the Money Market Funds is in the best interests of the shareholders of the Investing Fund.

7. Each Investing Fund will invest Uninvested Cash in, and hold shares of, the Money Market Funds only to the extent that the Investing Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25% of the Investing Fund's total assets.

8. The Non-Registered Money Market Funds will comply with the requirements of sections 17(a), (d), and (e), and 18 of the Act as if the Non-Registered Money Market Funds were registered open-end investment companies. With respect to all redemption requests made by an Investing Fund, the Non-Registered Money Market Funds will comply with section 22(e) of the Act. ACM will adopt procedures designed to ensure that each Non-Registered Money Market Fund complies with sections 17(a), (d), and (e), 18 and 22(e) of the Act. ACM will also periodically review and update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be made pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the Commission and its staff.

9. Each Non-Registered Money Market Fund will comply with rule 2a–7 under the Act and use the amortized cost method of valuation. With respect to such Non-Registered Money Market Fund, ACM will adopt and monitor the procedures described in rule 2a–7(c)(7) and will take such other actions as are required to be taken under those procedures. An Investing Fund may only purchase shares of a Non-Registered Money Market Fund if ACM determines on an ongoing basis that the Non-Registered Money Market Fund is in compliance with rule 2a–7. ACM will preserve for a period of not less than six years from the date of determination, the first two years in an easily accessible place, a record of such determination and the basis upon which the determination was made. This record will be subject to examination by the Commission and its staff.

10. Each Investing Fund will purchase and redeem shares of any Non-Registered Money Market Fund as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Non-Registered Money Market Fund. A separate account will be established in the shareholder records of each Non-Registered Money Market Fund for the account of each Investing Fund that invests in such Non-Registered Money Market Fund.

11. The Board will satisfy the fund governance standards as defined in rule 0–1(a)(7) under the Act by the compliance date set for the rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4588 Filed 8–22–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of GSB Financial Services Inc.; Order of Suspension of Trading

August 19, 2005.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of GSB Financial Services Inc. ("GSBF") because of possible manipulative acts, taken by individuals associated with the company, in connection with the market for the company's stock.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. e.d.t., on August 19, 2005 through 11:59 p.m. e.d.t., on September 1, 2005.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–16784 Filed 8–19–05; 11:46 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52270; File No. SR–Amex–2005–066]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Calculation of the National Best Bid or Offer When Another Exchange is Disconnected From the Intermarket Option Linkage

August 16, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2005, the American Stock Exchange LLC ("Amex") 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 Amex. On August 4, 2005, the Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rules 933(g) and 933(g)—ANTE regarding the calculation of the national best bid or offer ("NBBO") when another participant in the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage ("Linkage Plan") is disconnected from the Intermarket Option Linkage ("Linkage"). The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), at the Amex's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to set forth the Amex's policy in connection with declaring quotes from other options exchanges unreliable when such other exchange is disconnected from the Linkage. The Amex currently relies on Amex Rules 933(g) and 933(g)—ANTE to determine whether quotes from another options exchange(s) are unreliable.

Amex Rules 933(g) and 933(g)—ANTE provide that a Floor Governor or Exchange Official may determine that certain quotes from another options exchange(s) are not reliable. The existing Amex rules provide that a Floor Governor or Exchange Official may make such determination in the following circumstances: (i) when another options exchange declares its quotes non-firm and directly communicates or disseminates a message through OPRA; and (ii) when another options exchange communicates to the Amex that such options exchange is experiencing systems or other problems affecting the reliability of its disseminated quotes.

The Amex believes that an additional circumstance whereby a Floor Governor or Exchange Official may determine the quotes from another options exchange to be unreliable should be added to Amex Rules 933(g) and 933(g)—ANTE. This additional circumstance would arise when another Participant Exchange[4] is disconnected from the Linkage and is not accepting Linkage orders. The Amex believes that this additional circumstance for determining quotes from away options markets unreliable is necessary because there are times when because of system malfunctions, a Participant Exchange is disconnected from the Linkage but has not declared its quotes to be "non-firm" and has not informed the other options exchanges that such Participant Exchange may have quote problems. As a result, access to the Participant Exchange is limited, and the Amex believes such Participant Exchange's quotes should be excluded from the Amex's calculation of the NBBO.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act[5] in general and furthers the objectives of section 6(b)(5) of the Act[6] in particular, in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Amex 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, 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Form 19b–4 dated August 4, 2005 ("Amendment No. 1"). Amendment No. 1 supersedes and replaces the original filing in its entirety.

[4] A "Participant Exchange" is a registered national securities exchange that is a party to the Linkage Plan. *See* Amex Rule 940 (b)(14).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

• Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–066 on the subject line.

Paper Comments

• Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR-Amex-2005–066. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish tomake available publicly. All submissions should refer to File Number SR–Amex–2005–066 and should be submitted on or before September 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4581 Filed 8–22–05; 8:45 am]

BILLING CODE 8010–01–P

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52268; File No. SR–Amex–2005–077]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to a Temporary Suspension of Specialist Transaction Charges for the Nasdaq-100 Tracking Stock® (QQQQ)

August 15, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 15, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by Amex. On July 20, 2005, the Exchange filed Amendment No. 1 to the proposal.[3] On August 11, 2005, the Exchange filed Amendment No. 2 to the proposal.[4] Amex has designated the proposed rule change, as amended, as establishing or changing a due, fee, or other charge imposed by the Exchange pursuant to Section 19(b)(3)(A)(ii) of the Act[5] and Rule 19b–4(f)(2) thereunder,[6] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules to suspend specialist transaction charges for the trading of Nasdaq-100 Index Tracking Stock(®) (Symbol: QQQQ) from July 18, 2005 through July 31, 2005. The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at Amex's principal office, and from the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. 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

The Exchange is proposing to suspend transaction charges for specialist orders in the Nasdaq-100 Index Tracking Stock(®) (QQQQ) from July 18, 2005 through July 31, 2005. This proposed rule change also deletes the references in the Amex Fee Schedules regarding the suspension of transaction charges for customer/broker-dealer, specialist and registered trader orders in QQQQ through February 28, 2005 because those provisions are no longer effective due to their expiration. Similarly, the references in the Amex Fee Schedules regarding the suspension of transaction charges for specialist, registered trader, and broker-dealer orders in IAU from January 28, 2005 through February 28, 2005 will also be deleted because these provisions are also no longer effective due to their expiration.

Specialists orders for transactions in the Nasdaq-100 Index Tracking Stock(®) currently are charged $0.0037 ($0.37 per 100 shares), capped at $300 per trade. Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock(®) (formerly "QQQ") transferred its listing from Amex to the Nasdaq Stock Market, Inc. It now trades on Nasdaq under the symbol QQQQ. After the transfer, Amex began trading QQQQ on an unlisted trading privileges basis. Amex previously suspended the transaction charges of specialist and registered trader orders in connection with QQQQ from December 1, 2004 through

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Amex added language to the purpose section to explain that the proposal is deleting certain provisions from its fee schedules because such provisions, by their terms, have already expired.

[4] In Amendment No. 2, Amex made minor technical changes to the proposed rule text and provided furhter discussion on how the proposal is consistent with the requirement under Section 6(b)(4) of the Act to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons its members and issuers and other persons using its facilities. *See* 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

February 28, 2005.[7] The Exchange did not extend these fee waivers after February 28, 2005. In connection with the transfer of QQQQ to Nasdaq, the Amex Fee Schedules were amended to provide for transaction charges of $0.0015 per share ($0.15 per 100 shares) for customer orders, capped at $100 per trade in connection with QQQQ transactions.[8] Amex previously suspended those transaction charges for customer orders in connection with QQQQ from December 1, 2004 through February 28, 2005.[9] The Exchange did not extend this fee waiver after February 28, 2005.

The Exchange asserts that the proposed suspension of transaction fees for specialist orders in connection with QQQQ is consistent with Section 6(b)(4) of the Act.[10] Specifically, the Exchange believes that the proposal provides for an equitable allocation of reasonable fees among Exchange members largely based on the fact that a specialist has greater obligations than other members and they are also subject to Exchange fees in addition to transaction fees.

In connection with the proposal to suspend or waive transaction fees for specialist orders in QQQQ, the Exchange notes that specialists are subject to a variety of Exchange fees other than transaction charges. For example, the Exchange imposes floor fees solely on specialists such as a floor clerk fee, a floor facility fee, a post fee, and a registration fee.[11] In addition, for those members on the floor of the Exchange, a technology fee and membership fees are also charged by the Exchange.[12] Certain market participants—such as customers, non-member broker-dealers, market-makers, and member broker-dealers—are not subject to the majority of these fees. In addition, a specialist unit, in order to adequately "make a market" in assigned securities, must be sufficiently staffed and have adequate technology resources to handle the volume of orders (especially in QQQQ) that are sent to the Exchange. These operational costs borne by a specialist further support the Exchange proposal to temporarily suspend QQQQ transaction fees on specialist orders.

Specialists also have certain obligations under Exchange rules, as well as the Act, that do not exist for other market participants. For example, a specialist is required to maintain a fair and orderly market in his or her assigned securities pursuant to Amex Rule 170. This affirmative obligation requires the specialist to maintain the price continuity of the security with reasonable depth, while also minimizing the effect of any temporary disparities between supply and demand. As a result, the Exchange believes that the proposed suspension of transaction charges for specialist orders in QQQQ is reasonable and equitable given the numerous obligations that specialists must adhere to in making markets.

As detailed above, the Exchange believes a suspension of transaction fees for specialist orders in connection with QQQQ is equitable and appropriate for the purpose of enhancing our competitiveness in trading this security. The Exchange further submits that the fee suspension will provide greater incentive to the specialist to continue to provide market liquidity, rendering the Exchange an attractive venue for market participants to execute orders.

2. Statutory Basis

Amex believes that the proposed rule change consistent with Section 6(b) of the Act[13] in general and furthers the objectives of Section 6(b)(4) of the Act[14] in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change would 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[15] and subparagraph (f)(2) of Rule 19b–4 thereunder[16] because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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.[17]

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–Amex–2005–077 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303. All submissions should refer to File Number SR–Amex–2005–077. 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.

[7] *See* Securities Exchange Act Release Nos. 50811 (December 7, 2004), 69 FR 74547 (December 14, 2005); 50970 (January 6, 2005), 70 FR 2193 (January 12, 2005); and 51150 (February 8, 2005), 70 FR 7780 (February 15, 2005).

[8] *See* Securities Exchange Act Release No. 50894 (December 20, 2004), 69 FR 77788 (December 28, 2004).

[9] *See* Securities Exchange Act Release Nos. 50894 (December 20, 2004), 69 FR 77788 (December 28, 2004); 50969 (January 6, 2005), 70 FR 2191 (January 12, 2005); and 51152 (February 8, 2005), 70 FR 7781 (February 15, 2005).

[10] Section 6(b)(4) of the Act states that the rules of a national securities exchange must provide for "the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities."

[11] The floor clerk, floor facility, post, and registration fees on an annual basis are $900, $2,400, $1,000, and $800, respectively.

[12] A technology fee of $3,000 per year is assessed on all specialists and other floor participants at the Exchange. Annual membership dues of $1,500 must be paid by all members, while annual membership fees are payble depending on the type of membership and circumstances. Non-members are not subject to these fees.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(4).

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

[17] The effective date of the original proposed rule change is July 20, 2005 and the effective date of the amendment is August 11, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 11, 2005, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–077 and should be submitted on or before September 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4582 Filed 8–22–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52267; File No. SR–Amex–2005–081)

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to a Temporary Suspension of Specialist Transaction Charges for the Nasdaq-100 Tracking Stock® (QQQQ)

August 15, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Amex. On August 15, 2005, the Exchange filed Amendment No. 1 to the proposal.[3] Amex has designated the proposed rule change, as amended, as establishing or changing a due, fee, or other charge imposed by the Exchange pursuant to section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules (the "Amex Fee Schedules") to extend the suspension of transaction charges for specialist orders in connection with the trading of the Nasdaq-100 Index Tracking Stock® (Symbol: QQQQ) from August 1, 2005 through August 31, 2005. The text of the proposed rule change, as amended, is available on Amex's Web site (*http://www.amex.com*), at Amex's principal office, and from the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. 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

The Exchange is proposing to extend the suspension of transaction charges for specialist orders in the Nasdaq-100 Index Tracking Stock® (QQQQ) from August 1, 2005, through August 31, 2005. The current suspension of specialist transaction charges in QQQQ will otherwise terminate on July 31, 2005.[6]

Specialist orders in QQQQ executed on the Exchange currently are charged $0.0037 ($0.37 per 100 shares), capped at $300 per trade. Effective December 1, 2004, the Nasdaq-100 Index Tracking Stock® (formerly "QQQ") transferred its listing from Amex to the Nasdaq Stock Market, Inc. It now trades on Nasdaq under the symbol QQQQ. After the transfer, Amex began trading QQQQ on an unlisted trading privileges basis.

As detailed in a recently filed proposed rule change (File No. SR–Amex–2005–077), the Exchange submits that a suspension of transaction fees for specialist orders in connection with QQQQ is consistent with section 6(b)(4) of the Act.[7] Specifically, the Exchange believes that extending the suspension of transaction charges for QQQQ specialist orders is an equitable allocation of reasonable fees among Exchange members, issuers, and other persons using its facilities. The fact that specialists have greater obligations than other members and are also subject to other Exchange fees, in addition to transaction fees, supports this proposal to temporarily extend the fee suspension.

The Exchange notes that specialists are also subject to a variety of Exchange fees other than transaction charges, such as a floor clerk fee, a floor facility fee, a post fee, and a registration fee.[8] In addition, specialists and other floor members of the Exchange are subject to technology and membership fees.[9] Certain market participants—such as customers, non-member broker-dealers, market-makers, and member broker-dealers—are not subject to the majority of these fees. In addition, specialist units, unlike registered traders and other floor members, must be sufficiently staffed and provide adequate technology resources to handle the volume of orders (especially in QQQQ) that are sent to the specialist

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Amex made minor technical changes to the proposed rule text and provided further discussion on how the proposal is consistent with the requirement under Section 6(b)(4) of the Act to provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities. *See* 15 U.S.C. 78f(b)(4).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 7 CFR 240.19b–4(f)(2).

[6] *See* Amex File No. 2005–077 filed with the Commission on July 15, 2005.

[7] Section 6(b)(4) of the Act states that the rules of a national securities exchange provide for "the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities."

[8] The floor clerk, floor facility, post, and registration fees on an annual basis are $900, $2,400, $1,000, and $800, respectively.

[9] A technology fee of $3,000 per year is assessed on all specialists and other floor participants at the Exchange. Annual membership dues of $1,500 must be paid by all members, while annual membership fees are payable depending on the type of membership and circumstances. Non-members are not subject to these fees.

post at the Exchange. These operational costs that are incurred by a specialist further support the Exchange proposal to extend the suspension of QQQQ transaction fees on specialist orders.

Specialists have certain obligations under the Exchange rules, as well as the Act, that do not exist for other market participants. For example, a specialist is required to maintain a fair and orderly market in his or her assigned securities pursuant to Amex Rule 170. Other members of the Exchange, as well as non-member market participants, do not have this obligation. As a result, the Exchange believes that an extension of the transaction charge fee waiver for specialist orders in QQQQ is reasonable and equitable.

The Exchange is amending the Amex Fee Schedules to indicate that transaction charges for specialist orders in connection with QQQQ executed on the Exchange will be further suspended from August 1, 2005, through August 31, 2005. The Exchange also submits that the fee suspension will provide greater incentive to the specialist to continue to provide market liquidity, rendering the Exchange an attractive venue for market participants to execute orders.

2. Statutory Basis

Amex believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act [10] in general and furthers the objectives of section 6(b)(4) of the Act [11] in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [12] and subparagraph (f)(2) of Rule 19b–4 thereunder [13] because it establishes or changes a due, fee, or other charge imposed by the Exchange. 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.[14]

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–Amex–2005–081 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–081. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–081 and should be submitted on or before September 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4584 Filed 8–22–05; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

[14] The effective date of the original proposed rule change is August 1, 2005 and the effective date of the amendment is August 15, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 11, 2005, the date on which the Exchange submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52273; File No. SR–Amex–2005–078]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to a Temporary Suspension of Specialist Transaction Charges for the Nasdaq-100 Tracking Stock® (QQQQ)

August 16, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 15, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by Amex. On August 12, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, Amex made minor technical changes to the proposed rule text and provided further discussion on how the proposal is consistent with the requirement under Section 6(b)(4) of the Act to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. *See* 15 U.S.C. 78f(b)(4).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to retroactively apply a suspension of specialist transaction charges for the trading of Nasdaq–100 Index Tracking Stock® (Symbol: QQQQ) from July 1, 2005 through July 17, 2005. The text of the proposed rule change is available on Amex's Web site (*http://www.amex.com*), at Amex's principal office, and from 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, Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange in a companion filing (File No. SR–Amex–2005–077) proposed to suspend transaction charges for specialist orders in the Nasdaq–100 Tracking Stock ("QQQQ") from July 18, 2005 through July 31, 2005. In order to waive transaction fees for specialist orders in QQQQ for the entire month of July 2005, the Exchange has proposed to retroactively suspend transaction fees for specialist transactions from July 1, 2005 through July 17, 2005.

Under the existing Amex Equity and Exchange Traded Funds and Trust Issued Receipts Fee Schedules (the "Amex Fee Schedules"), specialist orders in QQQQ executed on the Exchange will be charged $0.0037 ($0.37 per 100 shares), capped at $300 per trade from July 1, 2005 through July 17, 2005. The Exchange believes that the retroactive suspension of transaction charges for specialist transactions from July 1, 2005 through July 17, 2005 is consistent with the companion filing to suspend transaction charges for specialist orders generally through July 31, 2005. The Exchange further believes that a retroactive suspension of transaction fees on specialist orders in QQQQ is appropriate to enhance the competitiveness of executions on Amex. The Exchange is amending the Amex Fee Schedules to indicate that transaction charges for specialist orders have been suspended from July 1, 2005 through July 31, 2005 in QQQQ.

As detailed in File No. SR–Amex–2005–077, the Exchange submits that a suspension of transaction fees for specialist orders in connection with QQQQ is consistent with Section 6(b)(4) of the Act.[4] Specifically, the Exchange believes that suspending transaction charges for QQQQ specialist orders is an equitable allocation of reasonable fees among Exchange members. The fact that specialists have greater obligations than other members and are also subject to other Exchange fees, in addition to transaction fees, supports this proposal to retroactively apply the fee suspension.

The Exchange notes that specialists are subject to a variety of Exchange fees other than transaction charges, such as a floor clerk fee, a floor facility fee, a post fee, and a registration fee.[5] In addition, specialists and other floor members of the Exchange are subject to technology and membership fees.[6] Certain market participants—such as customers, non-member broker-dealers, market-makers, and member broker-dealers—are not subject to the majority of these fees. In addition, specialist units, unlike registered traders and other floor members, must be sufficiently staffed and provide adequate technology resources in order to handle the volume of orders (especially in QQQQ) that are sent to the specialist post at the Exchange. These operational costs that are incurred by a specialist further support the Exchange proposal to extend the suspension of QQQQ transaction fees on specialist orders.

Specialists also have certain obligations required by Exchange rules as well as the Act that do not exist for other market participants. For example, a specialist pursuant to Amex Rule 170 is required to maintain a fair and orderly market in his or her assigned securities. Other members of the Exchange as well as non-member market participants do not have this obligation. As a result, the Exchange believes that this proposal to retroactively apply the transaction charge fee waiver for specialist orders in QQQQ is reasonable and equitable. As noted above, the Exchange is amending the Amex Fee Schedules to indicate that transaction charges for specialist orders in connection with QQQQ executed on the Exchange will be suspended from July 1, 2005 through July 31, 2005.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general and furthers the objectives of Section 6(b)(4) of the Act[8] in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 Amex 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, as amended, is consistent with

[4] Section 6(b)(4) of the Act states that the rules of a national securities exchange must provide for the "equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities."

[5] The floor clerk, floor facility, post, and registration fees on an annual basis are $900, $2,400, $1,000, and $800, respectively.

[6] A technology fee of $3,000 per year is assessed on all specialists and other floor participants at the Exchange. Annual membership dues of $1,500 must be paid by all members while annual membership fees are payable depending on the type of membership and circumstances. Non-members are not subject to these fees.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2005–078 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–078. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–078 and should be submitted on or before September 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4589 Filed 8–22–05; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52275; File No. SR–Amex–2005–003]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change, and Amendment No. 1 Thereto, to Expand the Types of Trusts Permitted to Directly Own Amex Memberships

August 16, 2005.

On January 7, 2005, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 356 to expand the types of trusts permitted to directly own Amex memberships. On June 7, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on June 28, 2005.[4] The Commission received no comments on the proposal.

The Exchange proposed to amend Amex Rule 356 to permit grantor trusts to directly own Exchange memberships. Currently, the Exchange permits certain pension trusts (generally comprised of trusts or custodial accounts, *i.e.*, Keoghs and IRAs) to directly own Exchange memberships for investment purposes and either lease the seat or designate a nominee to operate the seat.

Under the proposed rule change, grantor trusts will be able to acquire one or more Amex memberships either by transfer from an existing owner of an Amex membership or by a direct purchase. The grantor of the trust (*i.e.*, either the member transferring a membership to a trust or the grantor of the trust purchasing a membership) will be required during the grantor's lifetime or existence (in the case of a non-natural person) to be a beneficiary of the trust. In the event that the trust terminates or is amended such that it no longer qualifies to own an Amex membership, any memberships held by the trust will revert to the grantor.

As is the case with pension trusts, the trustee and grantor will be required on behalf of the trust to execute an agreement with the Exchange acknowledging that the trust will own the membership subject to the Exchange's Constitution and Rules, as well as certain other limitations and indemnifications, and will also be required to provide a legal opinion confirming that the trust was validly created and is authorized to own a membership and that the trustee is vested with all necessary authority to either appoint a nominee to operate the seat on behalf of the trust and/or lease the seat, as well as to enter into the requisite agreement. Additionally, the trustee and the grantor will be required to become allied members or approved persons of the Exchange, as applicable.

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of Section 6(b) of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[7] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, 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.

The Commission believes that permitting grantor trusts to directly own Amex memberships is designed to provide Amex members with increased estate and tax planning options and to achieve a reasonable balance between the Exchange's interest in providing members with the flexibility to plan their estates and the Exchange's interest in regulating and protecting its membership. The Commission notes that the grantor of the trust would be required during the grantor's lifetime or existence to be a beneficiary of the trust. Moreover, the trustee and grantor will be required on behalf of the trust to execute an agreement with the Exchange acknowledging that the trust will own

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange revised the proposed rule text to clarify that an Exchange member owner who does not conduct broker-dealer activities on the floor of the Exchange is not required to be registered with the Commission as a broker-dealer. Member owners can be individuals, partnerships, corporations, custodial accounts or, pursuant to the proposed rule change, grantor trusts. Amendment No. 1 replaced and superseded the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 51900 (June 22, 2005), 70 FR 37139.

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

the membership subject to the Exchange's Constitution and Rules. In addition, the trustee and grantor will be required to become allied members or approved persons of the Exchange, as applicable, and will remain subject to the Constitution and Rules of the Exchange. The Commission also notes that the proposal is similar to a Chicago Board Options Exchange, Incorporated ("CBOE") rule[8] that was previously approved by the Commission and permits trusts to directly own CBOE seats.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–Amex–2005–003), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4595 Filed 8–22–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52252; File No. SR–CBOE–2005–17]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Approving Proposed Rule Change To Adopt a Revenue Sharing Program for Trades in Tape B Securities

August 15, 2005.

On February 7, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt a Revenue Sharing Program for trades in Tape B securities.[3] The proposed rule change was published for comment in the **Federal Register** on July 15, 2005.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

The Commission finds CBOE's proposal to amend its Fee Schedule to adopt a Revenue Sharing Program for revenue CBOE receives under the Consolidated Tape Association Plan for trades in Tape B securities consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires that the rules of the exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Commission notes that CBOE will begin its Revenue Sharing Program upon the launch of its new stock trading platform.[7]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–2005–17) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4583 Filed 8–22–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52278, File No. SR–MSRB–2005–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change Relating to Solicitation of Municipal Securities Business under MSRB Rule G–38

August 17, 2005.

I. Introduction

On March 22, 2005, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change deleting existing Rule G–38, on consultants, and replacing it with new Rule G–38, on solicitation of municipal securities business. In addition, the proposed rule change would make related amendments to Rule G–37, on political contributions and prohibitions on municipal securities business, Rule G–8, on recordkeeping, Form G–37/G–38 and Form G–37x, as well as add new Form G–38t. The proposed rule change was published for comment in the **Federal Register** on April 21, 2005.[3] The Commission received four comment letters regarding the proposal.[4] On August 9, 2005, the MSRB filed Amendment No. 1 to the proposed rule change and a response to the four comment letters.[5] This order approves the proposed rule change, accelerates approval of Amendment No. 1, and solicits comments from interested persons on Amendment No. 1.

II. Description of the Proposal

The proposal would delete existing Rule G–38, on consultants, and replace it with new Rule G–38, on solicitation of municipal securities business. The MSRB believes that it would be appropriate to apply the basic standards of fair practice and professionalism embodied in MSRB rules to all persons who solicit municipal securities business on behalf of dealers. A full description of the proposal is contained in the Commission's Notice.[6]

In Amendment No. 1, the MSRB provides that the proposed rule change would become effective on the first business Monday at least five business days after Commission approval. Amendment No. 1 also deletes the requirement in proposed Rule G–38(c) relating to transitional payments that

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[8] *See* CBOE Rule 3.25.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Tape B securities are securities listed on the American Stock Exchange or the regional national securities exchanges.

[4] *See* Securities Exchange Act Release No. 52005 (July 11, 2005), 70 FR 41063.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] The CBOE has filed a proposed rule change (SR–CBOE–2004–21) to adopt a new set of rules to allow for the trading of non-option securities on CBOEdirect, the exchange's screen based trading system.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51561 (April 15, 2005), 70 FR 20782 (April 21, 2005).

[4] *See* letter from Rick Santorum, Senator, United States Senate, to William H. Donaldson, Chairman, Commission, dated March 31, 2005 ("Senator Santorum's Letter"); letter from Chris Charles, President, Wulff, Hansen & Co. ("Wulff, Hansen"), to Jonathan G. Katz, Secretary, Commission, dated May 6, 2005 ("Wulff, Hansen's Letter"); letter from Lynnette Kelly Hotchkiss, Senior Vice President and Associate General Counsel, The Bond Market Association (the "BMA"), to Jonathan G. Katz, Secretary, Commission, dated May 5, 2005 ("BMA's Letter"); and letter from Jonathan Stein, Director of Regulatory Affairs—Fixed Income, Raymond James & Associates, Inc. ("Raymond James"), to Jonathan G. Katz, Secretary, Commission, dated May 24, 2005 ("Raymond James" Letter).

[5] Amendment No. 1 is described in Section II, *infra.*

[6] *See supra* note 3.

the broker, dealer or municipal securities dealer ("dealer") must be selected by the issuer for municipal securities business on or prior to the effective date of the proposed rule change while adding a requirement that dealers include on their initial and all subsequent Form G–38t submissions each item of municipal securities business for which a transitional payment remains pending and the amount of such pending payment for each item of business. Amendment No. 1 also modifies Form G–38t to reflect the required reporting of pending payments. Finally, Amendment No. 1 modifies the definition of "affiliated person" and adds a definition of "registered person" so that affiliated persons would include independent brokers who are duly qualified registered persons of a dealer under MSRB or NASD professional qualification requirements. The text of Amendment No. 1 is available on the MSRB's Web site (*http://www.msrb.org*), at the MSRB's principal office, and at the Commission's Public Reference Room.

III. Discussion

As previously noted, the Commission received four comment letters on the proposed rule change.[7] Senator Santorum's Letter opposed changing Rule G–38. Senator Santorum stated that he had been informed that consultants serve a legitimate and important role in the industry by permitting broker-dealers that do not have the resources to maintain an office in a particular jurisdiction to bid for municipal securities business in that jurisdiction. The MSRB stated in its proposal,[8] and the Commission agrees, that the benefits to the municipal securities market resulting from the proposed rule change outweigh the benefits that would accrue to permitting consultants to continue soliciting municipal securities business on behalf of dealers.

Wulff Hansen's Letter supported the proposed rule change, stating that "we believe that the social and economic costs of the present system (in the form of overt pay-to-play, more subtle forms of influence peddling, or similar undesirable practices) have come to outweigh the benefits."[9]

The BMA's Letter requested modification of the requirements for making transition payments to consultants and clarification of the definitions of "solicitation" and "affiliated employees." The proposed rule change provided that a dealer could pay an outside consultant after the effective date of the amendment (the date that the Commission approved the amendment) only if, among other requirements, such payment was made with respect solely to solicitation activities undertaken on or prior to the effective date pursuant to a Consultant Agreement under former Rule G–38 and the dealer had been selected by the issuer to engage in such municipal securities business on or prior to the effective date. The BMA's Letter stated that as a practical matter, dealers will have no meaningful notice as to when the Commission will approve the amendment and thus will not have an opportunity to effectively close out their relationship with consultants. For example, the BMA's Letter stated that a dealer would be prohibited from paying consultants compensation, which they had legitimately earned, and be forced to renege on its contractual obligations simply because the dealer had not yet been selected for the deal. In addition, the BMA's Letter stated that other problems arise in those instances where a broker-dealer is part of a pool of selected underwriters and rotated to a senior manager position periodically or in instances where consultants are paid on a retainer basis (as opposed to a success fee arrangement) where they earn their compensation regardless of whether the broker-dealer is selected and moneys may still be contractually due for time worked but not paid as of the effective date.

The MSRB believes, and the Commission agrees, that Amendment No. 1, including the new effective date and modified transitional payment provisions, as well as the modification to Form G–38t, addresses the BMA's concerns about transition payments and will facilitate dealer compliance with revised Rule G–38 in an orderly and timely manner while reducing the opportunity for circumvention of the purposes of the proposed rule change. The MSRB further believes, and the Commission agrees, that as modified, the transitional payment provision should avoid the potential for exposing dealers to legal liability under their contracts with consultants for failure to pay for services rendered.

The BMA's Letter also stated that the definition of "solicitation" should be clarified. The MSRB has filed with the Commission a proposed interpretation providing such further clarification.[10]

The BMA's Letter also requested clarification of the definition of affiliated employees, stating that the amendment prohibited a broker-dealer from paying anyone other than an "employee" of the broker-dealer or an affiliate for soliciting municipal securities business. The BMA's Letter stated that there are registered representatives who work for a dealer or an affiliate but do so as independent contractors, not as employees. The BMA's letter noted that as NASD licensed representatives of the dealer these independent contractors are also subject to the full array of MSRB rules. The BMA's Letter requested that the proposal be modified to permit a dealer to pay any licensed representative of that dealer or an affiliate to solicit municipal securities business.

Raymond, James' Letter stated that Raymond James participated in BMA's Letter and fully supported that letter. Raymond, James' Letter also expressed concern that the proposed rule change did not recognize the important role that independent contractor financial advisors play in the market today, and stated that the definition of "affiliated person" should be expanded to include independent contractor registered representatives, by including NASD licensed representatives within the definition.

The MSRB believes, and the Commission agrees, that the modified definition of "affiliated person" in Amendment No. 1 will address this concern and will further minimize the potential burden on competition of the proposed rule change in that it would treat dealer business models using independent brokers equally with dealer business models using directly employed brokers without reducing the effectiveness of the proposed rule change.

After careful consideration, the Commission finds that the proposed rule change, as amended by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB[11] and, in particular, the requirements of Section 15B(b)(2)(C) of the Act and the rules and regulations thereunder.[12] Section 15B(b)(2)(C) of the Act requires, among other things, that the MSRB's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

[7] *See supra*, note 4.

[8] *See supra*, note 3, at 20785.

[9] *See supra*, note 4, at 1.

[10] File No. SR–MSRB–2005–11.

[11] In approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78o–4(b)(2)(C).

information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[13] In particular, the Commission finds that the proposed rule change will further investor protection and the public interest by ensuring that solicitations of municipal securities business are undertaken in a manner consistent with standards of fair practice and professionalism, thereby helping to maintain public trust and confidence in the integrity of the municipal securities market.

IV. Accelerated Approval of Amendment No. 1

The MSRB requested in Amendment No. 1 that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving Amendment No. 1 (simultaneously with the proposed rule change) prior to the thirtieth day after publication of the notice of filing of Amendment No. 1 in the **Federal Register.** The Commission finds good cause to approve Amendment No. 1 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register.** The MSRB believes, and the Commission agrees, that (i) the new effective date and modified transitional payment provisions, as well as the modification to Form G–38t, will facilitate dealer compliance with revised Rule G–38 in an orderly and timely manner while reducing the opportunity for circumvention of the purposes of the proposed rule change, and (ii) the modified definition of "affiliated person" would further minimize the potential burden on competition of the proposed rule change in that it would treat dealer business models using independent brokers equally with dealer business models using directly employed brokers without reducing the effectiveness of the proposed rule change.

For these reasons, the Commission finds good cause, consistent with Sections 15B(b)(2)(C) and 19(b)(2) of the Act, to accelerate approval of Amendment No. 1 to the proposed rule change.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 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–MSRB–2005–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–MSRB–2005–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the MSRB's offices. All comments received will be posted without change; the Commission does not editpersonal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MSRB–2005–04 and should be submitted on or before September 13, 2005.

VI. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–MSRB–2005–04) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4587 Filed 8–22–05; 8:45 am]

BILLING CODE 8010–01–P

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURTITES AND EXCHANGE COMMISSION

[Release No. 34–52271; File No. SR–NASD–2005–097]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend a Pilot Program That Increases Position and Exercise Limits for Equity Options

August 16, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 10, 2005, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities And Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders it effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to amend NASD Rule 2860 to extend a pilot program increasing certain options position and exercise limits for a pilot period. The text of the proposed rule change is available on NASD's Web site (*http://www.nasd.com*), at NASD's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

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. NASD 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

NASD is proposing to amend NASD Rule 2860 to extend a pilot program until March 3, 2006 (unless extended) increasing position and exercise limits for both standardized and conventional options ("Pilot Program").[5] Unless extended, the Pilot Program will expire on September 2, 2005.[6] NASD believes that the Pilot Program should be extended so that it may continue without interruption for the same reasons that are discussed in the Pilot Program Notice.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change is being made so that the Pilot Program, which achieves these goals as discussed in the Pilot Program Notice, may continue without interruption.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the forgoing rule change does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASD has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day pre-operative delay. The Commission is exercising its authority to waive the five-day pre-filing requirement and believes that waiver of the 30-day pre-operative delay is consistent with the protection of investors and in the public interest. Waiving the five-day pre-filing requirement and 30-day pre-operative delay will allow the Pilot Program to continue uninterrupted.[12]

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 Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–NASD–2005–097 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File No. SR–NASD–2005–097. 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, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office 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 No. SR–NASD–2005–097 and should be submitted on or before September 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4585 Filed 8–22–05; 8:45 am]

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[5] *See* Securities Exchange Act Release No. 51520 (April 11, 2005), 70 FR 19977 (April 15, 2005) (notice of filing and immediate effectiveness of File No. SR–NASD–2005–040) ("Pilot Program Notice"). Under the Pilot Program as set forth in NASD Rule 2860(b)(3), standardized and conventional options subject to a position limit of 13,500 contracts were increased during the pilot period to 25,000 contracts; those subject to a position limit of 22,500 contracts were increased to 50,000 contracts; those subject to a position limit of 31,500 contracts were increased to 75,000 contracts; those subject to a position limit of 60,000 contracts were increased to 200,000 contracts; and those subject to a position limit of 75,000 contracts were increased to 250,000 contracts. Options exercise limits, which are set forth in NASD Rule 2860(b)(4), and which incorporate by reference the position limits in NASD Rule 2860(b)(3), were also increased during the Pilot Period.

[6] *See* NASD Rule 2860(b)(3)(A)(i).

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52276; File No. SR–NASD–2004–131]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change and Amendments Nos. 1 and 2 Thereto, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto, Relating to the Listing and Trading of Leveraged Index Return Notes Linked to the Nikkei 225 Index

August 17, 2005.

I. Introduction

On August 30, 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"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade Leveraged Index Return Notes Linked to the Nikkei 225 Index ("Notes") issued by Merrill Lynch & Co., Inc. ("Merrill Lynch"). On March 21, 2005, Nasdaq filed Amendment No. 1 to the proposed rule change and on March 31, 2005, Nasdaq filed Amendment No. 2 to the proposed rule change. The proposed rule change and Amendments Nos. 1 and 2 were published for comment in the **Federal Register** on July 12, 2005.[3]

The Commission received no comments on the proposal. This order approves the proposed rule change, as amended by Amendments Nos. 1 and 2. Simultaneously, the Commission provides notice of filing of Amendment No. 3 to the proposed rule change and grants accelerated approval of Amendment No. 3.

The Commission has previously approved the listing of securities, the performance of which has been linked, in whole or in part, to the Nikkei 225 Index (the "Index"). The Notes, which are a series of non-convertible debt securities, will not be secured by collateral, will not pay interest and are not subject to redemption by Merrill Lynch or at the option of any beneficial owner before their maturity term of 4 ½ years. At maturity, if the value of the Index has increased, a beneficial owner of a Note would be entitled to receive the original offering price ($10), plus an amount calculated by multiplying the original offering price ($10) by an amount equal to 123% ("Participation Rate") of the percentage increase in the Index. If, at maturity, the value of the Index has not changed or has decreased by up to 20%, a beneficial owner of a Note would be entitled to receive the full original offering price. However, unlike ordinary debt securities, the Notes do not guarantee any return of principal at maturity. Therefore, if the value of the Index has declined at maturity by more than 20%, a beneficial owner would receive less, and possibly significantly less, than the original offering price: for each 1% decline in the Index *below* 20%, the redemption amount of the Note would be reduced by 1.25% of the original offering price.

The Index, which is a modified, price-weighted index, is composed of 225 securities and is broad-based. As of July 8, 2005, the highest weighted stock in the Index had the weight of 2.9705%, and the top five stocks had the cumulative weight of approximately 13.2606%. In addition, as of July 8, 2005, the Index had an average daily trading volume for an average Index component of 3,228,120 shares. As of the same date, the market capitalization of the Index components ranged from approximately 13.04 trillion yen to 40 billion yen, which corresponded approximately to 116 billion U.S. dollars and 353 million U.S. dollars.

II. Discussion and Commission Findings

The Commission believes that Nasdaq has adequately addressed the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that since the Notes will be deemed equity securities for the purposes of NASD Rule 4420(f), the NASD and Nasdaq existing equity trading rules would apply to the Notes. The Commission also notes that pursuant to Rule 2310(a) and IM–2310–2, members must have reasonable grounds for believing that a recommendation to a customer regarding the purchase, sale or exchange of any security is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs. Also, pursuant to Rule 2310(b) prior to the execution of a transaction in the Notes that has been recommended to a non-institutional customer, a member shall make reasonable efforts to obtain information concerning: (1) The customer's financial status; (2) the customer's tax status, (3) the customer's investments objectives, and (4) such other information used or considered to be reasonable by such member in making recommendations to the customer. Members are also reminded that the Notes are considered non-conventional investments for purposes of the NASD Notice to Members 03–71 (Nov. 2003). In addition, Nasdaq will distribute a circular to members that provides guidance regarding compliance responsibilities and requirements, including suitability recommendations, and highlights the special risks and characteristics of the Notes. Furthermore, the Notes will be subject to the equity margin rules and the regular equity trading hours of 9:30 a.m. to 4 p.m. will apply to transactions in the Notes.

Nasdaq represents that the NASD's surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the NASD will rely on its current surveillance procedures governing equity securities and will include additional monitoring on key pricing dates. Finally, Nasdaq will commence delisting or removal proceedings with respect to the Notes (unless the Commission has approved the continued trading of the Notes) if specified standards with respect to the Notes are not continuously maintained.

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities association. The Commission finds that the proposed rule change is consistent with the provisions of Section 15A of the Act,[4] in general, and with Section 15A(b)(6) of the Act,[5] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Specifically, the proposed rule change should provide investors with another investment vehicle based on the Index and a means of participating in the market for foreign securities. The Commission believes that the Notes will permit investors to obtain returns based on the Nikkei while at the same time limiting the downside risk of the original investment as a result of the 20% threshold. As described more fully above, even if the value of the Index decreases more than 20%, in no event will the decline in the value of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 51970 (July 5, 2005), 70 FR 40091 (July 12, 2005).

[4] 15 U.S.C. 78*o*–3.

[5] 15 U.S.C. 78*o*–3(b)(6).

Notes equal (unless the Index value drops to zero) or exceed the decline in the value of the Index.

The Commission finds good cause for approving Amendment No. 3 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register.** Nasdaq filed Amendment No. 3 solely for purposes of updating figures related to the Index. Because the updated figures are non-controversial and do not raise any concerns about the nature of the Index or the Notes, the Commission finds good cause for accelerating approval of Amendment No. 3 in order to prevent unnecessary delay in the approval of this proposed rule change in its entirety.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 3 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–2004–131 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2004–131. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–131 and should be submitted on or before September 13, 2005.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (SR–NASD–2004–131), as amended by Amendments Nos. 1 and 2, be, and it hereby is, approved, and that Amendment No. 3 to the proposed rule change be, and thereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4586 Filed 8–22–05; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52277; File No. SR–NASD–2005–096]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding Nasdaq Listing Fees for Closed-End Funds

August 17, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 2005, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. On August 15, 2005, the Exchange amended the proposed rule change ("Amendment No. 1").[3] Nasdaq has filed the proposal as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes changes to NASD Rule 4510. The text of the proposed rule change, as amended, is below. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

4510. The Nasdaq National Market

(a) Entry Fee

(1)–(2) No change.

(3) A closed-end management investment company registered under the Investment Company Act of 1940, as amended (a "Closed-End Fund"), that submits an application for a class of securities in The Nasdaq National Market shall pay to the Nasdaq Stock Market, Inc. an entry fee of $5,000 (of which $1,000 represents a non-refundable, application fee).

([3]*4*) An issuer that submits an application for inclusion of any class of rights in The Nasdaq National Market, shall pay, at the time of its application, a non-refundable application fee of $1,000 to The Nasdaq Stock Market, Inc.

([4]*5*) The Board of Directors of The Nasdaq *Stock* [National] Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the entry fee prescribed herein.

([5]*6*) If the application is withdrawn or is not approved, the entry fee (less the non-refundable application fee) shall be refunded.

([6]*7*) The fees described in this Rule 4510(a) shall not be applicable with respect to any securities that (i) are listed on a national securities exchange but not listed on Nasdaq, or (ii) are listed on the New York Stock Exchange and Nasdaq, if the issuer of such securities transfers their listing exclusively to the Nasdaq National Market.

([7]*8*) The fees described in this Rule 4510(a) shall not be applicable to an issuer (i) whose securities are listed on the New York Stock Exchange and designated as national market securities pursuant to the plan governing New York Stock Exchange securities at the time such securities are approved for

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[6] 6 15 U.S.C. 78s(b)(2).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange deleted the proposed rule changes to NASD Rule 4520 that were included in the Exchange's original filing with the Commission on July 29, 2005.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Nasdaq asked the Commission to waive the 30-day operative delya. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

listing on Nasdaq, and (ii) that maintains such listing and designation after it lists such securities on Nasdaq.

(b) No change

(c) Annual Fee—Domestic and Foreign Issues

(1) The issuer of each class of securities *(not otherwise identified in this Rule 4500 series)* [other than an ADR,] that is a domestic or foreign issue listed in The Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated on total shares outstanding according to the following schedule:

Up to 10 million shares—$24,500
10+ to 25 million shares—$30,500
25+ to 50 million shares—$34,500
50+ to 75 million shares—$44,500
75+ to 100 million shares—$61,750
Over 100 million shares—$75,000

(2)–(5) No change.

(d) Annual Fee—American Depositary Receipts (ADRs) *and Closed-End Funds*

(1)–(2) No change.

(3) A Closed-End Fund listed in The Nasdaq National Market shall pay to The Nasdaq Stock Market, Inc. an annual fee calculated based on total shares outstanding according to the following schedule:

Up to 5 million shares—$15,000
5+ to 10 million shares—$17,500
10+ to 25 million shares—$20,000
25+ to 50 million shares—$22.500
50+ to 100 million shares—$30,000
100+ to 250 million shares—$50,000
Over 250 million shares—$75,000

(4) For the purpose of determining the total shares outstanding, fund sponsors may aggregate shares outstanding of all Closed-End Funds in the same fund family listed in The Nasdaq National Market, as shown in the issuer's most recent periodic reports required to be filed with the appropriate regulatory authority or in more recent information held by Nasdaq. The maximum annual fee applicable to a fund family shall not exceed $75,000. For purposes of this rule, a "fund family" is defined as two or more Closed-End Funds that have a common investment adviser or have investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

([3]*5*) The Board of Directors of The Nasdaq Stock Market, Inc. or its designee may, in its discretion, defer or waive all or any part of the annual fee prescribed herein.

([4]*6*) If a class of securities is removed from the Nasdaq National Market, that portion of the annual fees for such class of securities attributable to the months following the date of removal shall not be refunded, except such portion shall be applied to The Nasdaq SmallCap Market fees for that calendar year.

(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, Closed-End Funds listing on The Nasdaq National Market are required to pay entry and annual fees according to the applicable fee schedules set forth in NASD Rule 4510.[7] These entry fees range from $100,000 to $150,000 and the annual fees from $15,000 to $75,000.

Pursuant to the proposed rule change, as amended, the entry fee for listing a Closed-End Fund on the National Market will decrease to $5,000 (of which $1,000 is a non-refundable application fee) per fund. Annual fees will be based on the total number of shares outstanding, with a minimum fee of $15,000 and a maximum fee of $75,000. For the purposes of determining the annual fee, fund sponsors will be permitted to aggregate the shares outstanding of all Closed-End Funds listed on the Nasdaq National Market that are part of the fund family. As a result, the annual fee may not exceed $75,000 per fund family. For the purposes of this rule, a "fund family" is defined as two or more Closed-End Funds that share a common investment adviser or investment advisers who are "affiliated persons" as defined in Section 2(a)(3) of the Investment Company Act of 1940, as amended.

Nasdaq believes there are several reasons to adopt new fees applicable to Closed-End Funds. First, the new annual fee schedule will accommodate the needs of fund sponsors more effectively than the current fee schedule because sponsors often choose to issue and list multiple funds in the same family. Currently, each fund that is listed on Nasdaq is assessed a separate annual fee. Capping annual fees at $75,000 per fund family will benefit fund sponsors and investors by reducing the costs associated with issuing fund shares.

Second, in cases where multiple funds are listed, the new fee schedule will substantially lower fees payable by Closed-End Funds, permitting Nasdaq to compete more effectively for listings with other markets. In this regard, Nasdaq notes that the new entry fees are similar to entry fees charged by the American Stock Exchange for listing Closed-End Funds.[8]

Nasdaq represents that the new fees proposed herein reflect a lowering of existing fees applicable to issuers of closed-end funds, listed on the Nasdaq National Market.[9]

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[10] in general, and with Section 15A(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable fees, dues, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed change to the entry and annual fees will apply equally to all Closed-End Funds listing on The Nasdaq National Market. Furthermore, Nasdaq believes that the proposed fees are reasonable and fall within the range of fees charged by other markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[7] Closed-End Funds are evaluated for listing on the Nasdaq National Market under the general initial listing criteria contained in NASD Rules 4420(a), (b) or (c).

[8] *See* Annex Company Guide Section 140.

[9] Telephone call between Yolanda Goettsch, Associate General Counsel, Nasdaq, and Forence Harmon, Senior Special Counsel, Commission, on August 12, 2005.

[10] 15 U.S.C. 78*o*–3.

[11] 15 U.S.C. 78*o*–3(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder [13] because the proposal: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative prior to 30 days after the date of filing or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that Nasdaq has given the Commission notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq satisfied the five-day pre-filing requirement.

A proposed rule change filed under Rule 19b–4(f)(6) [14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(b)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has asked the Commission to waive the 30-day operative delay.[15] The Commission believes that such waiver is consistent with the protection of investors and the public interest because the proposed rule change would lower listing fees for closed-end funds which may benefit those who invest in such funds by reducing the costs associated with the issuance of the shares. For this reason, the Commission designates the proposed rule change, as amended, to be effective upon filing with the Commission.[16]

At any time within 60 days of the filing of such 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.[17]

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] The effective date of the original proposed rule change is July 29, 2005 and the effective date of the amendment is August 15, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on August 15, 2005, the date on which the NASD submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–096 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station, Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–NASD–2005–096. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–096 and should be submitted on or before September 13, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4593 Filed 8–22–05; 8:45 am]

BILLING CODE 8010–01–P

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52269; File No. SR–NYSE–2005–19]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change to Require Members That Use Appendix E to Calculate Net Capital to File Supplemental and Alternative Reports

August 16, 2005.

On March 8, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed a proposed rule change with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 under the Act.[2] The proposed rule change amends NYSE Rule 418 to require member organizations approved by the Commission to use Appendix E to Rule 15c3–1 under the Act [3] to calculate net capital ("CSE broker-dealers") to file supplemental and alternative reports with the Exchange. The proposed rule change was published for comment in the **Federal Register** on July 14, 2005.[4] The Commission received no comments on the proposal. This order approves the proposed rule change.

Rule 17a–5 under the Act [5] contains broker-dealer reporting requirements. Broker-dealers file the monthly and quarterly reports required by Rule 17a–5(a) on Form X–17A–5 (the "FOCUS Report").[6] Pursuant to Rule 17a–5(a)(5),[7] CSE broker-dealers are required to file certain additional monthly and quarterly reports. The Exchange has created a modified FOCUS Report form for CSE broker-dealers. The form contains new line items to capture the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.15c3–1e. The Commission amended Rule 15c3–1 to establish this voluntary, alternative method of computing net capital, which is applicable to firms that qualify for consolidated supervised entity ("CSE") treatment. Securities Exchange Act Release No. 49830 (June 8, 2004), 69 FR 34428 (June 21, 2004).

[4] *See* Securities Exchange Act Release No. 51980 (July 6, 2005), 70 FR 40767 (July 14, 2005).

[5] 17 CFR 240.17a–5.

[6] 17 CFR 249.617.

[7] 17 CFR 240.17a–5(a)(5).

additional required reports. The proposed rule amendment is designed to require CSE broker-dealers to provide the additional reports to the Exchange.

Under NYSE Rule 418, the Exchange may at any time require any member or member organization to be audited in accordance with the requirements of Rule 17a–5. The proposed amendment adds NYSE Rule 418.25, which would require member organizations that are CSE broker-dealers to file such supplemental and alternative reports as may be prescribed by the Exchange. A copy of the modified FOCUS report that CSE broker-dealers would have to file with the Exchange under proposed Rule 418.25 is available on the Exchange's Internet Web site (*http://www.nyse.com*). The Commission finds that the NYSE's proposal to amend Rule 418 is consistent with the requirements of the Act and the rules and regulations under the Act applicable to a national securities exchange.[8] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[9] which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. *It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–2005–19) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4580 Filed 8–22–05; 8:45 am]

BILLING CODE 8010–01–P

[8] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52274; File No. SR–NYSE–2005–21]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto Relating to the Temporary Reallocation of Securities Among Specialists

August 16, 2005.

On March 11, 2005, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 103.11 to introduce new procedures regarding the temporary reallocation of securities traded on the Exchange from one specialist organization to another specialist organization. On June 16, 2005, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on July 14, 2005.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[5] and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[7] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, 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. The Commission notes that the Exchange has determined that the temporary reallocation of a security is most likely to be required for regulatory reasons and has therefore proposed to transfer the responsibility for such decisions from the Chief Executive Officer to the Chief Regulatory Officer ("CRO") or his or her designee.[8] The Commission also notes that the Exchange has proposed to specify that only non-specialist Board of Executive ("BoE") Floor Representatives may join the CRO (or his or her designee) in making reallocation decisions in order to avoid any potential conflicts of interest that may exist with specialist BoE Floor Representatives participating in such decisions. The Commission also notes that the Exchange has provided an alternative that, if there are not two non-specialist BoE Floor Representatives available to participate with the CRO (or his or her designee) in the reallocation decision, the most senior non-specialist Floor Governor or Governors, based on his or her current length of service as a Floor Governor, would be authorized to act in place of the non-specialist BoE Floor Representative or Representatives. The Commission believes that the proposed changes to the Exchange's procedure for the temporary reallocation of securities are designed to appropriately assign the responsibility for making reallocation decisions to the Exchange's regulatory group and disinterested members of the BoE (or disinterested Floor Governors), and thereby to minimize the potential for conflicts of interest and strengthen regulatory independence.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–2005–21) as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4592 Filed 8–22–05; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the NYSE provided information concerning the designee of the Chief Regulatory Officer and corrected technical errors in the rule text.

[4] *See* Securities Exchange Act Release No. 51985 (July 7, 2005), 70 FR 40768.

[5] 15 U.S.C. 78f.

[6] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] The Commission notes that the Exchange has represented that it expects that the designee would be an officer in the Exchange's regulatory group, with the Executive Vice President of the Market Surveillance Division being the primary designee. *See* Amendment No. 1.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52253; File No. SR–PCX–2005–16]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Amend Its Market Data Rebate Program To Allow Equity Trading Permit Holders To Receive Rebates on an Estimated Basis

August 15, 2005.

On February 1, 2005, the Pacific Exchange, Inc. ("PCX"), through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its current market data rebate program to allow Equity Trading Permit Holders ("ETP Holders") to receive market data rebates on an estimated basis when certain conditions are met. On July 5, 2005, PCX amended the proposed rule change.[3] The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on July 14, 2005.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

Currently, the rules governing the Archipelago Exchange ("ArcaEx"), the equities trading facility of PCXE, allow ETP Holders to receive Liquidity Provider Credit payments on a quarterly basis for limit orders posted by such ETP Holder in Tape B securities[5] that execute against inbound marketable orders. Under the current market data revenue program the Liquidity Provider Credit applied to ETP Holders for limit orders in Tape B securities that execute against inbound marketable orders is 50% of the revenue from the Consolidated Tape Association ("CTA") Plan generated for such trades.

The Commission finds that PCX's proposal to pay eligible ETP Holders an estimated share of Liquidity Provider Credits on a monthly basis, before quarterly revenues from the CTA Plan are distributed, consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[6] In particular, the Commission believes that the proposal is consistent with section 6(b)(5) of the Act,[7] which requires that the rules of the exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The PCX states that distributing estimated Liquidity Provider Credits on a monthly basis will make the pricing of executions on ArcaEx more competitive.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PCX–2005–16), as modified by Amendment No. 1 thereto, be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E5–4590 Filed 8–22–05; 8:45am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1. In Amendment No. 1, PCX amended the purpose section of the filing to include examples of how estimated market data rebates would be calculated and how estimated market data rebates would be distributed.

[4] *See* Securities Exchange Act Release No. 51990 (July 7, 2005), 70 FR 40770.

[5] Tape B securities include securities that are on the American Stock Exchange or the regional national securities exchanges.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration No. 10164]

North Dakota Disaster No. ND–00002

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of North Dakota (FEMA–1597–DR), dated 07/22/2005.

Incident: Severe Storms, Flooding, and Ground Saturation.

Incident Period: 06/01/2005 through 07/07/2005.

Effective Date: 07/22/2005.

Physical Loan Application Deadline Date: 09/20/2005.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/22/2005, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Benson, Bottineau, Cavalier, Dickey, Grand Forks, Griggs, Kidder, Lamoure, McHenry, Mountrail, Nelson, Pembina, Pierce, Ramsey, Ransom, Renville, Richland, Rolette, Sargent, Sioux, Stark, Steele, Towner, Traill, Walsh, Ward; Turtle Mountain Indian Reservation; Portion of the Standing Rock Indian Reservation which lies within the state of North Dakota; Three affiliated tribes of the Fort Berthold Reservation.

The Interest Rates are:

Other (including non-profit organizations) with credit available elsewhere: 4.750.

Businesses and non-profit organizations without credit available elsewhere: 4.000.

The number assigned to this disaster for physical damage is 10164.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–16697 Filed 8–22–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10163]

South Dakota Disaster #SD–00001

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of South Dakota (FEMA–1596–DR), dated 07/22/2005.

Incident: Severe Storm.

Incident Period: 06/07/2005 through 06/08/2005.

Effective Date: 07/22/2005.

Physical Loan Application Deadline Date: 09/20/2005.

ADDRESSES: Submit completed loan applications to : U.S. Small Business Administration, Disaster Area Office 3, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/22/2005, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Corson, Faulk, Hyde, Potter, Spink, Stanley, Sully.

The Interest Rates are: *Other (Including Non-Profit Organizations) with Credit Available Elsewhere:* 4.750. *Businesses and Non-Profit Organizations Without Credit Available Elsewhere:* 4.000.

The number assigned to this disaster for physical damage is 10163.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 05–16696 Filed 8–22–05; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Administrator's Line of Succession Designation, No. 1–A, Revision 26

This document replaces and supersedes "Line of Succession Designation No. 1–A, Revision 25."

Line of Succession Designation No. 1–A, Revision 26

Effective immediately, the Administrator's Line of Succession Designation is as follows:

(a) In the event of my inability to perform the functions and duties of my position, or my absence from the office, the Deputy Administrator will assume all functions and duties of the Administrator. In the event the Deputy Administrator and I are both unable to perform the functions and duties of the my position or are absent from our offices, I designate the officials in listed order below, if they are eligible to act as Administrator under the provisions of the Federal Vacancies Reform Act of 1998, to serve as Acting Administrator with full authority to perform all acts which the Administrator is authorized to perform:

(1) Chief Operating Officer.

(2) Chief of Staff.

(3) General Counsel.

(4) Associate Deputy Administrator for Capital Access.

(5) Associate Deputy Administrator for Management and Administration.

(6) Designated Agency Ethics Official.

(7) Regional Administrator for Region 6.

(b) Notwithstanding the provisions of SBA Standard Operating Procedure 00 01 2, "absence from the office," as used in reference to myself in paragraph (a) above, means

(1) I am not present in the office and cannot be reasonably contacted by phone or other electronic means, and there is an immediate business necessity for the exercise of my authority; or

(2) I am not present in the office and, upon being contacted by phone or other electronic means, I determine that I cannot exercise my authority effectively without being physically present in the office.

(c) An individual serving in an acting capacity in any of the positions listed in subparagraphs (a)(1) through (7), unless designated as such by the Administrator, is not also included in this Line of Succession. Instead, the next non-acting incumbent in the Line of Succession shall serve as Acting Administrator.

(d) This designation shall remain in full force and effect until revoked or superceded in writing by the Administrator, or by the Deputy Administrator when serving as Acting Administrator.

(e) Serving as Acting Administrator has no effect on the officials listed in subparagraphs (a)(1) through (7), above, with respect to their full-time position's authorities, duties and responsibilities (except that such official cannot both recommend and approve an action).

Dated: August 15, 2005.

Hector V. Barreto,

Administrator.

[FR Doc. 05–16655 Filed 8–22–05; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503. Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Report on Individual with Mental Impairment—20 CFR 404.1513, 416.913—0960–0058. Form SSA–824 is used by SSA to determine the claimant's medical status prior to making a disability determination. The respondents are physicians, medical directors, medical record librarians and other health professionals.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 36 minutes.

Estimated Annual Burden: 30,000 hours

2. Supplement to Claim of Person Outside the United States—20 CFR

404.460, 404.463, 422.505(b), 42 CFR 407.27(c)—0960–0051. The information collected on Form SSA–21 is used to determine the continuing entitlement to Social Security benefits and the proper benefit amounts of beneficiaries living outside the United States. It is also used to determine whether benefits are subject to withholding tax. The respondents are individuals entitled to Social Security benefits who are, will be, or have been residing outside the United States.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 35,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 5,833 hours.

3. Claimant's Work Background—20 CFR 404.1565(b), 416.965(b)—0960–0300. The information collected on Form HA–4633 is needed and used to afford claimants their statutory right to a hearing and decision under the Social Security Act (the Act). The information is used by the SSA in cases in which claimants for disability benefits have requested a hearing on the determination regarding their claim. A completed form provides an updated summary of a claimant's past relevant work and helps the administrative law judge to better decide whether or not the claimant is disabled. The respondents are claimants requesting hearings for benefits based on disability under Titles II and/or XVI of the Act.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 120,000.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 30,000 hours.

4. Medical Report on Adult with Allegation of Human Immunodeficiency Virus (HIV) Infection; Medical Report on Child with Allegation of Human Immunodeficiency Virus (HIV) Infection—20 CFR 416.993–416.994—0960–0500. Collection of the information on Forms SSA–4814–F5 and SSA–4815–F6 is necessary for SSA to determine if an individual with Human Immunodeficiency Virus (HIV) infection meets the requirements for presumptive disability (PD) payments. The SSA Field Office (FO) will, generally, mail the appropriate form to the claimant's medical source for completion and return to the FO. The FO staff will use the information on the form to determine if a PD is warranted. The respondents are the medical sources of the applicants for Supplemental Security Income (SSI) disability payments.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 59,100.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 9,850 hours.

5. Coverage of Employees of State and Local Governments—20 CFR 404, Subpart M—0960–0425. States (and Interstate Instrumentalities) are required to provide wage information and deposit related contributions for pre-1987 periods to SSA. The regulations at 20 CFR 404, Subpart M set forth the rules for States submitting reports of deposits and related recordkeeping. The respondents are State and Local Governments or Interstate Instrumentalities.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 52.

Frequency of Response: 1.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 52 hours.

6. Information Collection Requirements for Title VIII of the Social Security Act—20 CFR 408.202(d), 408.210, 408.230(a), 408.232(a), 408.320, 408.305, 408.310, 408.315, 408.340, 408.345, 408.351(d) and (f), 408.355(a), 408.360(a), 408.404(c), 408.410, 408.412, 408.420(a) and (b), 408.430, 408.432, 408.435(a) and (b), 408.437(b), (c) and (d)—0960–0658. Section 251 of the "Foster Care Independence Act of 1999" added Title VIII to the Social Security Act (Special Benefits for Certain World War II Veterans). Title VIII allows, under certain circumstances, the payment of a monthly benefit by Social Security to a qualified World War II veteran who resides outside the United States. The accompanying regulations set out the requirements an individual must meet in order to qualify for and become entitled to Special Veterans Benefits (SVB). The respondents are individuals who are applying for benefits under Title VIII of the Social Security Act.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 762.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 381 hours.

7. SSI Notice of Interim Assistance Reimbursement (IAR)—0960–0546. Forms SSA–8125 and SSA–L8125–F6 are used by SSA to obtain the amount of Interim Assistance Reimbursement (IAR) a State is due before it can pay IAR to the State in various situations. These forms are used for that purpose, and to conduct audits of a State's accounting of IAR. Respondents are State IAR officers.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 8,333 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. Marriage Certification—20 CFR 404.725—0960–0009. When the worker and spouse are not filing concurrently, SSA uses Form SSA–3–F6 to record any changes/additions to the worker's marital history since the worker's claim was adjudicated. The marital history of the claimant's wife or husband, when compared to the worker's marital history (as supplemented by Form SSA–3–F6), enables the fact finder to determine if the claimant has the necessary relationship to the worker. Where the spouse and worker were ceremonially married, the worker's statement on his/her marital history that he/she was ceremonially married to the claimant's spouse and the claimant's spouse statement that he/she was ceremonially married to the worker generally constitute evidence of a ceremonial marriage in lieu of obtaining a marriage certificate.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 180,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 15,000 hours.

2. Request To Be Selected As Payee—0960–0014. The information collected on form SSA–11–BK is necessary to determine the proper payee for a Social Security beneficiary. The form is designed to aid the investigation of a payee applicant. The use of the form will establish the applicant's relationship to the beneficiary, his/her justification and his/her concern for the beneficiary, as well as the manner in which the benefits will be used.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 2,121,686.

Frequency of Response: 1.

Average Burden Per Response: 10.5 minutes.

Estimated Annual Burden: 371,295 hours.

3. Record of SSI Inquiry—20 CFR 416.345—0960–0140. Form SSA–3462 is completed by SSA personnel via telephone or personal interview, and it is used to determine potential eligibility for SSI benefits. The respondents are individuals who inquire about SSI eligibility for themselves or someone else.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 2,134,100.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 177,842 hours.

4. Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—Adult, Form SSA–3988; Statement for Determining Continuing Eligibility for Supplemental Security Income Payments—Child, Form SSA–3989—20 CFR Subpart B—416.204–0960—NEW.

Background

The Social Security Act mandates periodic redeterminations of non-medical factors relating to SSI recipient's continuing eligibility for SSI payments. SSA studies have indicated that as many as two-thirds of these scheduled redeterminations, which are completed with the assistance of an SSA employee, do not result in any change in circumstances that affects the recipients payment. SSA has conducted extensive testing of both of the SSA–3988 and SSA–3989, under OMB Control Number 0960–0643, and has validated that these redetermination formats result in significant operational savings and a decrease in recipient inconvenience while still obtaining timely, accurate data to determine continuing eligibility through the process.

The Collection

Forms SSA–3988 and SSA–3989 will be used to determine whether SSI recipients have met and continue to meet all statutory and regulatory non-medical requirements for SSI eligibility, and whether they have been and are still receiving the correct payment amount. The SSA–3988 and SSA–3989 are designed as self-help forms that will be mailed to recipients or to their representative payees for completion and return to SSA. The respondents are recipients of SSI payments or their representatives.

Type of Request: New information collection.

Forms	Respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
SSA–3988	650,000	1	26	281,667
SSA–3989	65,000	1	26	28,167

5. Denial of Title II Benefits to Fugitive Felons—0960–New. Specifically, Section 203 of the SSPA prohibits payment of title II benefits:

- To persons fleeing to avoid prosecution or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees; or
- In jurisdictions that do not define crimes as felonies, where the crime is punishable by death or imprisonment for a term exceeding 1 year regardless of the actual sentence imposed; and
- To persons violating a condition of probation or parole imposed under Federal or State law.

To identify claimants who should not be receiving benefits, the Commissioner directed that we add specific questions to title II applications that solicit information about any outstanding felony warrants or warrants for parole/probation violations.

In addition, SSA will collect supplemental information if a claimant responds affirmatively to either or both of the two fugitive felon questions on title II applications, thereby indicating that they have an unsatisfied warrant. Answers to these questions will be used to verify that a warrant is still outstanding. An SSA claims representative will contact beneficiaries by telephone to collect the information. Respondents will be claimants for benefits who indicated on their application that they have an unsatisfied warrant.

Type of Request: New information collection.

Number of Respondents: 10,000.

Frequency of Response: 1.

Average Burden Per Response: 8 minutes.

Estimated Annual Burden: 1,333 hours.

Dated: August 17, 2005.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 05–16660 Filed 8–22–05; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974, as Amended; Minor Changes to a System of Records

AGENCY: Social Security Administration (SSA).

ACTION: Notice of minor changes to an existing system of records.

SUMMARY: In accordance with the Privacy Act (5 U.S.C. 552a(e)(4)), we are issuing public notice of our intent to make housekeeping changes to the system of records entitled, Recovery of Overpayments, Accounting and Reporting (ROAR) SSA/OTSO, 60–0094, to more accurately describe the records maintained in this system of records. The housekeeping changes make the Privacy Act notice of the ROAR system of records accurate and up to date. We invite public comment on this proposal.

DATES: This notice is effective upon publication.

ADDRESSES: Interested individuals may comment on this publication by writing to the Deputy Executive Director, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401. All comments received will be available for public inspection at the above address.

FOR FURTHER INFORMATION CONTACT: Contact Ms. Tracie Jennings, Social Insurance Specialist, Disclosure Policy Team, Office of Public Disclosure, Office of the General Counsel, Social Security Administration, Room 3–A–6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, telephone 410–965–2902, e-mail: *tracie.jennings@ssa.gov.*

SUPPLEMENTARY INFORMATION:

I. Minor Housekeeping Changes to the ROAR System of Records

The ROAR system of records is SSA's debt collection system for the recovery of program debts for Title II Retirement, Survivors, and Disability Insurance program debt, Title XVI Supplemental Security Income program debt recovered from Title II benefits, and Title XVIII health insurance program debt recovered from Title II benefits. The ROAR system of records also controls misuse funds cases, cases in which a former representative payee is asked to return conserved funds, and Civil Monetary Penalty cases. We are making the changes discussed below to make the Privacy Act notice of the ROAR system of records accurate and up to date. We have not made any substantive changes to the ROAR system of records.

A. Revision to Name of the ROAR System of Records

We are changing the current name of this system of records from Recovery of Overpayments, Accounting and Reporting System to Recovery of Overpayments, Accounting and Reporting System/Debt Management System (ROAR/DMS) SSA/OTSO. The new name of the system of records more accurately reflects the purposes for which the system of records was established.

B. Revision to the System Location Section of the ROAR/DMS Notice

The System location section of the ROAR/DMS notice currently states that all Social Security field offices maintain "lists of overpaid individuals" (*i.e.* individuals who owe SSA program debt). Such lists are no longer maintained in these offices and we have revised this section accordingly. We have also revised the address information for SSA Program Service Centers.

C. Revision to the Categories of Individuals Covered by the ROAR/DMS Notice

The ROAR/DMS system of records historically has always maintained information about representative payees when those payees have received excess benefits for the individuals for whom they serve as payees. This is not clear from the current description of the categories of individuals covered by the system of records. We have clarified the language in this section to state that such individuals are covered by the ROAR/DMS system of records.

D. Revision to the Purpose Section of the ROAR/DMS Notice

The ROAR/DMS system has always encompassed SSA's DMS, which is SSA's automated system for recording, classifying, and summarizing information on SSA's program debt collection activities, but this is not evident from the current description of the Purpose(s) section of the ROAR/DMS notice. Thus, we have revised the Purpose(s) section of the ROAR/DMS notice to more accurately describe SSA's program debt collection activities.

E. Revision to the Language in Routine Use #3 in the ROAR/DMS Notice

Routine use #3 in the ROAR/DMS Notice provides for disclosure of information to third party contacts to assist SSA in recovering program debts. The routine use currently cites examples of non-governmental and governmental entities to which SSA may disclose information for this purpose. We have revised the routine use to include reference to the Department of the Treasury as another example of a third party contact to which SSA may disclose information from the ROAR/DMS system of records for program debt collection purposes.

F. Revision to the System Manager Section of the ROAR/DMS Notice

We have revised the "System manager" section of the ROAR/DMS notice to denote that the system of records has co-managers; a manager for the ROAR portion of the system of records and a manager for the DMS portion of the system of records.

G. Revision of the Notification Procedure Section of the ROAR/DMS Notice

This section of the ROAR/DMS notice previously stated that an individual could find out if the ROAR/DMS system of records contained a record about him or her by contacting the appropriate processing center, the most convenient Social Security office, or writing to the system manager of the ROAR/DMS system of records. We have revised this section by stating that individuals can determine if the ROAR/DMS system of records contains a record about them by contacting the most convenient Social Security office or by writing to the system managers.

H. Revision to the Record Access Procedures Section of the ROAR/DMS Notice

We have revised the information in this section to state that individuals may access some information about their program debt via the Internet when SSA has authorized such access using a personal identification number and password.

I. Editorial/Grammatical Changes to the ROAR/DMS Notice

In addition to the changes discussed in items A–H above, we have made editorial and grammatical changes throughout the ROAR/DMS notice to make the notice accurate and up to date.

II. Effect of the Proposed Housekeeping Changes to the ROAR/DMS System of Records

When operating the ROAR/DMS system of records, we adhere to all applicable statutory requirements, including those under the Social Security Act and the Privacy Act, in carrying out our program debt collection responsibilities. Therefore, we do not anticipate that the housekeeping changes will have an unwarranted adverse effect on the rights of individuals.

Dated: August 12, 2005.

Jo Anne B. Barnhart,

Commissioner.

SYSTEM NUMBER:

60–0094.

SYSTEM NAME:

Recovery of Overpayments, Accounting and Reporting /Debt Management System (ROAR/DMS) SSA/OTSO.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Social Security Administration, Office of Telecommunications and Systems Operations, 6401 Security Boulevard, Baltimore, MD 21235.

Program Service Centers (Contact the system manager(s) for PSC address information).

Social Security Administration, Office of Central Operations, 1500 Woodlawn Drive, Baltimore, MD 21241.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Social Security beneficiaries, former beneficiaries, and representative payees who may have received excess benefits; persons holding conserved (accumulated) funds received on behalf of a Social Security beneficiary; and persons who received Social Security payments in error or on behalf of a beneficiary and are suspected to have misused those payments.

CATEGORIES OF RECORDS IN THE SYSTEM:

Identifying characteristics of each program debt or instance of misused or

conserved funds (*e.g.*, name, Social Security number (SSN) and address of the individual(s) involved, recovery efforts made and the date of each action, and planned future actions).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 204(a) of the Social Security Act (42 U.S.C. 404(a)).

PURPOSE(S):

The ROAR/DMS system of records controls the recovery and collection activity of:

- Retirement, Survivors and Disability Insurance (RSDI), Supplemental Security Income (SSI), and Health Insurance (HI) program debt when refund is requested or adjustment is proposed;
- SSI, and HI program debt recovered from RSDI accounts;
- Misused funds cases;
- Conserved funds cases;
- Civil Monetary Penalty cases; and
- Program debts created by fraudulent acts.

The ROAR/DMS system of records encompasses SSA's automated system for recording, classifying, and summarizing information on SSA's program debt collection responsibilities. The users of this system are employees of the Social Security field offices, as well as selected personnel of SSA's 8 Processing Centers, Regional and Area offices, and Teleservice Centers. The data are used to maintain control of program debt, and misused or conserved funds, from the time of discovery to the final resolution, and for the proper adjustments of payment and refund amounts. The DMS front-end screens, object programs, and other processes are used to create transaction records that are used to establish and update the ROAR/DMS system of records, update the Master Beneficiary Record, and update the Supplemental Security Income Record and Special Veterans Benefits System. These transaction record data produce accounting and statistical reports at specified intervals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Disclosure may be made for routine uses as indicated below. However, disclosure of any information constituting "returns or return information" within the scope of the Internal Revenue Code will not be disclosed unless disclosure is authorized by that statute.

(1) To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

(2) To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or a third party on his/her behalf.

(3) To third party contacts such as private collection agencies and credit reporting agencies under contract with SSA and other agencies, including the Veterans Administration, the Armed Forces, the Department of the Treasury, and State motor vehicle agencies, for the purpose of their assisting SSA in recovering program debt.

(4) Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

(5) Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to the General Services Administration (GSA) and the National Archives and Records Administration (NARA) for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984.

(6) To the Department of Justice (DOJ), a court or other tribunal, or another party before such tribunal when:

(a) SSA, or any component thereof; or

(b) any SSA employee in his/her official capacity; or

(c) any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) the United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components, is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court or other tribunal is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which are subject to the disclosure provisions of the IRC (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

(7) To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

(8) To employers to assist SSA in the collection of debts owed by former beneficiaries and representative payees of Social Security payments who received an overpayment and owe a delinquent debt to the SSA. Disclosure under this routine use is authorized under the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) and implemented through administrative wage garnishment provisions of this Act (31 U.S.C. 3720D).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12) may be made to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 as amended (31 U.S.C. 3701, *et seq.*) or the Social Security Domestic Employment Reform Act of 1994, Pub. L. 103–387, 42 U.S.C. 404(f). The purpose of this disclosure is to aid in the collection of outstanding program debts owed to the Federal government, typically, to provide an incentive for debtors to repay delinquent Federal government program debts by making these part of their credit records. Disclosure of records is limited to the individual's name, address, SSN, and other information necessary to establish the individual's identity; the amount, status, and history of the claim and the agency or program under which the claim arose. The disclosure will be made only after the procedural requirements of 31 U.S.C. 3711(e) have been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are, or have been, maintained in magnetic cartridges, microfiche and paper form.

RETRIEVABILITY:

Records are retrieved by SSN.

SAFEGUARDS:

System security for automated records has been established in accordance with the Systems Security Handbook. This includes maintaining automated records in a secured building, the SSA National Computer Center, and limiting access to the building to employees who have a need to enter in the performance of their official duties. Paper and other non-ADP records are protected through standard

security measures (*e.g.*, maintenance of the records in buildings which are manned by armed guards).

RETENTION AND DISPOSAL:

Magnetic cartridges are updated daily and retained for 75 days. The magnetic cartridges produced in the last operation of the month are retained in security storage for a period of 75 days, after which the tapes are erased and returned to stock. The microfiche records are normally updated monthly, retained for 3 years after the month they are produced, and then destroyed by application of heat.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Retirement and Survivors Insurance System, Division of Title II Payments and Accounting, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland, 21235, is the system manager for ROAR.

Director, Office of Financial Policy and Systems Design, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland, 21235, is the system manager for DMS.

NOTIFICATION PROCEDURE:

An individual can determine if this system contains a record about him/her by contacting the most convenient Social Security field office and providing his/her name, SSN or other information that may be in the system of records that will identify him/her. An individual requesting notification of records in person should provide the same information, as well as provide an identity document, preferably with a photograph, such as a driver's license or some other means of identification, such as a voter registration card, credit card, etc. If an individual does not have any identification documents sufficient to establish his/her identity, the individual must certify in writing that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense.

If notification is requested by telephone, an individual must verify his/her identity by providing identifying information that parallels the record to which notification is being requested. If it is determined that the identifying information provided by telephone is insufficient, the individual will be required to submit a request in writing or in person. If an individual is requesting information by telephone on behalf of another individual, the subject individual must be connected with SSA and the requesting individual in the same phone call. SSA will establish the subject individual's identity (his/her name, SSN, address, date of birth and place of birth along with one other piece of information such as mother's maiden name) and ask for his/her consent in providing information to the requesting individual.

If a request for notification is submitted by mail, an individual must include a notarized statement to SSA to verify his/her identity or must certify in the request that he/she is the person claimed to be and that he/she understands that the knowing and willful request for, or acquisition of, a record pertaining to another individual under false pretenses is a criminal offense. These procedures are in accordance with SSA Regulations (20 CFR 401.40).

RECORD ACCESS PROCEDURES:

Same as notification procedures. Also, requesters should reasonably specify the record contents they are seeking. An individual may also have access to certain program debt management data via Internet queries when he or she is authorized by SSA to conduct business transactions electronically using a personal identification number (PIN) and password. Using a PIN and password individuals may obtain information such as the reason for the program debt, the amount owed on the debt, how much has been withheld from the last check to cover the debt, and the same information about their next check. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

CONTESTING RECORD PROCEDURES:

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought, and the reasons for the correction, with supporting justification showing how the record is untimely, incomplete, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65(a)).

RECORD SOURCE CATEGORIES:

The information for the computer files is received directly from beneficiaries, from Social Security field offices, and as the result of earnings enforcement operations. The paper listings are updated as a result of the computer operations.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 05–16633 Filed 8–22–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Order Adjusting the Standard Foreign Fare Level Index

AGENCY: Department of Transportation.

ACTION: Notice of order adjusting the Standard Foreign Fare Level index (Docket OST–05–20332).

SUMMARY: The Department revises the Standard Foreign Fare Level (SFFL) to reflect the latest available fuel and non fuel cost changes experienced by carriers, as required by 40 U.S.C. 41509(e).

FOR FURTHER INFORMATION CONTACT: Mr. John Kiser or Ms. Diane Z. Rhodes, Pricing & Multilateral Affairs, Division (X–43, Room 6424), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–1065.

Dated: August 17, 2005.

Paul L. Gretch,

Director, Office of International Aviation.

[FR Doc. 05–16673 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Centennial Airport, Englewood, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Centennial Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before September 22, 2005.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Craig A. Sparks, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, CO 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Olislagers, Executive Director, Centennial Airport, 7800 South Peoria Street, Box G–1, Englewood, Colorado 80112.

FOR FURTHER INFORMATION CONTACT: Ms. Mindy Lee, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comments on the request to release property at the Centennial Airport under the provisions of the AIR 21.

On July 29, 2005, the FAA determined that the request to release property at the Centennial Airport submitted by the Arapahoe County Public Airport Authority, Colorado met the procedural requirements of the Federal Aviation Regulations, part 155. The FAA may approve the request, in whole or in part, no later than September 29, 2005.

The following is a brief overview of the request:

The Centennial Airport requests the release of 16.568 acres of airport property (a portion of Parcel 15, northeast corner) from aeronautical use to non-aeronautical use. The purpose of this release is to allow Centennial Airport to lease the subject land to non-aeronautical businesses since it no longer serves any aeronautical purpose at the airport. The release of this parcel will provide revenue for airport improvements and maintenance.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may inspect the application, notice and other documents germane to the application in person at the Centennial Airport, 7800 South Peoria Street, Englewood, Colorado 80112.

Issued in Denver, Colorado on August 17, 2005.

Craig A. Sparks,

Manager, Denver Airports District Office.

[FR Doc. 05–16736 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Pueblo Memorial Airport, Pueblo, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Pueblo Memorial Airport under the provisions of section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before September 22, 2005.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Craig Sparks, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Daniel E. Centa, Director of Public Works and Aviation, Pueblo Memorial Airport, 31201 Bryan Circle, Pueblo, Colorado 81001.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Nelson, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Pueblo Memorial Airport under the provisions of the AIR 21.

On July 19, 2005 the FAA determined that the request to release property at the Pueblo Memorial Airport submitted by the City of Pueblo met the procedural requirements of the Federal Aviation Regulations, part 155. The FAA may approve the request, in whole or in part, no later than October 31, 2005.

The following is a brief overview of the request.

The Pueblo Memorial Airport requests the release of 6.24 acres [Lot 5 a re-subdivision of Lots 13 and 14] of non-aeronautical airport property to the City of Pueblo, Colorado. The purpose of this release is to allow the City of Pueblo to sell the subject land that was conveyed to the City by the United States acting through the War Assets Administration by Quit Claim Deed dated July 20, 1948. The sale of this parcel will provide funds for airport improvements.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may inspect the application, notice and other documents germane to the application in person at Pueblo Memorial Airport, 31201 Bryan Circle, Pueblo, CO 81001.

Issued in Denver, Colorado on August 17, 2005.

Craig Sparks,

Manager, Denver Airports District Office.

[FR Doc. 05–16735 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Pueblo Memorial Airport, Pueblo, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Pueblo Memorial Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before September 23, 2005.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Craig Sparks, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Daniel E. Centa, Director of Public Works and Aviation, Pueblo Memorial Airport, 31201 Bryan Circle, Pueblo, Colorado, 81001.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Nelson, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Pueblo Memorial under the provisions of the AIR 21.

On July 19, 2005 the FAA determined that the request to release property at the Pueblo Memorial Airport submitted by the City of Pueblo met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than October 31, 2005.

The following is a brief overview of the request:

The Pueblo Memorial Airport requests the release of 6.23 acres [Lot 1 a re-subdivision of Lots 13 and 14] of non-aeronautical airport property to the City of Pueblo, Colorado. The purpose of this release is to allow the City of Pueblo to sell the subject land that was conveyed to the City by the United States acting through the War Assets Administration by Quit Claim Deed dated July 20, 1948. The sale of this parcel will provide funds for airport improvements. Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, inspect the application, notice and other documents germane to the application in person at Pueblo Memorial Airport 31201 Bryan Circle, Pueblo, CO 81001.

Issued in Denver, Colorado on August 17, 2005.

Craig Sparks,

Manager, Denver Airports District Office.

[FR Doc. 05–16738 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Pueblo Memorial Airport, Pueblo, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Pueblo Memorial Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before September 23, 2005.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Craig Sparks, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Daniel E. Centa, Director of Public Works and Aviation, Pueblo Memorial Airport, 31201 Bryan Circle, Pueblo, Colorado, 81001.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Nelson, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Pueblo Memorial under the provisions of the AIR 21.

On July 19, 2005 the FAA determined that the request to release property at the Pueblo Memorial Airport submitted by the City of Pueblo met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than October 31, 2005.

The following is a brief overview of the request:

The Pueblo Memorial Airport requests the release of 6.15 acres [Lot 2 a re-subdivision of Lots 13 and 14] of non-aeronautical airport property to the City of Pueblo, Colorado. The purpose of this release is to allow the City of Pueblo to sell the subject land that was conveyed to the City by the United States acting through the War Assets Administration by Quit Claim Deed dated July 20, 1948. The sale of this parcel will provide funds for airport improvements. Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, inspect the application, notice and other documents germane to the application in person at Pueblo Memorial Airport 31201 Bryan Circle, Pueblo, CO 81001.

Issued in Denver, Colorado on August 17, 2005.

Craig Sparks,

Manager, Denver Airports District Office.

[FR Doc. 05–16742 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Pueblo Memorial Airport, Pueblo, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Pueblo Memorial Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before September 22, 2005.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Craig Sparks, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Daniel E. Centa, Director of Public Works and Aviation, Pueblo Memorial Airport, 31201 Bryan Circle, Pueblo, Colorado 81001.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Nelson, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Pueblo Memorial Airport under the provisions of the AIR 21.

On July 19, 2005 the FAA determined that the request to release property at the Pueblo Memorial Airport submitted by the City of Pueblo met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, no later than October 31, 2005.

The following is a brief overview of the request:

The Pueblo Memorial Airport requests the release of 6.36 acres [Lot 57] of non-aeronautical airport property to the City of Pueblo, Colorado. The purpose of this release is to allow the City of Pueblo to

sell the subject land that was conveyed to the City by the United States acting through the War Assets Administration by Quit Claim Deed dated July 20, 1948. The sale of this parcel will provide funds for airport improvements.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, inspect the application, notice and other documents germane to the application in person at Pueblo Memorial Airport, 31201 Bryan Circle, Pueblo, CO 81001.

Issued in Denver, Colorado on August 17, 2005.

Craig Sparks,

Manager, Denver Airports District Office.

[FR Doc. 05–16744 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Salt Lake City International Airport, Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice to request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Salt Lake City International Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before September 22, 2005.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Craig Sparks, Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steve Domino, Director of Planning, Salt Lake City Department of Airports, AMF Box 22084, Salt Lake City, Utah 84122.

FOR FURTHER INFORMATION CONTACT: Ms. Cynthia Nelson, Project Manager, Federal Aviation Administration, Northwest Mountain Region, Airports Division, Denver Airports District Office, 26805 E. 68th Ave., Suite 224, Denver, Colorado 80249.

The request to release property may be reviewed in person by appointment at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Salt Lake city International Airport under the provisions of the AIR 21.

On July 29, 2005, the FAA determined that the request to release property at the Salt Lake City International Airport submitted by the Salt Lake City Department of Airports met the procedural requirements of the Federal Aviation Regulations, part 155. The FAA may approve the request, in whole or in part, no later than October 31, 2005.

The following is a brief overview of the request:

The Salt Lake City International Airport requests the release of 620.51 acres of non-aeronautical airport property to the Salt Lake City Department of Airports, Utah. The purpose of this release is to allow the Salt Lake City Department of Airports to complete a land transfer with the subject land, which is no longer needed for airport purposes. The airport will acquire property that is compatible with the Salt Lake City International Airport's aviation needs.

Any person may inspect the request by appointment at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, inspect the application, notice and other documents germane to the application in person at Salt Lake City Department of Airports, Salt Lake City International Airport, 776 North Terminal Drive, Terminal One, Room 250, Salt Lake City, UT 84116.

Issued in Denver, Colorado on August 17, 2005.

Craig Sparks,

Manager, Denver Airports District Office.

[FR Doc. 05–16734 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice: Receipt of Noise Compatibility Program and Request for Review for Boise Air Terminal/Gowen Field, Boise, ID

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps (NEM's) submitted by the airport director for the Boise Air Terminal/Gowen Field under the provisions of 49 U.S.C. 47501 *et seq.* (Aviation Safety and Noise Abatement Act) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Boise Air Terminal/Gowen Field under part 150 in conjunction with the NEM's and this program will be approved or disapproved on or before February 13, 2006.

DATES: The effective date of the FAA's determination on the NEM's and the start of its review of the associated noise compatibility program is August 12, 2005. The public comment period ends October 12, 2005.

FOR FURTHER INFORMATION CONTACT: Cayla Morgan, Federal Aviation Administration, Seattle Airports District Office, 1601 Lind Ave., SW., Suite 250, Renton, WA 98055–4056, telephone (425) 227–2653. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the NEM's submitted for the Boise Air Terminal/Gowen Field are in compliance with applicable requirements of part 150, effective August 12, 2005. Further, the FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before February 13, 2006. This notice also announces the availability of this program for public review and comment.

Under 49 U.S.C., section 47503 (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act"), an airport operator may submit to the FAA NEM's which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted NEM's that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken, or

proposes to take, to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The director of the Boise Air Terminal/Gowen Field submitted to the FAA on September 9, 2004, NEM's, descriptions and other documentation that were produced during the Boise Air Terminal/Gowen Field FAR Part 150 Study dated July 2004. It was requested that the FAA review this material as the NEM's, as described in section 47503 of the Act, 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 47504 of the Act.

The FAA has completed its review of the NEM's and related descriptions submitted by the director of the Boise Air Terminal/Gowen Field. The specific documentation determined to constitute the NEM's includes the following from the *Boise Air Terminal/Gowen Field FAR Part 150 Study of July 2004:*

- Figure 5–1, Existing Noise Exposure Map, 2004
- Figure 5–2, Future Noise Exposure Map, 2009
- Tables(s) 2.17 and 2.18, Summary of Annual Activity for 2003 and 2008
- Table 5.1 at page 5.2, Existing and Future Noise Exposure Map with Existing and Future Land Use, presents estimates of the number of persons residing within the day/night noise level 60 through 75 noise contours
- Figures 3–1 and 3–2 present Flight Tracks
- Pages 9–1 through 9–3 present the Record of Consultation during the study
- Appendix F presents Revised Consultation

The FAA has determined that these maps for the Boise Air Terminal/Gowen Field are in compliance with applicable requirements. This determination is effective on August 12, 2005. The FAA's determination on an airport operator's NEM's is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or funds the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a NEM's submitted under section 47503 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or interpreting the NEM's to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land-use-control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through the FAA's review of NEM's. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 47503 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR part 150, that the statutorily required consultation has been accomplished. The FAA has formally received the noise compatibility program for Boise Air Terminal/Gowen Field, also effective on August 12, 2005. 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 February 13, 2006.

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 non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. The FAA will consider all comments, other than those properly addressed to local land use authorities, 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, Airports Division, 1601 Lind Avenue, SW., Suite 315, Renton, Washington.

Seattle Airports District Office, 1601 Lind Ave., SW., Suite 250, Seattle, Washington.

Boise Air Terminal/Gowen Field, 3201 Airport Way, Boise, Idaho.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington, August 12, 2005.

Lowell H. Johnson,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 05–16737 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement No. ANM–113–04–032]

Certification of an In-seat Video System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of final policy.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of final policy on certification of an in-seat video system.

DATES: This final policy was issued by the Transport Airplane Directorate on August 12, 2005.

FOR FURTHER INFORMATION CONTACT: John Piccola, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Standardization Branch, ANM–113; 1601 Lind Avenue, SW., Renton, WA 98055–4056; telephone (425) 227–1509; fax (425) 227–1232; e-mail: *john.piccola@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Disposition of Comments

A notice of proposed policy was published in the **Federal Register** on December 3, 2004 (69 FR 70303). Two (2) commenters responded to the request for comments.

Background

Based on data industry has presented to the FAA, in-seat video system designs have matured to the point that dedicated testing is not required per 14 CFR 25.601. This policy recommends the use of Aerospace Recommended Practice (ARP) 5475 when abuse load tests are required. This policy adds analysis or inspection as valid means of compliance, in lieu of test. The FAA

also clarifies questions that have arisen regarding previously released policy on this subject.

The final policy as well as the disposition of public comments received are available on the Internet at the following address: *http://airweb.faa.gov.rgl*. If you do not have access to the Internet, you can obtain a copy of the policy by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Issued in Renton, Washington on August 12, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–16739 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2005–22027]

Notice of Technical Workshop and Demonstration—Wednesday, September 21, 2005

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of technical workshop and demonstration.

SUMMARY: This notice announces that NHTSA will hold a compliance test program workshop to discuss and demonstrate the Office of Vehicle Safety Compliance (OVSC) Laboratory Test Procedure (TP) for the agency's safety standard for tire pressure monitoring systems (TPMS). Vehicle manufacturers, tier-one TPMS suppliers, TPMS component manufacturers, and other interested persons with technical knowledge of TPMS who wish to participate in the workshop are asked to pre-register and are invited to submit related technical issues for discussion at the meeting.

DATES: *Workshop:* The workshop and demonstration of the test procedure will be held on September 21, 2005 from 8:30 a.m. to 5 p.m. (If a second day is needed, the workshop will extend into September 22, 2005.)

Pre-registration: Persons wishing to participate in the workshop should contact NHTSA at the address or electronic mail listed below by August 31, 2005. (Due to space limitations, NHTSA may have to limit the number of participants per organization.)

Submission of Agenda Issues: Written suggestions regarding technical issues to be included in the agenda should be submitted to the address below and must be received by the agency on or before August 31, 2005.

ADDRESSES: *Workshop:* The workshop and demonstration will be held in San Angelo, Texas near the OVSC San Angelo Test Facility. Directions to the meeting location and a final agenda will be sent to registered participants.

Submission of Agenda Issues: You may submit comments identified by DOT DMS Docket Number NHTSA 2005–22027 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this technical workshop notice. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided.

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

FOR FURTHER INFORMATION CONTACT: For technical issues, contact Theresa Lacuesta, Office of Vehicle Safety Compliance, NVS–221, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone (202) 366–2319, facsimile (202) 366–3081, electronic mail "*tlacuesta@nhtsa.dot.gov*". For registration, contact Lorri Hamn at the same address, telephone (202) 366–9896, facsimile (202) 493–2266, electronic mail "*lhamn@nhtsa.dot.gov*".

SUPPLEMENTARY INFORMATION: On April 8, 2005, NHTSA published a final rule establishing Federal Motor Vehicle Safety Standard (FMVSS) No. 138, *Tire Pressure Monitoring Systems* (70 FR 18136). This final rule requires new passenger cars, multi-purpose passenger vehicles, trucks, and buses with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or less, except those with dual wheels on an axle, to be equipped with a TPMS to alert the driver when one or more of the vehicle's tires, up to a total of all four tires, is significantly under-inflated. Specifically, the TPMS must be capable of detecting when the pressure in one or more of the vehicle's tires is 25 percent or more below the vehicle manufacturer's recommended cold inflation pressure or a minimum activation pressure specified in the standard, whichever is higher. As reflected in the final rule, FMVSS No. 138 is a performance standard. Petitions for reconsideration of the final rule have been received and may be viewed on DOT Web site *http://dms.dot.gov*, (reference docket number NHTSA–2005–20586). The scope of this workshop is strictly limited to issues surrounding implementation of OVSC Laboratory Test Procedure TP–138, including subsequent amendments, if any, resulting from the agency's response to petitions for reconsideration. TP–138 is posted on the NHTSA Web site at *http://www.nhtsa.dot.gov* (under "Test Procedures" on the Vehicles and Equipment page).

To enable interested parties and NHTSA personnel to discuss the questions concerning TP–138, NHTSA believes that it would be desirable to hold a technical workshop and demonstration on the test procedure. As noted above, persons wishing to participate in the workshop are requested to notify Lori Hamn by facsimile, mail or electronic mail no later than August 31, 2005. Prospective attendees should indicate their name, title, and organizational affiliation. Once the agency compiles a list of all prospective attendees, NHTSA will determine whether the number of participants per organization must be limited due to space constraints.

In order to facilitate discussions, the agency requests that interested parties submit written suggestions regarding topics pertaining to TP–138 for inclusion in the agenda for this workshop. Copies of all written submissions and the final agenda will be placed in the docket for this notice. The agency will include as many of the suggested topics in the final agenda as appropriate. The following is a preliminary agenda for the workshop.

Agenda

The workshop will begin at 8:30 a.m. on September 21, 2005 and conclude by 5 p.m. The agency has not decided if

physical demonstrations will be included. If physical demonstrations are conducted, sessions may extend into September 22, 2005.

Issued: August 17, 2004

Claude H. Harris,

Director, Office of Vehicle, Safety Compliance.

Editorial Note: This document was received at the Office of the Federal Register August 17, 2005.

[FR Doc. 05–16631 Filed 8–22–05; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Proposed Agency Information Collection Activities; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the "agencies") may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of proposed revisions to the Consolidated Reports of Condition and Income (Call Report), which are currently approved collections of information. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC and the agencies should modify the proposed revisions prior to giving final approval. The agencies will then submit the revisions to OMB for review and approval.

DATES: Comments must be submitted on or before October 24, 2005.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number(s), will be shared among the agencies.

OCC: You may submit comments, identified by [Attention: 1557–0081], by any of the following methods:

- E-mail: *regs.comments@occ.treas.gov*. Include [Attention: 1557–0081] in the subject line of the message.
- Fax: (202) 874–4448.
- Mail: Public Information Room, Office of the Comptroller of the Currency, 250 E Street, SW., Mailstop 1–5, Washington, DC 20219; Attention: 1557–0081.

Public Inspection: You may inspect and photocopy comments at the Public Information Room. You can make an appointment to inspect the comments by calling (202) 874–5043.

Board: You may submit comments, which should refer to "Consolidated Reports of Condition and Income, 7100–0036," by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov*. Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm*.
- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- E-mail: *regs.comments@federalreserve.gov*. Include docket number in the subject line of the message.
- Fax: (202) 452–3819 or (202) 452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, which should refer to "Consolidated Reports of Condition and Income, 3064–0052," by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/propose.html*.
- E-mail: *comments@FDIC.gov*. Include "Consolidated Reports of Condition and Income, 3064–0052" in the subject line of the message.
- Mail: Steven F. Hanft (202–898–3907). Paperwork Clearance Officer, Room MB–3064, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery: Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room 100, 801 17th Street, NW., between 9 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Mark Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or electronic mail to *mmenchik@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: For further information about the revisions discussed in this notice, please contact any of the agency clearance officers whose names appear below. In addition, copies of Call Report forms can be obtained at the FFIEC's Web site (*http://www.ffiec.gov/ffiec_report_forms.htm*).

OCC: Mary Gottlieb, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Michelle E. Long, Federal Reserve Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869.

FDIC: Steven F. Hanft, Paperwork Clearance Officer, (202) 898–3907, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the Call Report, which is currently an approved collection of information for each of the agencies.

Report Title: Consolidated Reports of Condition and Income (Call Report).

Form Number: Call Report: FFIEC 031 (for banks with domestic and foreign offices) and FFIEC 041 (for banks with domestic offices only).

Frequency of Response: Quarterly.

Affected Public: Business or other for-profit.

OCC:

OMB Number: 1557–0081.

Estimated Number of Respondents: 1,950 national banks.

Estimated Time per Response: 43.80 burden hours (represents a decrease of 4.47 hours associated with testing and enrollment in the Central Data Repository (CDR) and a net increase of 1.81 hours for proposed new items and deletions).

Estimated Total Annual Burden: 341,621 burden hours.

Board:

OMB Number: 7100–0036.

Estimated Number of Respondents: 919 State member banks.

Estimated Time per Response: 50.38 burden hours (represents a decrease of 4.01 hours associated with testing and enrollment in the CDR and a net increase of 2.01 hours for proposed new items and deletions).

Estimated Total Annual Burden: 185,197 burden hours.

FDIC:

OMB Number: 3064–0052.

Estimated Number of Respondents: 5,243 insured state nonmember banks.

Estimated Time per Response: 34.73 burden hours (represents a decrease of 4.16 hours associated with testing and enrollment in the CDR and a net increase of 1.79 hours for proposed new items and deletions).

Estimated Total Annual Burden: 728,274 burden hours.

The estimated time per response for the Call Report is an average that varies by agency because of differences in the composition of the institutions under each agency's supervision (*e.g.*, size distribution of institutions, types of activities in which they are engaged, and existence of foreign offices). The average reporting burden for the Call Report is estimated to range from 16 to 625 hours per quarter, depending on an individual institution's circumstances.

Furthermore, the effect on reporting burden of the proposed revisions to the Call Report requirements will vary from institution to institution depending, in some cases, on the institution's asset size and, in other cases, on its involvement with the types of activities or transactions to which the proposed changes apply. This proposal would add several new data items to the Call Report, revise certain existing items, eliminate a limited number of items, and remove the burden hours associated with testing and enrollment in the new CDR system, which had been added to the Call Report burden estimate in 2004, because these CDR activities will be completed prior to the implementation of the proposed revisions. Since the reduction in burden related to the CDR exceeds the net increase in burden from the proposed revisions to the content of the Call Report, the proposal as a whole would produce a net decrease in reporting burden for banks of all sizes. Nevertheless, the proposed new items and revisions of existing items, taken together, would have an effect on all banks. Therefore, as discussed more fully below in Section I. Overview, the agencies encourage banks and other interested parties to comment on such matters as data availability, data alternatives, and reporting thresholds for each proposal for new or revised data. Such comments will assist the agencies in determining the content of the final set of revisions to the Call Report. For purposes of this proposal, the following burden estimates include the effect of all of the proposed revisions without anticipating any possible modifications resulting from the public comment process that may lessen the impact of the revisions on some or all banks.

General Description of Reports

These information collections are mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 324 (for State member banks), and 12 U.S.C. 1817 (for insured State nonmember commercial and savings banks). Except for selected items, these information collections are not given confidential treatment.

Abstract

Institutions file Call Reports with the agencies each quarter for the agencies' use in monitoring the condition, performance, and risk profile of individual institutions and the industry as a whole. In addition, Call Reports provide the most current statistical data available for evaluating institutions' corporate applications such as mergers, for identifying areas of focus for both on-site and off-site examinations, and for monetary and other public policy purposes. Call Reports are also used to calculate all institutions' deposit insurance and Financing Corporation assessments and national banks' semiannual assessment fees.

Current Actions

I. Overview

The agencies last revised the form and content of the Call Report in a manner that significantly affected a substantial percentage of banks in March 2002. The revisions that have taken effect since March 2002 (*i.e.*, in March 2003 and June 2005) were narrowly focused on certain specific activities in order to improve the information available to the agencies for those banks engaging in these activities. These focused revisions meant that the new or revised Call Report items pertaining to each of these activities were directly applicable to small percentages of banks rather than to most or all banks.

During this recent period of limited revisions to the Call Report, the FFIEC and the agencies having been working toward the October 1, 2005, implementation of the CDR, the Internet-based system they are developing to modernize and streamline how Call Report data are collected, validated, managed, and distributed. At the same time, the agencies have also been carefully evaluating their information needs. In this regard, the agencies recognize that the Call Report imposes reporting burden, which is a component of the overall regulatory burden that banks face. Another contributor to this overall burden is the examination process, particularly on-site examinations during which bank management and staff spend time and effort responding to inquiries and requests for information that are designed to assist examiners in evaluating the condition and risk profile of the institution. The amount of attention that examiners initially direct to the various risk areas of the bank under examination is, in large part, determined from Call Report data. These data, and analytical reports generated from Call Report data such as the Uniform Bank Performance Report, assist examiners in making their preliminary assessments of risks and in scoping efforts during the planning phase of the examination process.

The more risk-focused the information available to examiners from a bank's Call Report, the better the job examiners can do before the start of their on-site work in making their preliminary assessments as to whether each of the risk areas of the bank presents greater than normal, normal, or less than normal risk. The degree of perceived risk determines the extent of the examination procedures, and the

resultant regulatory burden, that are initially planned for each risk area. If the outcome of these procedures begins to reveal a greater than expected level of risk in a particular risk area, the examination scope and procedures are adjusted accordingly, adding to the regulatory burden imposed on the bank.

Call Report data are also a vital source of information for the agencies' off-site examination and surveillance activities. Among their benefits, these activities aid in determining whether the frequency of a bank's examination cycle should remain at maximum allowed time intervals, thereby lessening overall regulatory burden. More risk-focused Call Report data enhance the agencies' ability to assess whether an institution is experiencing changes in its risk profile that warrant immediate follow-up, which may include accelerating the timing of an on-site examination.

In developing this proposal, the agencies have considered a range of potential information needs, particularly in the areas of credit risk, liquidity, and liabilities, and have identified those additions to the Call Report that are believed to be most critical and relevant to the agencies as they seek to fulfill their supervisory responsibilities. At the same time, the agencies have identified certain existing Call Report data that are no longer sufficiently critical or useful to warrant their continued collection from either all banks or banks that meet certain criteria (*e.g.*, an asset size threshold). On balance, the agencies recognize that the reporting burden that would result from the addition to the Call Report of all of the new items discussed in this proposal would not be fully offset by the proposed elimination of, or establishment of reporting thresholds for, a limited number of other Call Report items, thereby resulting in a net increase in reporting burden. Nevertheless, when viewing these proposed revisions to the Call Report within a larger context, they are intended to enhance the agencies' on- and off-site supervision activities, which should help to control the overall regulatory burden on banks.

Thus, the agencies are requesting comment on the following proposed revisions to the Call Report, which would take effect as of March 31, 2006. For each of the proposed revisions of existing items or proposed new items, the agencies are particularly interested in comments from banks on whether the information that is proposed to be collected is readily available from existing bank records. The agencies also invite comment on whether there are particular proposed revisions for which the new data would be of limited relevance for purposes of assessing risks in a specific segment of the banking industry. In such cases, comments are requested on what criteria, *e.g.*, an asset size threshold or some other measure, should be established for identifying the specific segment of the banking industry that should be required to report the proposed new information. Finally, the agencies seek comment on whether, for a particular proposed revision, there is an alternative set of information that could satisfy the agencies' data needs in that area and be less burdensome for banks to report than the new or revised items that the agencies have proposed. The agencies will consider all of the comments they receive as they formulate a final set of revisions to the Call Report for implementation in March 2006.

(1) Burden-reducing revisions:

- Eliminating Schedule RC-O, Memorandum item 2, "Estimated amount of uninsured deposits," for banks with less than $1 billion in assets;
- Collecting only the total amount of a bank's holdings of asset-backed securities in Schedule RC–B from banks that only have domestic offices and are less than $1 billion in assets (but continuing to collect the breakdown by type of asset-backed security from all other banks);
- Eliminating items for reporting the impact on income of derivatives held for purposes other than trading (Schedule RI, Memorandum items 9.a through 9.c); and
- Eliminating items pertaining to bankers acceptances (Schedule RC, items 9 and 18; Schedule RC–H, items 1 and 2; and Schedule RC–L, item 5).

(2) Revisions of existing items and new items:

- Splitting "Construction, land development, and other land loans" (CLD&OL loans) into separate categories for 1–4 family residential CLD&OL loans and all other CLD&OL loans (Schedule RC–C, part I, item 1.a; Schedule RC–N, item 1.a; Schedule RI–B, part I, item 1.a; and Schedule RC–L, item 1.c.1);
- Splitting loans "Secured by nonfarm nonresidential properties" (commercial real estate loans) into separate categories for owner-occupied and other commercial real estate (Schedule RC–C, part I, item 1.e; Schedule RC–N, item 1.e; Schedule RI–B, part I, item 1.e);
- Replacing the breakdown of "Lease financing receivables" between leases from U.S. and non-U.S. addressees with a breakdown of leases between retail (consumer) leases and commercial leases for banks with foreign offices or with domestic offices only and $300 million or more in total assets (Schedule RC–C, part I, items 10.a and 10.b; Schedule RC–N, items 8.a and 8.b on the FFIEC 031 and Memorandum item 3.d on the FFIEC 041; and Schedule RI–B, part I, items 8.a and 8.b on the FFIEC 031 and Memorandum item 2.d on the FFIEC 041);
- Collecting further information on Federal Home Loan Bank advances, which are currently reported in Schedule RC–M, item 5.a, by adding breakdowns of advances by type and by next repricing date and by splitting the existing item for advances with a remaining maturity of more than three years into two items;
- Adding two items to the past due and nonaccrual assets schedule (Schedule RC–N) for "Additions to nonaccrual assets during the quarter" and "Nonaccrual assets sold during the quarter;"
- Collecting additional information on credit derivatives by adding a breakdown by type of contract to the notional amounts currently reported in Schedule RC–L, item 7, along with new items for the maximum amounts payable and receivable on credit derivatives; adding credit derivatives to the existing maturity distribution of derivatives in Schedule RC–R, Memorandum item 2; adding credit derivatives to the breakdown of trading revenue by type of exposure currently collected in Schedule RI, Memorandum item 8; and adding a new income statement Memorandum item for the effect on earnings of credit derivatives held for purposes other than trading;
- Adding a new Schedule RC–P to collect data pertaining to closed-end 1–4 family residential mortgage banking activities for banks with $1 billion or more in total assets,[1] including quarter-end loans held for sale and quarterly originations, purchases, and sales, segregated between first and junior liens, and noninterest income from these activities;
- Changing the category of noninterest income in which banks report income from certain sales of annuities from "Income from other insurance activities" (Schedule RI, item 5.h.(2)) to "Investment banking, advisory, brokerage, and underwriting fees and commissions" (Schedule RI, item 5.d);
- Splitting the income statement item for "Investment banking, advisory, brokerage, and underwriting fees and commissions" (Schedule RI, item 5.d)

[1] In addition, a smaller bank with significant involvement in these activities, as determined by its primary federal regulator, could be directed by its regulator to report this information.

into separate items for fees and commissions from securities brokerage, fees and commissions from sales of annuities, and other fees and commissions;

- Adding new items for the amounts included in "Federal funds purchased (in domestic offices)" (Schedule RC, item 14.b) and "Other borrowings" (Schedule RC–M, item 5.b) that are secured;
- Adding an item to Schedule RC–F, "Other Assets," for the carrying value of the bank's life insurance assets, which would replace the item in this schedule for reporting such assets if they exceed 25 percent of "All other assets";
- Revising Schedule RI–D, "Income from International Operations," on the FFIEC 031 to focus on activity conducted in foreign offices; and
- Revising the scope of Schedule RC–S, column G, "All Other Loans and All Leases," to cover securitizations and credit-enhanced asset sales involving assets other than loans and leases.

(3) Other matters:

- Clarifying the instructions to Schedule RC–S, Memorandum item 2, to indicate that the servicing of home equity lines should be included in the servicing of "Other financial assets" rather than 1–4 family residential mortgages; and
- Revising the officer declaration and director attestation requirements and signatures that apply to the Call Report.

These proposed revisions to the Call Report, which have been approved for publication by the FFIEC for the purpose of soliciting comments from banks and other interested parties, are discussed in more detail below.

Type of Review: Revision and extension of currently approved collections.

As mentioned above, the agencies plan to implement the proposed changes as of the March 31, 2006, report date. Nonetheless, as is customary for Call Report changes, institutions are advised that they may report reasonable estimates for any new or revised item in their reports for March 31, 2006, if the information to be reported is not readily available. In addition, the specific wording of the captions for the new and revised Call Report items discussed in this proposal and the numbering of these items in the report should be regarded as preliminary.

II. Discussion of Proposed Revisions

A. Burden-Reducing Revisions

1. Uninsured Deposits

All banks have been required to report the "Estimated amount of uninsured deposits" in Schedule RC–O, Memorandum item 2, since March 2002. To limit reporting burden, the FFIEC and the agencies advised banks that they were not expected to modify their information systems or acquire new systems solely for purposes of making this estimate. Rather, banks were instructed to base their estimates of the uninsured portion of their deposits on data that are readily available from the information systems and other records the bank has in place. Nonetheless, smaller banks continue to indicate that they find this Memorandum item burdensome and, as a consequence, many resort to reporting a simple estimate based on the number and amount of their deposit accounts of more than $100,000, the current limit of deposit insurance.

Because banks already report the number and amount of such deposit accounts in Schedule RC–O, Memorandum item 1, the agencies are able to calculate the same simple estimate of uninsured deposits as these banks have done. A comparison of the amounts banks have reported for their estimated uninsured deposits in Memorandum item 2 with a simple estimate calculated by the agencies from the information reported in Memorandum item 1 revealed insignificant differences between the two figures for banks with less than $1 billion in assets, which currently hold only about 20 percent of banks' total domestic deposits. Only at larger institutions were the differences between banks' reported estimates and the calculated simple estimate significant enough to have a potential effect on the estimate of insured deposits used by the FDIC in the determination of deposit insurance assessment premiums. Accordingly, the agencies are proposing that banks with less than $1 billion in total assets would no longer be required to complete Schedule RC–O, Memorandum item 2. Banks with $1 billion or more in total assets would continue to report the "Estimated amount of uninsured deposits" in this Memorandum item.

2. Holdings of Asset-Backed Securities

In Schedule RC–B, "Securities," the agencies collect a six-way breakdown of banks' holdings of asset-backed securities (not held for trading purposes) in items 5.a through 5.f.[2] Because banks with domestic offices only and less than $1 billion in total assets hold only a nominal percentage of the industry's investments in asset-backed securities, the agencies have determined that continuing to request a breakdown by category of these institutions' limited holdings is no longer warranted. Instead, these banks would report only their total holdings of asset-backed securities in Schedule RC–B. However, all banks with foreign offices and other banks with $1 billion or more in total assets would continue to report the existing breakdown of their asset-backed securities in this schedule.

3. Impact of Derivatives on Income

Banks with foreign offices or with $100 million or more in total assets report the effect that their use of derivatives outside the trading account has had on their year-to-date interest income, interest expense, and net noninterest income in income statement (Schedule RI) Memorandum items 9.a through 9.c. The amounts reported in these Memorandum items are aggregates of all nontrading derivative positions and combine derivatives that may have substantially different underlying risk exposures, *e.g.*, interest rate risk, foreign exchange risk, and credit risk. In recognition of the new data on credit derivatives that the agencies are proposing to collect (see Section II.B.6. below), the agencies have identified the three income statement Memorandum items as being of lesser utility and propose to delete them.

4. Bankers Acceptances

The Call Report balance sheet (Schedule RC) has long required banks to separately disclose the amount of their "Customers" liability to this bank on acceptances outstanding" (item 9) and their "Bank's liability on acceptances executed and outstanding" (item 18). For banks with foreign offices, corresponding amounts are disclosed for acceptance assets and liabilities in domestic offices (Schedule RC–H, items 1 and 2). In addition, banks with foreign offices or $100 million or more in total assets also report the amount of "Participations in acceptances conveyed to others by the reporting bank" (Schedule RC–L, item 5). Over time, the volume of acceptance assets and liabilities as a percentage of industry assets and liabilities has declined substantially to a nominal amount, with only a small number of banks reporting these items. The agencies are proposing to delete these five items and banks would be instructed to include any acceptance assets and liabilities in "Other assets" and "Other liabilities," respectively, on the Call Report balance sheet.

[2] In Schedule RC–B, the asset-backed securities reported in items 5.a through 5.f exclude mortgage-backed securities, which are reported separately in items 4.a(1) through 4.b(3) of the schedule.

B. Revisions of Existing Items and New Items

1. Construction Land Development, and Other Land Loans

Construction, land development, and other land lending are highly specialized activities with inherent risks that must be managed and controlled to ensure that these activities remain profitable. Management's ability to identify, measure, monitor, and control the risks from these types of loans through effective underwriting policies, systems, and internal controls is crucial to a sound lending program. In areas of the country that experience high levels of construction activity and an extremely competitive lending environment, these factors often lead to thinner profit margins on CLD&OL loans and looser underwriting standards. Moreover, the risk profiles, including loss rates, of CLD&OL loans vary across loan types because of differences in such factors as underwriting and repayment source. The agencies' real estate lending standards recognize these differences in risk, for example, by setting higher supervisory loan-to-value limits for 1–4 family residential construction loans than for other construction loans.

The agencies have seen substantial growth in the volume of CLD&OL loans in recent years. At commercial banks and state-chartered savings banks, these loans grew more rapidly than loan portfolios as a whole during 2003 and 2004. The faster growth in CLD&OL lending than overall lending occurred each year not only for institutions as a whole, but also for banks with less than $100 million in assets, banks with $100 million to $1 billion in assets, and for banks with more than $1 billion in assets. At year-end 2004, banks' CLD&OL loans totaled more than $300 billion, up nearly 40 percent from their level of $217 billion two years earlier. In addition, at banks with less than $100 million in assets, CLD&OL loans were a higher percentage of total loans and leases at year-end 2004 (7 percent) than at banks with more than $1 billion in assets (less than 5 percent). Nearly 88 percent of all banks reported holding CLD&OL loans at year-end 2004, including almost 79 percent of banks with less than $100 million in assets and more than 91 percent of banks with more than $1 billion in assets.

In the Thrift Financial Report (TFR) (Form 1313, OMB No. 1550–0023) that the Office of Thrift Supervision (OTS) collects from the savings associations under its supervision, these institutions are required to report the amount of construction loans for 1–4 family residential properties separately from other construction loans. Charge-offs and recoveries on 1–4 family residential property construction loans are also reported separately from other construction loan charge-offs and recoveries in the TFR. The National Association of Home Builders (NAHB), in letters submitted to the agencies in January 2003 and May 2005 in response to the agencies' requests for comment on past proposed revisions to the Call Report, has requested that the agencies "consider itemizing the construction and land development lending data that are currently aggregated" to distinguish between different types of construction loans. The NAHB noted that their analysis of TFR data on construction loans revealed that residential construction loans "perform much better than most other real estate loans" and expressed concern that the "current lack of credible activity and performance data" on construction lending in the Call Report "impedes the Agencies" ability to accurately evaluate the level of risk associated with such activities."

The agencies agree with the NAHB that it would be beneficial to improve their ability to monitor the construction lending activities of individual banks and the industry as a whole by obtaining separate data on 1–4 family residential CLD&OL loans and all other CLD&OL loans, particularly in light of the substantial growth in this type of lending by banks. Such information would also enable the agencies to identify institutions that significantly shift from 1–4 family residential construction lending to other construction lending, and vice versa, and to identify when institutions that had been solely 1–4 family residential construction lenders move into other types of construction lending.

Therefore, the agencies are proposing to split the existing item for "Construction, land development, and other land loans" in the loan schedule (Schedule RC–C, part I, item 1.a), the past due and nonaccrual schedule (Schedule RC–N, item 1.a), and the charge-offs and recoveries schedule (Schedule RI–B, part I, item 1.a) into separate items for "1–4 family residential construction, land development, and other land loans" and "Other construction, land development, and other land loans." In addition, the agencies would similarly split the item for "Commitments to fund commercial real estate, construction, and land development loans secured by real estate" in the off-balance sheet items schedule (Schedule RC–L, item 1.c.(1)) into two items.

2. Loans Secured by Nonfarm Nonresidential Properties

Loans secured by nonfarm nonresidential properties (commercial real estate loans) include loans made to the occupants of such properties and loans to non-occupant investors. These two types of commercial real estate loans present different risk profiles. Loans secured by owner-occupied properties perform more like commercial and industrial loans because the success of the occupant's business is the primary source of repayment. To ensure repayment of loans to non-occupant investors, the property must generate sufficient cash flow from the parties who are the occupants.

The volume of commercial real estate loans at banks has also increased significantly in recent years. As with CLD&OL loans, commercial real estate loans grew more rapidly than loan portfolios as a whole at commercial banks and state-chartered savings banks during 2003 and 2004, both for the industry as a whole and for small, medium, and large banks. At year-end 2004, banks' commercial real estate loans stood at nearly $700 billion, a jump of 20 percent from the $584 billion in such loans at year-end 2002. The $700 billion in commercial real estate loans represented almost 14 percent of loans at all commercial banks and state-chartered savings banks at year-end 2004, but such loans were 19 percent of loans at banks with less than $100 million in assets versus 11 percent of loans at banks with more than $1 billion in assets. Almost all banks hold commercial real estate loans, including 96 percent of banks with less than $100 million in assets and 93 percent of banks with more than $1 billion in assets.

Because of the significant and growing level of bank involvement in commercial real estate lending and the different risk characteristics of owner-occupied and other commercial properties, separate reporting of these two categories of commercial real estate would enhance the agencies' monitoring and risk-scoping capabilities. The agencies propose to split the existing item for loans "Secured by nonfarm nonresidential properties" in the loan schedule (Schedule RC–C, part I, item 1.e), the past due and nonaccrual schedule (Schedule RC–N, item 1.e), and the charge-offs and recoveries schedule (Schedule RI–B, part I, item 1.e) into separate items for loans secured by owner-occupied nonfarm nonresidential properties and loans

secured by other nonfarm nonresidential properties.

When a commercial property that is partially occupied by the owner and partially occupied (or available to be occupied) by other parties, the property would be considered owner-occupied when the owner occupies more than half of the property's usable space. Properties such as hotels and motels would not be considered owner-occupied. The agencies request comment on the reporting of partially owner-occupied properties and on any other definitional issues that may arise when determining whether to report a loan as secured by owner-occupied property.

3. Retail and Commercial Leases

Banks with foreign offices or with $300 million or more in total assets currently report a breakdown of their lease financing receivables between those from U.S. and non-U.S. addressees in Schedule RC–C, part I, items 10.a and 10.b, and certain related schedules.[3] Because banks lease various types of property to various types of customers, the current addressee breakdown, in which only a limited number of banks report having leases to non-U.S. addressees, does not provide satisfactory risk-related information about this type of financing activity. When reporting information on their loans that are not secured by real estate in the Call Report loan schedule and related schedules, banks distinguish, for example, between consumer (retail) loans and commercial loans. As with retail and commercial loans, there are differences between the underwriting of and repayment sources for retail and commercial leases.

The agencies believe that the different risk characteristics of these two types of leases warrant replacing the existing addressee breakdown of leases with a retail versus commercial lease breakdown in the Call Report schedules for loans and leases, past due and nonaccrual assets, and charge-offs and recoveries. Retail (consumer) leases would be defined in a manner similar to consumer loans, *i.e.*, as leases to individuals for household, family, and other personal expenditures. Commercial leases would encompass all other lease financing receivables. This proposed reporting change would affect only the approximately 500 banks with foreign offices or with $300 million or more in total assets that have lease financing receivables as assets.

[3] Banks with domestic offices only and less than $300 million in total assets are not required to provide this breakdown.

4. Federal Home Loan Bank Advances

The Federal Home Loan Bank (FHLB) System is an increasingly important funding source for banks, particularly community banks, with over 57 percent of all banks reporting borrowings from FHLBs as of December 31, 2004. From year-end 2001 to year-end 2004, the volume of FHLB advances to commercial banks grew more than 25 percent to $250 billion. At the same time, the array of advances offered by the 12 FHLBs has expanded in recent years, with many of the newer advance products containing features that can significantly alter an institution's interest rate risk profile.

The agencies currently collect aggregate information on FHLB advances that is stratified by remaining maturity (Schedule RC–M, items 5.a (1) through 5.a.(3)). This information does not differentiate among types of advance products, which means that the agencies cannot distinguish products with lower repricing risk (putable advances where the bank has the right, but not the obligation, to prepay the FHLB) from products with higher repricing risk (callable advances where the FHLB has the right, but not the obligation, to require the bank to prepay the advance or establish a new advance). Furthermore, the current reporting by remaining maturity is based on the contractual terms of the advances, but this approach does not capture the potential volatility associated with more complex products that have various embedded options.

To address these informational deficiencies, the agencies are proposing to add two additional breakdowns of FHLB advances. The first would collect data on four categories of advances: Fixed rate, variable rate (where the interest rate is tied to an index), callable structured advances (where the FHLB has the option to call the advance), and other structured advances (putable, convertible, or with caps, floors, or other embedded derivatives). In the second breakdown, banks would report their advances based on the amount of time until the next repricing date (one year or less, over one year through three years, over three years through five years, and over five years). The existing data reported on the remaining maturity of FHLB advances would be modified by adding a new remaining maturity period of over five years, with a corresponding modification to the remaining maturity periods used for "Other borrowings" in Schedule RC–M, item 5.b. This additional information would help the agencies' assessments of interest rate risk, liquidity, and funds management and, in particular, would assist examiners with their risk-scoping of examinations, which can be performed off-site and thereby reduce on-site examination hours.

Banks currently report standby letters of credit issued by a Federal Home Loan Bank on their behalf in Schedule RC–L, item 9, "All other off-balance sheet liabilities," when these letters of credit exceed 10 percent of the bank's total equity capital. When these letters of credit exceed 25 percent of total equity capital, the amount must also be separately identified and disclosed in Schedule RC–L. Because of the growth in this activity, the agencies would add a preprinted caption to Schedule RC–L, item 9.c, to facilitate the reporting and identification of standby letters of credit issued by a Federal Home Loan Bank when the amount exceeds 25 percent of total equity capital.

5. Nonaccrual Assets

Information on nonaccrual assets is a key indicator of the credit quality of a bank's assets. Effective December 31, 2003, bank holding companies that file the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C) (OMB No. 7100–0128) with the Board began to complete two new items in the report's Schedule HC–N, "Past Due and Nonaccrual Loans, Leases, and Other Assets': Memorandum item 7, "Additions to nonaccrual assets during the quarter," and Memorandum item 8, "Nonaccrual assets sold during the quarter." The agencies propose to add these same items to the comparable Call Report schedule (Schedule RC–N).

Although the overall quarter-to-quarter change in a bank's nonaccrual assets can be calculated based on the quarter-end totals reported for such assets in Schedule RC–N, the reasons for the change cannot be determined from the information currently reported in Schedule RC–N. Information relating to inflows and outflows of nonaccrual assets would enhance the agencies' ability to track shifts in the credit quality of a bank's assets. Information on additions to nonaccrual assets during the quarter would indicate the extent of erosion or improvement in the quality of a bank's assets. Data on the outflow of nonaccrual assets, such as sale activity, would also provide insight into the approaches taken by a bank's management to the resolution of problem assets. Thus, the proposed new items would assist the agencies in assessing a bank's ability to manage credit risk and deal with credit problems.

For the industry as a whole, information on inflows and outflows

would aid in the evaluation of credit cycle trends. For example, a slowdown in inflows of nonaccrual assets may indicate an approaching peak level of nonperforming assets after the end of a recession. The information on nonaccrual asset sales would increase the agencies' understanding of the evolution of the secondary market for sales of distressed assets, which has only come into existence in recent years.

Because bank holding companies that file the FR Y–9C report (*i.e.*, bank holding companies with total consolidated assets of $150 million or more and certain multibank holding companies) have reported the volume of additions to nonaccrual assets and sales of such assets for the past two years, banks that are subsidiaries of these holding companies should have systems in place for compiling these data. Other banks, however, may not currently track these data, although the agencies believe that sales of nonaccrual assets by small banks are infrequent at present. Thus, the agencies are particularly interested in receiving comments from banks that do not fall within the scope of an FR Y–9C report about their ability to report the amounts of quarterly additions to, and sales of, nonaccrual assets beginning March 31, 2006.

6. Information on Credit Derivatives

The volume of credit derivatives, as measured by their notional amount, has increased significantly at banks over the past several years, rising from an aggregate notional amount of $395 billion at year-end 2001 to $3.1 trillion at March 31, 2005. From the end of the fourth quarter of 2004 to the end of the first quarter of 2005 alone, the notional amount of credit derivatives reported by banks increased by $778 billion or 33 percent. However, despite this volume, the number of banks currently participating in the credit derivatives market, almost all of which have in excess of $1 billion in assets, is extremely small: 19 banks act as a guarantor by selling credit protection to other parties (*i.e.*, they are assuming credit risk), while 26 banks are buying credit protection from other parties (*i.e.*, they are hedging credit risk). A number of these banks enter into some credit derivatives as guarantor and other credit derivatives as beneficiaries.

To gain a better understanding of the nature and trends of the credit derivative activities that are concentrated in a small number of large banks, the agencies are proposing to expand the information they collect in several Call Report schedules. First, in Schedule RC–L, item 7, where banks currently report the notional amounts of the credit derivatives on which they are the guarantor and on which they are the beneficiary, these banks would be required to provide a breakdown of these notional amounts by type of credit derivative: credit default swaps, total return swaps, credit options, and other credit derivatives. Banks would also report the maximum amounts they would pay and receive on credit derivatives on which they are the guarantor and on which they are the beneficiary, respectively.

Second, in Schedule RC–R, Memorandum item 2, where banks currently present a maturity distribution of their derivative contracts that are subject to the risk-based capital requirements, credit derivatives would be added as a new category of derivatives with their remaining maturities reported separately for those that are investment grade and those that are subinvestment grade.

Third, in Schedule RI, Memorandum item 8, banks that reported average trading assets of $2 million or more for any quarter of the preceding calendar year currently provide a four-way breakdown of trading revenue by type of risk exposure. When banks that must complete Memorandum item 8 hold credit derivatives for trading purposes, they have to report the revenue from these derivatives in one of the four existing risk exposure categories, none of which is particularly suitable for reporting such revenue. Accordingly, the agencies propose to add a new risk exposure category for credit derivatives. This information would address the current weakness in the reporting of trading revenue, but, more importantly, it would enable the agencies to begin to identify the extent to which credit derivatives held for trading purposes contribute to a bank's trading revenue each period and over time.

Finally, the agencies propose to add a new Memorandum item to Schedule RI, "Income Statement," for the changes in fair value recognized in earnings on credit derivatives that are held for purposes other than trading, *e.g.*, to economically hedge credit exposures arising from nontrading assets (such as available-for-sale securities or loans held for investment[4]) or unused lines of credit. In this regard, the agencies reiterate that credit derivatives held for purposes other than trading should not be reported as trading assets or liabilities in the Call Report and the changes in fair value of such credit derivatives should not be reported as trading revenue. Consistent with the existing guidance in the Glossary entry for "Derivative contracts" in the Call Report instructions, credit derivatives held for purposes other than trading with positive and negative fair values should be reported in "Other assets" and "Other liabilities," respectively, on the Call Report balance sheet. Changes in fair value of derivatives held for purposes other than trading that are not designated as hedging instruments should be reported consistently as either "Other noninterest income" or "Other noninterest expense" in the Call Report income statement.

7. 1–4 Family Residential Mortgage Banking Activities

Mortgage banking activities, particularly those involving closed-end 1–4 family residential mortgages, have become an increasingly important line of business for many banks. Mortgage banking revenues are a significant component of earnings for these institutions and have been critical to the recent record earnings achieved by the banking industry as a whole. The growth of the industry's mortgage banking activities also reflects the central role that securitization mechanisms now play in the mortgage market.

However, these activities and the revenues they generate can be quite volatile over the business and interest rate cycle. Furthermore, a bank's mortgage banking operations can raise significant management and supervisory concerns related to credit, liquidity, interest rate, and operational risk. Understanding the importance of mortgage banking activities to an institution's financial condition and risk profile requires information about the transactional flows associated with residential mortgages. In this regard, the OTS has collected a large set of cash flow data on mortgage loan disbursements, purchases, and sales in the TFR for more than a decade.

After considering the OTS's reporting requirements as well as the types of information commonly disclosed by banking organizations with large mortgage banking operations, the agencies are proposing to add a new Schedule RC–P that would contain a series of items that are focused on closed-end 1–4 family residential mortgage loans, with data reported separately for first liens and junior liens. The new items would cover loans originated, purchased, and sold during the quarter, loans held for sale at quarter-end, and the year-to-date noninterest income earned from closed-

[4] Loans held for investment are loans that the bank has the intent and ability to hold for the foreseeable future or until maturity or payoff.

end 1–4 family residential mortgage banking activities. This income would consist of the portion of a bank's "Net servicing fees," "Net securitization income," and "Net gains (losses) on sales of loans and leases" (Schedule RI, items 5.f, 5.g, and 5.i) attributable to closed-end 1–4 family residential mortgage loans.

The proposed new items would be reported by all banks with $1 billion or more in total assets. In addition, banks with less than $1 billion in assets that are significantly involved in mortgage banking activities, as determined by their primary Federal regulator, could be directed by their regulator to report this mortgage banking information.

For loans originated, purchased, and sold during the quarter, banks would report the principal amount of these loans. Originations would include those loans for which the origination and underwriting process was handled by the bank or a consolidated subsidiary of the bank, but would exclude those loans for which the origination and underwriting process was handled by another party, including a correspondent or mortgage broker, even if the loan was closed in the name of the bank or a consolidated subsidiary of the bank. Such loans would be treated as purchases, as would acquisitions of loans closed in the name of another party. Sales of loans would include those transfers of loans that have been accounted for as sales in accordance with generally accepted accounting principles, *i.e.*, where the loans are no longer included in the bank's consolidated total assets. Loans held for sale at quarter-end would be reported at the lower of cost or fair value, consisent with their presentation in the Call Report balance sheet. The agencies request comment on the reporting approach discussed in this paragraph.

8. Income Statement Reclassification of Income From Annuity Sales

In the Call Report income statement (Schedule RI), banks currently report commissions and fees from sales of annuities (fixed, variable, and deferred) and related referral and management fees as a component of item 5.h.(2), "Income from other insurance activities."[5] Because annuities are deemed to be financial investment products rather than insurance, the agencies propose to revise the instructions for item 5.h.(2) and item 5.d, "Investment banking, advisory, brokerage, and underwriting fees and commissions," by moving the references to annuities in the former item to the latter item. This change in the income statement classification for commissions and fees from annuity sales and related income should affect no more than 25 percent of all banks based on the number of banks that currently report "Income from the sale and servicing of mutual funds and annuities" in Schedule RI, Memorandum item 2.

9. Investment Banking, Advisory, Brokerage, and Underwriting Income

As the caption for Schedule RI, item 5.d, "Investment banking, advisory, brokerage, and underwriting fees and commissions," indicates, this income statement item commingles noninterest income from a variety of activities. At present, approximately 25 percent of all banks report that they earn income from these activities. However, the percentage of institutions reporting such income varies significantly as a function of bank size; ranging from less than 12 percent of banks with less than $100 million in assets to more than 60 percent of banks with $1 billion or more in assets. The smaller banks that report income in Schedule RI, item 5.d, generally are not involved in investment banking and securities underwriting activities, but generate fees and commissions from sales of one or more types of investment products to customers. (In addition, as discussed in the preceding section, some banks generate commissions and fees from sales of annuities and the agencies are proposing to include such income in Schedule RI, item 5.d.)

In order to better understand the sources of banks' noninterest income, the agencies are proposing to distinguish between banks' investment banking (dealer) activities and their sales (brokerage) activities by splitting item 5.d (after moving commissions and fees from annuity sales and related income into this income statement category from item 5.h.(2) as discussed in the preceding section) into three separate items. As revised, item 5.d would be subdivided into items for "Fees and commissions from securities brokerage," "Fees and commissions from annuity sales," and "Investment banking, advisory, and underwriting fees and commissions." Securities brokerage income would include fees and commissions from sales of mutual funds and from purchases and sales of other securities and money market instruments for customers (including other banks) where the bank is acting as agent.

10. Certain Secured Borrowings

When banks raise funds from sources other than deposit liabilities, they may do so on a secured or unsecured basis. "Securities sold under agreements to repurchase" (Schedule RC, item 14.b) and "Federal Home Loan Bank advances" (Schedule RC–M, item 5.a) always represent secured borrowings, whereas "Subordinated notes and debentures" (Schedule RC, item 19) must be unsecured. However, amounts included in "Federal funds purchased (in domestic offices)" (Schedule RC, item 14.a) and "Other borrowings" (Schedule RC–M, item 5.b) can be secured or unsecured, but this cannot be determined at present from the Call Report. This uncertainty adversely affects the agencies' assessment of banks' liquidity positions. Moreover, as a bank's condition deteriorates, it usually encounters increasing difficulty in rolling over existing unsecured debt or borrowing additional funds on an unsecured basis. When an institution fails, the relative volume of secured and unsecured borrowings directly influences the loss to the FDIC-administered deposit insurance fund.

Thus, to better understand the structure of banks' nondeposit liabilities and the effect of these liabilities on liquidity, the agencies are proposing to add two items to Schedule RC–M in which banks would report the secured portion of their "Federal funds purchased" and their "Other borrowings." At present, only about one fifth of all banks have purchased federal funds and the same percentage of institutions have other borrowings. The use of these funding sources increases in relation to bank size, with 15 percent of banks with less than $100 million in assets reporting federal funds purchased and about 11 percent of such banks reporting other borrowings. The respective percentages for these two types of liabilities increase to nearly 53 and 64 percent for banks with $1 billion or more in assets.

11. Life Insurance Assets

Banks include their holdings of life insurance assets (*i.e.*, the cash surrender value reported to the bank by the insurance carrier, less any applicable surrender charges not reflected by the carrier in this reported value) in Schedule RC–F, item 5, "All other assets." If the carrying amount of a bank's life insurance assets included in item 5 is greater than $25,000 and exceeds 25 percent of its "All other

[5] However, commissions and fees from sales of annuities by a bank's trust department (or a consolidated trust company subsidiary) that are executed in a fiduciary capacity are to be reported in "Income from fiduciary activities" in Schedule RI, item 5.a, and income from sales of annuities to bank customers by a bank's securities brokerage subsidiary are reported in "Investment banking, advisory, brokerage, and underwriting fees and commissions" in Schedule RI, item 5.d.

assets," the bank must disclose this carrying amount in item 5.b.

In December 2004, the agencies issued an Interagency Statement on the Purchase and Risk Management of Life Insurance to provide guidance to institutions to help ensure that their risk management processes for bank-owned life insurance (BOLI) are consistent with safe and sound banking practices. Given the risks associated with BOLI, the Interagency Statement advises institutions that it is generally not prudent for an institution to hold BOLI with an aggregate cash surrender value that exceeds 25 percent of the institution's capital as measured in accordance with its primary Federal regulator's concentration guidelines. Although more than 40 percent of all banks report the amount of their life insurance assets in item 5.b under the current 25 percent of "All other assets" disclosure threshold, this reporting mechanism does not ensure that the agencies are able to monitor whether all banks holding life insurance assets are approaching or have exceeded the 25 percent of capital concentration threshold. As a consequence, the agencies are proposing to revise Call Report Schedule RC–F by adding a new item 5 in which all banks would report their holdings of life insurance assets and by renumbering existing item 5, "All other assets," as item 6. The agencies note that all savings associations are currently required to report the amount of their life insurance assets in the TFR (Schedule SC, lines SC615 and SC625).

12. Income From International Operations

In the FFIEC 031 version of the Call Report, banks with foreign offices whose international operations account for more than 10 percent of total revenues, total assets, or net income must complete Schedule RI–D, "Income from International Operations." Banks that must complete this schedule, of which there are less than 40, are directed to report estimates of the amounts of their income and expense attributable to international operations after eliminating intrabank accounts. These estimates should reflect all appropriate internal allocations of income and expense, whether or not recorded in that manner in the bank's formal accounting records. The agencies have found that the term "international operations" is subject to varying interpretations and has led to differences between what some banks report as international income in their internal management reports compared to the income reported in Schedule RI–D.

In order to obtain better income data about banks' foreign operations in a less burdensome manner, the agencies are proposing to revise the approach taken in Schedule RI–D. Instead of collecting income from "international operations," the agencies would begin to capture income from foreign offices as that term is currently defined for Call Report purposes. This revised approach should improve the usefulness of the Schedule RI–D data in assessing the significance of foreign office net income to banks' overall net income. The threshold for completing revised Schedule RI–D would continue to be based on a 10 percent test, but the total revenues, total assets, and net income used for this test would be based on foreign office revenues, assets, and net income, which should present a clearer standard than at present.

The data items in proposed revised Schedule RI–D, "Income from Foreign Offices," would for the most part mirror categories of income and expense reported in Schedule RI. The categories that would be used for foreign offices would include total interest income; total interest expense; provision for loan and lease losses; trading revenue; investment banking, advisory, brokerage, and underwriting fees and commissions; net securitization income; all other noninterest income; realized gains (losses) on held-to-maturity and available-for-sale securities; total noninterest expense; applicable income taxes; and extraordinary items and other adjustments, net of income taxes. The amounts reported in the preceding income and expense categories would be reported gross, *i.e.*, before eliminating the effects of transactions with domestic offices, which would be a change from the current Schedule RI–D approach under which amounts are reported net of intrabank transactions. Banks would also report the amount of any adjustments to pretax income for internal allocations to foreign offices for the effects of equity capital on overall bank funding costs before arriving at net income attributable to foreign offices before internal allocations of income and expense. To complete the remainder of revised Schedule RI–D, banks would next report the amount of internal allocations of income and expense applicable to foreign offices, followed by the amount of eliminations arising from the consolidation of foreign offices with domestic offices. Finally, banks would then report their consolidated net income attributable to foreign offices.

13. Scope of Securitizations To Be Included in Schedule RC–S

In column G of Schedule RC–S, "Servicing, Securitization, and Asset Sale Activities," banks report information on securitizations and on asset sales with recourse or other seller-provided credit enhancements involving loans and leases other than those covered in columns A through F. Although the scope of Schedule RC–S was intended to cover all of a bank's securitizations and credit-enhanced asset sales, as currently structured column G does not capture transactions involving assets other than loans and leases. As a result, securitization transactions involving such assets as securities, for example, have not been reported in Schedule RC–S. Therefore, the agencies propose to revise the scope of column G to encompass "All Other Loans, All Leases, and All Other Assets" to ensure that they can identify and monitor the full range of banks' involvement in and credit exposure to securitizations and asset sales. With fewer than 30 banks reporting data on securitizations in column G of Schedule RC–S at present, the proposed change in the scope of column G is expected to affect only a nominal number of banks.

C. Other Matters

1. Instructional Clarification for Servicing of Home Equity Lines

Banks report the outstanding principal balance of assets serviced for others in Schedule RC–S, Memorandum item 2. In Memorandum items 2.a and 2.b, the amounts of 1–4 family residential mortgages serviced with recourse and without recourse, respectively, are reported. Memorandum item 2.c covers all other financial assets serviced for others, but banks are required to report the amount of such servicing only if the servicing volume is more than $10 million. The instructions for Memorandum items 2.a and 2.b do not explicitly define "1–4 family residential mortgages." However, the caption for column A of the body of Schedule RC–S is "1–4 family residential loans," which the instructions for column A describe as closed-end loans secured by first or junior liens on 1–4 family residential properties as defined for Schedule RC–C, part I, items 1.c.(2)(a) and (b).

Some banks have asked whether Memorandum items 2.a and 2.b should include servicing of home equity lines of credit because such lines are also secured by 1–4 family residential properties. Information on securitizations and asset sales involving home equity lines is reported in column

B of the body of Schedule RC–S. To resolve the questions about the scope of Memorandum items 2.a and 2.b, the agencies are proposing to clarify the instructions by stating that these two items should include servicing of closed-end loans secured by first or junior liens on 1–4 family residential properties only. Servicing of home equity lines would be included in Memorandum item 2.c.

2. Officer Declaration and Director Attestation Requirements and Signatures

The Call Report must be signed by an authorized officer of the bank and attested to by not less than two directors (trustees) for state nonmember banks and three directors for national and State member banks. As required by statute, the officer declaration and director attestation address the correctness of the information reported in the Call Report. The statute also recognizes that banks are responsible for maintaining procedures to ensure the accuracy of this information.

Given the importance placed upon the quality of the information reported in the Call Report, the agencies believe that the chief executive officer and chief financial officer are the most appropriate officers within a bank to sign a declaration concerning the preparation of the report. Similarly, because of the duties normally carried out by the audit committee of the board of directors, audit committee members are the most appropriate directors to attest to the correctness of the report. The agencies recognize, however, that some banks may not have audit committees and that, at some banks, the same individual may perform the functions of both the chief executive officer and the chief financial officer.

The agencies plan to revise the existing officer declaration to require that the Call Report be signed by each bank's chief executive officer (or the person performing similar functions) and chief financial officer (or the person performing similar functions), who may be the same person. The revised declaration would also state that these officers are responsible for establishing and maintaining adequate internal control over financial reporting, including controls over regulatory reports. The director attestation would be revised to require that the directors who sign be members of the bank's audit committee. If the bank has no audit committee or if the committee has less than the two or three directors required to attest to the Call Report, other directors would sign the attestation. The revised director attestation would also indicate that the directors signing the attestation have reviewed the bank's Call Report.

III. Request for Comment

Public comment is requested on all aspects of this joint notice. As previously mentioned, the agencies particularly wish to encourage banks and other interested parties to comment on such matters as data availability, data alternatives, and reporting thresholds for each proposal for new or revised data. In addition, comments are invited on:

(a) Whether the proposed revisions to the Call Report collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections as they are proposed to be revised, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections 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.

Comments submitted in response to this joint notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

Dated: August 16, 2005.

Stuart E. Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, August 18, 2005.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 17th day of August, 2005.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 05–16680 Filed 8–22–05; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13013C

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13013C, Taxpayer Advocacy Panel (TAP) Membership Application.

DATES: Written comments should be received on or before October 24, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Taxpayer Advocacy Panel (TAP) Membership Application.

OMB Number: 1545–1788.

Form Number: 13013C.

Abstract: Form 13013C is an application to volunteer to serve on the Taxpayer Advocacy Panel (TAP), as an advisory panel to the Internal Revenue Service. The TAP application is necessary for the purpose of recruiting perspective members to voluntarily participate on the Taxpayer Advocacy Panel for the Internal Revenue Service. It is necessary to gather information to rank applicants as well as to balance the panels demographically.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, and business or other for-profit organizations.

Estimated Number of Respondents: 1,200.

Estimated Time per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 1,800.

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: August 17, 2005.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 05–16716 Filed 8–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–158138–04]

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 NPRM and temporary regulations, REG–128138–04, Information Returns by Donees Relating to Qualified Intellectual Property Contributions.

DATES: Written comments should be received on or before October 24, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION: *Title:* Information Returns by Donees Relating to Qualified Intellectual Property Contributions.

OMB Number: 1545–1932.

Regulation Project Number: REG–158138–04.

Abstract: The regulations are necessary to implement section 882 of the American Jobs Creation Act of 2004, which directs that regulations be issued regarding information returns by donees relating to qualified intellectual property contributions made after June 3, 2004.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 10,000.

Estimated Total Burden Hours: 2.

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: August 17, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–4610 Filed 8–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 941 TeleFile

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 941 TeleFile, Employer's Quarterly Federal Tax Return.

DATES: Written comments should be received on or before October 24, 2005 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at (*Larnice.Mack@irs.gov*).

SUPPLEMENTARY INFORMATION:

Title: Employer's Quarterly Federal Tax Return.

OMB Number: 1545–1509.

Form Number: 941 TeleFile.

Abstract: 941 TeleFile is used by employers to report by telephone payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. It may be used instead of filing Form 941.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and state local, or tribal governments.

Estimated Number of Responses: 920,000.

Estimated Time Per Response: 6 hours, 1 minute.

Estimated Total Annual Burden Hours: 5,704,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 16, 2005.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E5–4611 Filed 8–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Discontinuance of Non-Encrypted Options for IRS E-file for the 2006 Filing Season and Discontinuance of IRS-Provided Dial-Up and ISDN Lines

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final notice.

SUMMARY: Internal Revenue Service has provided the ability for *IRS e-file* program participants, who transmit directly to the Electronic Management System (EMS), to use only IRS approved encryption methods for the 2006 and later filing seasons. States that are retrieving their returns from the State Retrieval SubSystem (SRS) have been informed that they will do so via the EMS. This information pertains to *IRS e-file* software developers who currently prepare software packages for direct dial-up transmission to *IRS e-file* EMS sites for individual and business electronic returns and electronic tax documents, for states participating in IRS federal/state e-file, and also for transmitters who have dedicated leased lines. All trading partners (transmitters) who directly transmit to the IRS EMS must use either the IRS Internet solution (described below) or they must purchase and install in IRS facilities Federal Information Processing Standards (FIPS)-compliant and IRS-approved encrypted dedicated leased lines. This solution is not for the Forms 1120 and 990 series submitted directly to the Modernized e-file (MeF) platform through the Registered User Portal or through the Application-to-Application method. It is not for the Information Returns, such as 1098, 1099, etc. to the FIRE system. It is not for the filing of forms W–2 to the Social Security Administration. The IRS will attempt to ensure that the standards described in the encryption solution documentation are generally compliant to those adopted by other IRS e-commerce Internet interfaces.

DATES: During 2005, the IRS will phase down the number of its existing analog PSTN dial-up line services and its companion existing ISDN dial-up line services. The service will shut off connections to the analog dial infrastructure but will maintain lines temporarily to use if emergency conditions warrant. Full IRS-provided dial up infrastructure retirement is planned for 2006. The Internal Revenue Service will allow testing to its authorized e-file software developers through a current production 2005 Assurance Testing (ATS) facility for authorized e-file transmitters and software developers and to its 2006 ATS. The Internal Revenue Service encourages all current and prospective transmitters to begin using the new encryption methods as soon as possible.

Last 2005 Production/test transmissions to EMS on IRS-provided dial-up or ISDN lines:

- 1040 family, Electronic Tax Documents, State Returns for Individuals, State Acknowledgments—10/20/2005.
- 940, 941, 990, 1041, 1065, 1120, State Returns for Fiduciary Returns—12/29/05.

First 2006 Test transmissions to EMS via encrypted transmissions, using either (1) Internet Secure Sockets Layer (SSL) with TELNET/S protocol or (2) FIPS-compliant, trading-partner provided encrypted dedicated leased line—11/1/05.

Specific return test and production schedules will appear on the *IRS e-file* for tax professionals' page on the *irs.gov* Web site.

SUPPLEMENTARY INFORMATION: The Internet filing solution utilizes Secure Sockets Layer (SSL) Version 3.0 with 128-bit encryption keys in an operational mode using the current modem based file transmission commands within a client commonly termed "TELNET/S". The dedicated line encryption options must be compliant with Federal Information Processing Standards (FIPS) and approved by IRS. See below for more information. The Internet filing solution is a replacement of the current dial-up transmissions to the EMS. If the software package for direct filing to IRS EMS provides for Internet filing, it must include an interface to the IRS EMS Front-End Processing Systems' Encrypted Interface URL site.

Background

The Internal Revenue Service is charged with protecting taxpayer information using the most feasible, efficient and appropriate methods of protection available. Encrypting the transmissions between the trading partners and the IRS enhances and completes the existing security provided by the trading partners' systems and by the IRS security zone. Many IRS trading partners are subject to the Gramm-Leach-Bliley Act (GLBA) of 1999 and the Federal Trade Commission Privacy and Safeguards Rules, effective May 23, 2003. The methods the IRS offers in this announcement fully accommodate the requirements of the GLBA to encrypt the transmission of sensitive data. Encryption solutions began with the

Acceptance Testing System (ATS) in November 2004. For the 2005 filing season, many *IRS e-file* transmitters began successfully using the encrypted solutions, discontinuing use of non-encrypted transmissions whether by dedicated or dial-up links on the Public Switched Telephone Network (PSTN) for filers of Forms 940, 941, 1040, 1041, 1065, electronic tax documents, state Acknowledgment Files, and 990 family and 1120 family who are using the Electronic Management System.

Internet Transmission Filers

Recognizing that the majority of e-commerce and e-government applications are migrating to the Internet and using standard technologies, the Internal Revenue Service has provided the ability for authorized e-file Trading Partners to electronically transmit return information via an IRS-provided and certified secure Internet transport. Use of this secure Internet transport will require the use of Secure Sockets Layer (SSL) Version 3.0 using 128-bit encryption keys in an operational mode using the current modem based file transmission commands within a client commonly termed "TELNET/S". Note that EMS is unable to support the FTP protocol over the TELNET/S connection, but will continue to support Zmodem, YModem Batch, and XModem 1K protocols.

Dedicated Line Filers

Based on an analysis of various e-file trading partner capabilities, the Internal Revenue Service began permitting the use of a minimum 128-bit Federal Information Processing Standards (FIPS) approved but trading partner-chosen, procured, and installed method of encryption for use on trading partner-provided dedicated line(s), effective for the 2005 Filing Season. These dedicated lines' termination points may continue to be at the Martinsburg and Memphis EMS locations and may continue to use the existing TELNET and FTP protocol methods. Transmitters may install new encrypted lines, including ISDN, if they are approved by IRS. IRS sent to each trading partner with a dedicated line a revised annual Dedicated Leased Line Application on which the Trading Partner must identify the evaluation number referencing the chosen encryption method (*e.g.*, Brand, Model Number, FIPS 140-x, Evaluation Number xxx, and Evaluation Date). Means of termination points for encrypted transmissions for dedicated line users could vary, determined by user configuration. IRS will contact each dedicated leased line Trading Partner after receiving a revised dedicated leased line application. IRS is discontinuing support of dedicated lines' on IRS network equipment for filers of individual returns on November 1, 2005 and for business returns on December 30, 2005.

Cost Impacts and Taxpayer Burdens

The cost impact of the Internet SSL method to IRS e-filers is expected to be minimal. Support for SSL is provided at no extra cost in most Operating Systems available for the last five years, and is supported by the majority of Internet Service Providers (ISPs). The transmitters will incur the cost of the ISP, however, many of them already have and use an ISP. Currently the transmitters must pay for the long distance telephone call to the IRS front-end sites, and must make multiple calls if their transmission volume is high. Historic technologies also incur "dropped" calls. With use of the Internet, these occurrences should be reduced. Additionally, dial up access to ISPs are normally via local calls, including alternate phone numbers. Throughput transmission times to EMS have been very fast via the Internet.

ADDRESSES: Authorized *IRS e-file* Software Developers and dedicated leased line transmitters who have not requested the encryption solution documentation, should immediately e-mail requests with the "Doing-Business-As" Company name, ETIN, and EFIN to *efile.transmission.encryption@irs.gov.*

FOR FURTHER INFORMATION CONTACT: Questions will also be taken over the telephone. Call Carolyn Davis—202–283–0589 (not a toll-free number). You may write to Carolyn E. Davis, Senior Program Analyst, IRS, Electronic Tax Administration, OS:CIO:I:ET:S:TP, 5000 Ellin Road, Room C4–187, Lanham, MD 20706.

Dated: August 17, 2005.

Kim Cooper,

Acting Director, Strategic Services Division, Electronic Tax Administration.

[FR Doc: E5–4613 Filed 8–22–05; 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 Tuesday, September 13, 2005 from 2:30 p.m. to 3:30 p.m. ET.

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 Tuesday, September 13, 2005 from 2:30 p.m. to 3:30 p.m. ET 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: August 18, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 05–16717 Filed 8–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 2 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, September 20, 2005, from 1:30 p.m. to 3 p.m. e.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 Area 2 Taxpayer Advocacy Panel will be held Tuesday, September 20, 2005 from 1:30 p.m. to 3 p.m. e.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: August 18, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–4609 Filed 8–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 22, 2005.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien 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 7 Taxpayer Advocacy Panel will be held Thursday, September 22, 2005 from 12:30 p.m. Pacific time to 1:30 p.m. Pacific time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174 or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: August 18, 2005.

Martha Curry,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–4612 Filed 8–22–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Annual Thrift Satisfaction Survey

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before September 22, 2005.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or facsimile number (202) 906–6518, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Annual Thrift Satisfaction Survey.

OMB Number: 1550–0087.

Form Number: None assigned.

Regulation requirement: N/A.

Description: This survey is needed to help OTS evaluate the effectiveness of the services it provides to thrifts.

Type of Review: Renewal.

Affected Public: Federal Savings Associations.

Estimated Number of Respondents: 200.

Estimated Frequency of Response: Annually.

Estimated Burden Hours per Response: .25 hours.

Estimated Total Burden: 50 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: August 9, 2005.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. 05–16730 Filed 8–22–05; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register
Vol. 70, No. 162
Tuesday, August 23, 2005

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[HI 125–NBK; FRL–7946–7]

Revisions to the State of Hawaii State Implementation Plan, Update to Materials Incorporated by Reference

Correction

In rule document 05–15436 beginning on page 44852 in the issue of Thursday, August 4, 2005, make the following correction:

§52.620 [Amended]

On page 44855, in §52.620(c), in the table, in the second column "Title/subject," in the ninth line, "equipment testing" should read "equipment reporting".

[FR Doc. C5–15436 Filed 8–22–05; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
August 23, 2005

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Tiger Salamander, Central Population; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT68

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Tiger Salamander, Central Population

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are designating critical habitat for the Central population of the California tiger salamander (*Ambystoma californiense*) pursuant to the Endangered Species Act of 1973, as amended (Act). In total, approximately 199,109 acres (ac) (80,576 hectares (ha)) fall within the boundaries of the critical habitat designation. The critical habitat is located within 19 counties in California.

DATES: This rule becomes effective on September 22, 2005.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, will be available for public inspection, by appointment, during normal business hours, at the Sacramento Fish and Wildlife Office, 2800 Cottage Way, Sacramento, CA 95825 (telephone (916) 414–6600). The final rule, economic analysis, and map will also be available via the Internet at *http://sacramento.fws.gov* or by contacting the Sacramento Fish and Wildlife.

FOR FURTHER INFORMATION CONTACT: Arnold Roessler, Sacramento Fish and Wildlife Office at the address above (telephone (916) 414–6600; facsimile (916) 414–6712).

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 available 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 Act 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 473 species or 38 percent of the 1,253 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat.

We address the habitat needs of all 1,253 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.

We note, however, that the August 6, 2004, Ninth Circuit judicial opinion, *Gifford Pinchot Task Force v. United States Fish and Wildlife Service*) found our definition of adverse modification was invalid. In response to the decision, the Director provided guidance to the Service based on the statutory language.

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 (NOIs) 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 adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). 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

A physical description of the California tiger salamander, its taxonomy, distribution, life history, biology, habitat requirements and characteristics, dispersal and migration, and other relevant information is included in the Background sections of the final rule to list the California tiger salamander as a threatened species (69 FR 47212; August 4, 2004) and the proposed rule to designate critical habitat for the Central population of California tiger salamander (69 FR 48570; August 10, 2004). Additional relevant information may be found in the final rules to list the Santa Barbara County population of the California tiger salamander as endangered (65 FR 57242; September 21, 2000) and to list the Sonoma County population of the

California tiger salamander as endangered (68 FR 13498; March 19, 2003), and the final rule to designate critical habitat for the Santa Barbara population (69 FR 68568; November 24, 2004).

Previous Federal Actions

On August 10, 2004, we published in the **Federal Register** a proposed rule to designate critical habitat for the Central population of the California tiger salamander (referred to hereinafter as "CTS Central population") (69 FR 48570). On October 13, 2004, a complaint was filed in the U.S. District Court for the Northern District of California (*Center for Biological Diversity and Environmental Defense Council* v. *U.S. Fish and Wildlife Service et al.* (Case No. C–04 4324 FMS)), which in part identified the failure of designating critical habitat for the California tiger salamander in the central portion of its range. On February 3, 2005, the district court approved a settlement agreement between the parties that established an August 10, 2005, deadline for final designation of critical habitat for the California tiger salamander in the central portion of its range to be submitted to the **Federal Register** for publication. This final rulemaking is being made in order to meet the date established in accordance with the settlement agreement. For a discussion of other previous Federal actions regarding the California tiger salamander, please see the final rule to list the Central population of the California tiger salamander as a threatened species across its range (69 FR 47212, August 4, 2004). Other Federal actions regarding California tiger salamander prior to May 2004 are summarized in that final rule and are incorporated by reference.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed designation of critical habitat for the Central population of California tiger salamander in the proposed rule published on August 10, 2004 (69 FR 48570). We also contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule. In addition, we held five public meetings/workshops between January 2005 and March 2005, in the following California locations: Fresno, Merced, Modesto, Red Bluff, and Sacramento. During those public meetings we provided information on the designation, accepted written comments from the public, answered questions related to the designation, and provided information on schedules and contacts for additional information and subsequent open comment periods.

During the comment period that opened on August 10, 2004, and closed on October 12, 2004, we received comments directly addressing the proposed critical habitat designation: one from a peer reviewer, one from a Federal agency, six from Department of Defense agencies, one from a State agency, two from local government, and 34 from organizations or individuals. We received a single request for a public hearing prior to the deadline of September 24, 2004. Sacramento Fish and Wildlife Office staff met with the requester and discussed the Public Hearing process procedures and their client's critical habitat concerns regarding Central Valley Region Unit 1 in Yolo County, California. On March 9, 2005, we received a written withdrawal of the public hearing request (Service in litt. 2005; Neasham in litt. 2005).

During the comment period that opened on July 18, 2005, and closed on August 3, 2005, we received an additional 40 comments directly addressing the proposed critical habitat designation and or the draft economic analysis. Of these latter comments, three were from peer reviewers, one from a Federal agency, and 32 were from organizations or individuals. We received no additional State comments.

The comments we received were reviewed and the significant comments were grouped into general issues specifically relating to the proposed critical habitat designation for Central population of CTS, and are addressed in the following summary and incorporated into the final rule, as appropriate.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from 15 knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received a response from four of the peer reviewers. Peer review comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments

Comment: The peer reviewer agreed with our approach to the long term conservation of the species. The peer reviewer agreed that conservation of the range of habitat types in which a species occurs helps maintain local adaptations that are important for long term viability.

Our Response: In our proposal to designate critical habitat we identified those five approaches to conserve the Central population of the California tiger salamander, and we continue to apply these approaches in this final rule. To ensure the long term conservation of the species, Primary Constituent Elements (PCEs) were identified (see Primary Constituent Element section), and critical habitat units are designated consistent with these five principles.

Comment: The peer reviewer stated that the term, "rescue ponds" may be misapplied or misunderstood by the general public and suggested using the more easily understood term, "dispersal ponds" instead. Another reviewer suggested we specifically define the types of breeding habitat.

Our Response: We agree and have replaced that term throughout this final rule. The term "dispersal ponds," which is defined as ponds located away from the pond in which the adult or juvenile CTS was born, encompasses the definition of "rescue ponds." We have further refined our description of the primary constituent elements including breeding habitat in the final rule.

Issue 1: Department of Defense (DOD)

Comment: The Army has requested that their lands at Fort Hunter-Liggett be exempted from final critical habitat designation based on their Integrated Natural Resources Management Plan (INRMP) providing a benefit to the CTS in accordance with section 4(a)(3) of the Act. Section 318 of fiscal year 2004 National Defense Authorization Act (Pub. L. 108–136) amended section 4 of 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 us from designating as critical habitat any lands or other geographical areas owned or controlled by the DOD, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act, 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.

Our Response: We have determined that exclusion of Fort Hunter-Liggett from final critical habitat for CTS under section 4(a)(3) of the Act is appropriate.

Comment: The Army requested that areas identified for development in their Installation-wide Multispecies Habitat Management Plan for Former Fort Ord be excluded from critical habitat, in

accordance with section 4(b)(2) of the Act, because they believe that designation of critical habitat in those areas would result in economic costs and delays such that the benefits of exclusion would outweigh the benefits of inclusion. Specifically, they requested exclusion of the Bureau of Land Management (BLM) Office (approximately 5 hectares (ha)(13 acres(ac))) and Military Operations-Urban Terrain Facility (MOUT) (approximately 22 ha (54 ac)) parcels, which are surrounded by the approximately 6000-ha (15,000 ac) Natural Resource Management Area (NRMA). The NRMA will be managed by BLM with the primary management goals being conservation and enhancement of threatened and endangered species. They also requested exclusion of a two percent development allowance within the NRMA and of all existing paved roads and their associated shoulders.

Our Response: The BLM Office and MOUT parcels are relatively small areas which are already partially developed and are identified for additional development. It is our intent to avoid developed areas because they lack any PCEs in this designation. We have, therefore. not included these areas in critical habitat (see description of Central Coast Region, Unit 2).

The two percent development allowance within the NRMA would allow for up to two percent of areas with natural vegetation to be converted to buildings or other development-oriented uses, such as public access, grazing, police and fire training, and education and research. However, specific development plans do not exist. We cannot determine the effects of excluding unknown development location(s) and, therefore, we are not excluding them from critical habitat.

When determining critical habitat boundaries, we made every effort to avoid proposing the designation of developed areas such as buildings, paved areas, boat ramps, and other structures that lack PCEs for the Central population of the CTS. Any such structures inadvertently left inside proposed critical habitat boundaries are not considered part of the proposed unit. This also applies to the land on which such structures sit directly. Therefore, Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the species and/or PCEs in adjacent critical habitat.

Issue 2: Habitat and Species Specific Information

Comment: Habitat/species are not present on some selected lands that have been proposed to be designated as critical habitat.

Our Response: We believe that we used the best scientific and commercial information available in determining those areas essential for the CTS proposed critical habitat designation. We revised the proposed designation based on information received during the comment periods and have adjusted the designation accordingly. In this final designation, we used additional available information, such as detailed aerial imagery, to refine and map critical habitat (please refer to the Criteria Used to Identify Critical Habitat section). The areas designated as final critical habitat are occupied and have habitat features that are essential for the conservation of the species. Even though an area may be mapped as critical habitat, individual salamanders may or may not be present on any one parcel at all times because some lands may function solely as dispersal habitat for the species and individual salamanders would only be found on those lands during migration.

Comment: The Service has not clearly established that the proposed critical habitat areas are essential to the conservation of the CTS nor provided an explanation of why some other occupied areas are not essential. Also, the descriptions of the PCEs do not explain the basis of what is essential to species conservation.

Our Response: To provide for the long term conservation of the species, we identified those features essential to the conservation of the species (see Primary Constituent Elements section). The criteria used to designate critical habitat units is consistent with the following five conservation principles: (1) Maintaining the current genetic structure across the species range; (2) maintaining the current geographic, elevational, and ecological distribution; (3) protecting the hydrology and water quality of breeding pools and ponds; (4) retaining or providing for connectivity between breeding locations for genetic exchange and recolonization; and (5) protecting sufficient barrier-free upland habitat around each breeding location to allow for sufficient survival and recruitment to maintain a breeding population over the long term. We excluded any areas that do not contain one or more of the PCEs or that were determined not to be essential for the conservation of the species because: (1) The area is highly degraded and may not be restorable; (2) the area is small, highly fragmented, or isolated and may provide little or no long term conservation value; and (3) other areas within the geographic region were determined to be sufficient to meet the species needs for conservation.

Comment: One commenter stated that critical habitat for the species is not prudent and determinable.

Our Response: According to our regulations at 50 CFR 424.12, a designation of critical habitat is not prudent when one or both or the following situations exist: (1) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. In the final rule listing the Central population of the CTS as threatened (August 4, 2004; 69 FR 47212), we found that a designation of critical habitat was prudent and subsequently published a proposed rule to designate critical habitat on August 10, 2004 (69 FR 48570). We did not find any information indicating that designating critical habitat would increase risk to this species and the large body of scientific information available on the California tiger salamander provides a sufficient basis for us to define PCEs and designate critical habitat. Our reasoning is discussed in the final listing rule, and we believe this rationale is still applicable.

Comment: Several comments stated that we have not conducted surveys across most of the range of the species and haven't established what is critical habitat for the species. Several commenters asserted that we lack site-specific information (presence) across the range of the species, and more studies are needed to determine critical habitat for the species. One commenter requested that we postpone designating critical habitat until site-specific surveys are completed over the range of the species.

Our Response: We acknowledge that rangewide surveys over all areas that the species may be distributed have not been conducted. Nonetheless, we feel that we have sufficient peer-reviewed scientific and commercial data regarding the range, distribution, biology, and ecology of the Central population of the CTS to designate critical habitat. Given the large body of existing CTS scientific and commercial data, we feel that additional site-specific data is not necessary to designate critical habitat for the Central population of the CTS. We have used the best scientific and commercial data

that is available to determine what habitat features are essential for the conservation of this species. We feel that additional surveys at this time across the range of this species would be of little assistance in developing an improved understanding of the PCEs for this species.

Comment: One commenter stated that critical habitat is not needed to stop development because most CTS habitat is not threatened by development in the foreseeable future.

Our Response: The purpose of designating critical habitat is not to stop development, but to provide for the conservation of the species. The listing rule states that the species is threatened by development in the foreseeable future by a variety of factors including habitat destruction, degradation, and fragmentation due to urban development and conversion to intensive agriculture, hybridization with nonnative salamanders, inadequate regulatory mechanisms, nonnative predators, and pesticide drift, and CTS continues to be threatened by these factors.

Comment: One commenter stated that the species is already protected enough by private and Federal programs. A total of 15 percent of all extant occurrences (96 breeding locations) and 3,326,807 acres of habitat are protected by the Williamson Act or Food Security Zones.

Our Response: A critical habitat designation means that Federal agencies are required to consult with the Service on the impacts of actions they undertake, fund, or permit on designated critical habitat. While in many cases, these requirements may not provide substantial additional protection for most species, they do direct the Service to consider specifically whether a proposed action will affect the functionality of essential habitat to serve its intended conservation role for a species rather than to focus exclusively on whether the action is likely to jeopardize the species' continued existence. We agree, however, that even absent a critical habitat designation, Federal agencies are still required to consult on the impacts of their activities on listed species and their habitat.

Fifteen percent of CTS breeding locations is an insufficient amount of protected habitat for the conservation of the species, especially when more than the breeding ponds themselves need protection in order to conserve the species. To ensure the long term conservation of the species, we identified those features essential to the conservation of the species (see Primary Constituent Element section). The criteria we used to designate critical habitat units is consistent with the five-pronged approach identified earlier.

The California Land and Conservation Act, more commonly known as the Williamson Act, has been an agricultural land protection program since its enactment in 1965. In 1998, the California Legislature enhanced the Williamson Act with farmland security zone provisions. The Williamson Act is a voluntary program that offers tax incentives in exchange for voluntary restrictive land uses for agricultural and compatible open space uses under a minimum 10-year rolling contract with local governments. The food security zone provisions offer a tax reduction for a 20-year minimum rolling contract term. These contracted areas may offer some limited protection from habitat destruction. However, these contracts do not significantly provide for long term conservation of the species, as they may not be renewed by the property owner upon expiration and they can be canceled prior to the end of the contract term, based upon board approval and payment of a cancellation fee.

Comment: One commenter stated that critical habitat is not warranted because the species is extant across its historical range and half the range remains suitable.

Our Response: The term, "not warranted," applies to a petition to list the species as threatened or endangered and is a result that is possible for a petition finding. We do not have a "not warranted" option for a critical habitat designation. Although we agree that salamanders can still be found across their historical range and habitat remains suitable, the species continues to be threatened by destruction, fragmentation, and degradation of wetland and associated upland habitats due to urban development, conversion of habitats to intensive agriculture, predation by nonnative species, disease, agricultural and landscape contaminants, rodent and mosquito control, and hybridization with nonnative tiger salamanders now and in the foreseeable future.

Issue 3: Unit Designations

Comment: One commenter stated that the units need to be connected.

Our Response: We disagree that all critical habitat units need to be connected. We determined that the conservation of the species would be best served if the PCEs include dispersal habitat for CTS to meet the animal's requisite biological needs. For the proposed critical habitat designation, we developed a specific strategy for determining which areas would be considered critical habitat. Part of that strategy was to connect separated CTS records based on the known dispersal capabilities and continuous habitat between occurrences and/or breeding locations. Connecting large areas of unknown occupancy which may or may not support CTS, or the PCEs, would not materially contribute to the conservation of the species. For more information, please see the Criteria and Methodology sections.

Comment: Several commenters stated that the unit descriptions are incomplete and, in some cases, inaccurate.

Our Response: In response to information provided during the two public comment periods and the information received during the public meeting and workshops, we made corrections to two of the proposed critical habitat unit descriptions. We feel that we have provided sufficient information for the public to generally understand the location of each unit and are ready to assist individuals with any additional information requests on the locations of the critical habitat units. For further information on this designation and specific units, please contact the Sacramento Fish and Wildlife Office (see **ADDRESSES** section above).

Comment: One commenter stated that the PCE descriptions are unclear.

Our Response: In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features, the PCEs, that are essential to the conservation of the species and that may require special management considerations and 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 comment letter did not specify what was unclear about the PCEs described in the proposed rule. For a full description of each of the PCEs, please refer to the Primary Constituent Element section below.

Issue 4: Social and Economic Costs/ Regulatory Burden

Comment: Several commenters asserted that critical habitat results in an increased regulatory burden, increased landowner costs, and restricts land uses and property rights.

Our Response: The economic analysis identifies the costs which accrue as a result of the designation. These costs will be incurred when a Federal approval or permit is required, or Federal funds are involved with a project proposed on private property, the critical habitat designation poses no regulatory burden for private landowners, and in particular, should not affect farming and ranching activities on private lands. Routine ranching activities are also exempt from take under the 4(d) rule at 50 CFR 17.43(c).

While the designation of critical habitat does not itself result in the regulation of non-federal actions on private lands, the listing of the Central population of California tiger salamander under the Endangered Species Act may affect private landowner's actions. Actions which could result in take of California tiger salamanders (*e.g.*, ground disturbing activities such as soil compaction or soil remediation activities) require authorization for take following consultation under Section 7 or an incidental take permit under section 10 of the Act. Because the Central population of CTS has been listed since 2004, proposed actions on private lands that require Federal authorization or funding that may affect the listed entity already undergo consultation under Section 7 to ensure that their actions are not likely to jeopardize the continued existence of the species. Future consultations involving private lands will also analyze the effect of the proposed action on designated critical habitat when a Federal nexus exists.

Comment: One commenter stated that all critical habitat lands, not just habitat, are now subject to Service jurisdiction.

Our Response: Federal agencies have the responsibility to consult with us if a Federal action may affect a federally-listed species even absent critical habitat designation for that species. This requirement exists for all lands. We also determine whether a proposed project will adversely modify or destroy any designated critical habitat. Private individuals also share the same responsibility but may need to seek authorization for incidental take under section 10 of the Act.

Comment: One commenter stated that critical habitat designation burdens landowners with determining if their lands have PCEs and that the costs of determining PCEs on private lands should be undertaken by the Service. Other commenters stated that the designation of critical habitat means that regulatory agencies will oversee agricultural and ranching practices, that critical habitat will impact housing development by delaying the development process and thereby increase costs, and that the designation of critical habitat will increase delays in permit processing.

Our Response: Designation of critical habitat in areas occupied by the species does not necessarily result in a regulatory burden above that already in place due to the presence of the listed species. The Service will work with private landowners to identify activities and modifications to activities that will not result in take, to develop measures to minimize the potential for take, and to provide authorizations for take through sections 7 and 10 of the Act. One intention of critical habitat is to inform people of areas that contain the features that are essential for the conservation of the species. We encourage landowners to work in partnership with us to develop plans that allow their land management and development practices to proceed in a manner consistent with the conservation of listed species. The California tiger salamander is already a federally-listed species, and as such, development projects that may result in take of the species are already required to consult with the Service under Section 7 or Section 10 of the Act. Assuming a federal nexus exists, designation of CH will not cause any additional delays to housing developments due to consultation requirements.

Comment: A commenter stated that sections 7 and 10 of the Act already sufficiently protect the species. Another commenter stated that the U.S. Army Corps of Engineers (Corps) already has jurisdiction over vernal pools that are used as CTS breeding ponds, so the Clean Water Act (CWA) already protects the species and its habitat.

Our Response: Sections 7 and 10 of the Act function to ensure activities that result in incidental take, or that may adversely affect the species, will not jeopardize the existence of the species, while the larger role of critical habitat functions to conserve the species. The Act requires Federal agencies to consult with us on actions they undertake, fund, or permit on designated critical habitat to ensure that those actions do not adversely modify the designated critical habitat. Although these requirements may not provide substantial additional protection for many species, they direct the Service to consider whether or not a proposed action would affect the functionality of critical habitat to serve its intended conservation role for a species rather than to focus exclusively on whether or not the proposed action would be likely to jeopardize the species' continued existence. We agree that even absent a critical habitat designation, Federal agencies are still required to consult on the effects of their activities on listed species. Finally, the Corps may take jurisdiction over some of the aquatic breeding habitat of the CTS, such as some vernal pools. However, not all CTS breeding habitat occurs on Corps jurisdictional wetlands. Additionally, the CTS is a terrestrial species that spends most of its adult life in the surrounding uplands that are generally not under the jurisdiction of the Corps. Therefore, we conclude that regulation of the discharge of fill into waters of the United States by the Corps under Section 404 of the CWA is inadequate to protect the Central population of CTS and its habitat.

Comment: Many commenters claimed the Service violated the Administrative Procedure Act and the Act because we should have prepared an economic analysis first and then proposed critical habitat.

Our Response: Pursuant to the Act, and clarified in our implementing regulations at 50 CFR 424.19, we are required to, "after proposing designation of [a critical habitat] area, consider the probable economic and other impacts of the designation upon proposed or ongoing activities." The purpose of the draft economic analysis is to determine and evaluate the potential economic effects of the proposed designation. In order to develop an economic analysis of the effects of designating critical habitat, we need to have identified an initial proposal for the designation of critical habitat. Following the publication of our proposed designation of critical habitat for the CTS, we developed a draft economic analysis of the proposed designation that was released for public review and comment. The public was allowed 60 days to comment on the proposed designation and an additional 17 days to comment on both the draft economic analysis and proposed designation.

Issue 5: Notification and Comment Period Comments

Comment: Several commenters stated that all private landowners were not notified about the proposed designation of critical habitat, that additional public

meetings are needed, and that the public was not given enough opportunity to comment because the draft economic analysis was not published at the same time or before the proposed rule to designate critical habitat. Another commenter stated that the Service admits that the proposed critical habitat was made without sufficient public participation and without sufficient scientific rigor and review, so the rule should be withdrawn until evidence is presented regarding species conservation requirements.

Our Response: The proposed critical habitat designation was published in the **Federal Register** on August 10, 2004 (69 FR 48570), and we accepted comments from all interested parties for a 60-day comment period, until October 12, 2004. On July 18, 2005, we reopened the comment period for 17 days and made available the draft economic analysis (70 FR 41183). We held five public workshops to provide information on the CTS, and at those workshops, we discussed opportunities for the public to comment and provide input and information. We solicited comments from peer reviewers on the proposed critical habitat designation for the CTS. We received general support from experts in the fields of ecology, conservation, genetics, taxonomy, and management reviewers of the proposed rule. In addition, we are required to base critical habitat designations on the best available scientific and commercial data available to us, to consider those physical and biological features that are essential to the conservation of the species, and to consider whether such areas may require special management considerations and protection. Our definition and explanation of the PCEs was peer reviewed and the results of the review did not indicate that our definition or description of the PCEs was lacking. Additionally, we have revised our PCEs to more accurately and/or precisely identify those physical and biological features essential to the species.

Comment: The Service should draft a recovery plan for the species before critical habitat is proposed to be designated.

Our Response: Section 4 of the Act requires us to designate critical habitat at the time of listing to the maximum extent prudent and determinable. While we agree that a recovery plan is a useful tool to assist us with determining which areas contain the habitat features that are essential for the conservation of a species, we are unable to postpone the final designation pending completion of a recovery plan.

Issue 6: Property Rights

Comment: The proposed critical habitat designation decreases land values.

Our Response: We have finalized our draft economic analysis of the impact of critical habitat designation by incorporating all substantive comments received during the public comment periods (See Economic Analysis section).

Comment: The Service needs to provide more information on which agricultural practices are allowable, and when consultation with us would be necessary owing to crop changes.

Our Response: Some farming practices benefit salamanders while other practices may adversely affect salamanders. For example, drawing down pond water for frost protection can conflict with CTS biological needs; however, creating additional new ponds may benefit CTS if the ponds stay inundated long enough during the period of juvenile metamorphosis (approximately 12 weeks), with active, regular control of nonnative species. Activities carried out, funded, or authorized by a Federal agency (*i.e.*, activities with a Federal nexus) require consultation pursuant to section 7 of the Act if they may affect a federally listed species and/or its designated critical habitat. Our experience with consultations on CTS is that few agricultural activities have involved a Federal nexus and thus have not required a consultation under section 7 of the Act. In regard to grazing, we do not foresee any change in the ability of private landowners to graze their property as a result of this designation due to the establishment of the special 4(d) rule at 50 CFR 17.43(c). In addition, we anticipate that many activities, including grazing, presently occurring in areas designated as critical habitat can be managed to be compatible with the needs of CTS and its habitat. We addressed many agricultural issues during the public workshops and hearings that we held during the process of listing the species. Any interested parties are welcome to write us or call us (see **ADDRESSES** section) during regular business hours to have us answer specific questions regarding agricultural practices as they relate to CTS conservation.

Comment: The Service should compensate private landowners for taking because critical habitat is designated.

Our Response: The designation of critical habitat does not mean that private lands would be taken by the Federal government or reasonable uses would not be allowed. We believe that, in accordance with Executive Order 12630, this designation of critical habitat for the CTS will not have significant takings implications. We determined that: (1) The designation would result in little additional regulatory burden above that currently in place due to the species being federally listed because the majority of the designation is occupied by the species, and (2) the designation of critical habitat will not affect private lands in which there is not a Federal nexus. We do not anticipate that property values, rights or ownership will be significantly affected by the critical habitat designation.

Issue 7: Mapping

Comment: Several commenters stated that the proposed designation of critical habitat goes overboard, includes "all geographic area," is poorly defined, and should exclude nonhabitat areas from the designation of critical habitat. Other commenters stated that the Service made errors in mapping open spaces and developed areas as critical habitat and that we used political boundaries as a basis for critical habitat units.

Our Response: Of the estimated 936,204 ac (378,882 ha) of California tiger salamander habitat, we have designated 199,109 ac (80,576 ha). In our designation, we did not designate all the areas where California tiger salamander are found, but instead focused on areas where there are high concentrations of known occurrences and the habitat is likely to persist in the future. In this designation, not all geographic areas are critical habitat if those areas do not possess any the PCEs as we identified in the proposed rule and this final rule. We feel that we have clearly defined and described the three PCEs. All designated critical habitat is occupied and contains at least one of the three PCEs. Based on the clear PCE definitions, we believe that landowners can identify the areas that contain the PCEs. We stated in the proposed and final rules that areas that do not have PCEs are not considered to be critical habitat, including roads, buildings, paved areas, etc.

Comment: The Service used poor data and needs to do a better job mapping areas that do not contain PCEs, such as buildings, roads, parking lots. These mapping errors and inaccuracies need to be corrected, and the Service should better describe which areas are and are not critical habitat.

Our Response: In the proposed rule and this final rule, we used the best scientific and commercial data available to develop critical habitat for the species

and took into account the many comments that we received in developing the final rule. We stated in the proposed rule and again in this final rule that we could not map critical habitat in sufficient detail to exclude each and every developed area or other areas that are unlikely to contain the PCEs. However, when determining critical habitat boundaries, we made every effort to avoid designating developed areas such as buildings, paved areas, boat ramps, and other structures that lack PCEs for the Central population of the California tiger salamander. Any such structures inadvertently left inside proposed critical habitat boundaries are not considered part of the unit. This also applies to the land on which such structures sit directly. Therefore, Federal actions limited to these areas would not trigger section 7 consultations, unless they affect the species and/or primary constituent elements in adjacent critical habitat.

Comment: A number of commenters identified specific areas that they thought should not be designated as critical habitat.

Our Response: Where site-specific documentation was submitted to us providing a rationale as to why an area should not be designated critical habitat, we evaluated that information in accordance with the definition of critical habitat pursuant to section 3(5)(A) of the Act and the provisions of section 4(b)(2) of the Act. We evaluated the parcels to determine whether or not modifications to the proposal were warranted. We further examined the proposed critical habitat areas and refined the boundaries to exclude those areas that did not, or were not likely to, contain the PCEs for the species, wherever technically feasible. Please refer to the Summary of Changes from the Proposed Rule section for a more detailed discussion.

Comment: The Service violated the Act by not narrowly defining critical habitat.

Our Response: We believe that we have followed the Congressional intent of the Act by designating critical habitat to the maximum extent prudent and determinable for California tiger salamander based on the best scientific and commercial data available. We are required to identify critical habitat "by specific limits using reference points and lines as found on standard topographic maps of the area" (50 CFR 424.12(c)). We have delineated the boundaries of the critical habitat units in this rule based on the best scientific and commercial data available. The scale at which we mapped the extent of critical habitat was based on the availability and accuracy of aerial photography and GIS data layers used to develop the designation. In drawing our lines for the proposed rule, we attempted to exclude areas that do not contain essential occurrences of the species and habitat as defined by the PCEs. On the basis of information obtained through public comments and updated imagery and GIS data layers, we have been able to refine the boundaries of critical habitat during the development of this final rule. However, due to the limitations of our mapping scale, we were not able to exclude all areas that do not contain the PCEs. We have determined that existing manmade features and structures, such as buildings, roads, railroads, airports, runways, other paved areas, lawns, and other urban landscaped areas are not likely to contain one or more of the PCEs. Because activities in these areas are unlikely to affect PCEs (*i.e.*, critical habitat for the species), a consultation under section 7 of the Act would not be required.

Comment: The proposed designation should be withdrawn until the consequences of the *Gifford Pinchot* court decision are appropriately codified, after the Service conducts a formal rulemaking process.

Our Response: We are under an order to designate critical habitat. The Director has issued guidance for the evaluation of critical habitat effects when the Service consults which is based on the language of the statute.

Comment: The Service lacks evidence for the scale and extent of what is essential for the conservation of the species.

Our Response: To ensure the long term conservation of the species, we identified those features essential to the conservation of the species (see Primary Constituent Element section). The criteria used to designate critical habitat units is consistent with the following five conservation principles: (1) Maintaining the current genetic structure across the species range; (2) maintaining the current geographic, elevational, and ecological distribution; (3) protecting the hydrology and water quality of breeding pools and ponds; (4) retaining or providing for connectivity between breeding locations for genetic exchange and recolonization; and (5) protecting sufficient barrier-free upland habitat around each breeding location to allow for sufficient survival and recruitment to maintain a breeding population over the long term. We excluded areas that do not contain one or more of the PCEs or did not contain the habitat features essential for the conservation of the species because: (1) The area is highly degraded and may not be restorable; (2) the area is small, highly fragmented, or isolated and may provide little or no long term conservation value; and (3) other areas within the geographic region were determined to be sufficient to meet the species needs for conservation. The Act directs us to identify specific areas, both occupied and unoccupied by a listed species, that have the features essential to the conservation of the species and that may require special management. Using the best available scientific and commercial information, we have determined those areas that would best conserve the species in the long term. Those areas are described in terms of PCEs and habitat features and are provided in this final rule.

Comment: The primary constituent elements are arbitrary, overly broad, and do not provide for defensible critical habitat boundaries.

Our Response: We have determined the habitat features (PCEs) to be essential for the conservation of the species. To ensure the long term conservation of the species, we identified those features essential to the conservation of the species (see Primary Constituent Elements section). The criteria used to designate critical habitat units is consistent with the following five conservation principles: (1) Maintaining the current genetic structure across the species range; (2) maintaining the current geographic, elevational, and ecological distribution; (3) protecting the hydrology and water quality of breeding pools and ponds; (4) retaining or providing for connectivity between breeding locations for genetic exchange and recolonization; and (5) protecting sufficient barrier-free upland habitat around each breeding location to allow for sufficient survival and recruitment to maintain a breeding population over the long term. We did not designate areas that did not contain one or more of the PCEs or that were not essential for the conservation of the species because: (1) The area is highly degraded and may not be restorable; (2) the area is small, highly fragmented, or isolated and may provide little or no long term conservation value; and (3) other areas within the geographic region were determined to be sufficient to meet the species needs for conservation.

Comment: The Service failed to demonstrate that special management considerations are needed to justify a critical habitat designation.

Our Response: Critical habitat is defined in section 3(5)(A) of the Act as: (i) the specific areas within the geographic area occupied by the species,

at the time it is listed in accordance with the Act, on which are found those physical or biological features that are (I) essential to the conservation of the species and (II) that may require special management considerations or protections; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon determination that such areas are essential to the conservation of the species. In our determination of critical habitat for CTS, we have identified those areas of occupied habitat that contain those features essential to the conservation of the species. Areas that may require special management or protection have also been identified (see Critical Habitat Designation section below).

Issue 8: 4(d) Rule

Comment: The 4(d) rule should include public lands like East Bay Regional Park District, not just private lands.

Our Response: The final rule listing the CTS as threatened (69 FR 47212) finalized the 4(d) rule for the species rangewide, which exempts existing routine ranching activities. Under the 4(d) rule, take of the threatened Central population of CTS caused by existing routine ranching activities on private or Tribal lands for activities that do not have a Federal nexus would be exempt from section 9 of the Act. Federal agencies have the responsibility to consult with the Service if a Federal action may affect a federally-listed species because of their section 7 responsibilities under the Act.

Issue 9: State Comments

We received one comment from the State of California during the initial comment period. We did not receive any additional State comments during the second comment period, which opened on July 18, 2005 (70 FR 41183).

State Comment: The California Department of Transportation provided information regarding labeling errors on the **Federal Register** map for Unit 4 of the Central Coast Region.

Our Response: We have revised the **Federal Register** maps to reflect changes in the labeling.

Economic Analysis

Comment: Critical habitat will increase transaction costs, slow sales, and reduce rental and developmental incomes.

Our Response: To the extent that they are documented, the economic analysis captures costs related to the designation including those enumerated by the commenter.

Comment: The proposed rule to designate critical habitat for CTS violates Executive Order 13211. Specifically, the Service needs to exclude energy producing lands or prepare a Statement of Energy Effects and include those effects in the EA and discuss benefits and costs to the species and energy production.

Our Response: The draft economic analysis considers potential impacts on the energy section. This analysis examines planned power production facilities within the study area for proximity to proposed critical habitat. It finds the sites fall into one of two categories: either they are too far from critical habitat to be affected, or are within or near habitat but have already completed the environmental mitigation process. In both cases, the incremental impacts of designation are zero; the regulation is not expected to impact energy production. This final rule to designate critical habitat for the Central population of the CTS is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required. For more details, please see the draft economic analysis, section "V.2 Economic Impacts on the Energy Industry."

Comment: Several comments stated that the DEA underestimated the delay in project completion resulting from Section 7 consultation.

Our Response: Delay times resulting from Section 7 consultation were calculated based on a review of available Biological Opinions. Delay time was calculated based on the average number of days from submission of a completed application to the date of a final decision.

Comment: Several comments stated that mitigation costs in Alameda, Contra Costa and Fresno Counties are higher than the figure used in the DEA.

Our Response: Mitigation costs were derived from a survey of mitigation banks, developers and consultants familiar with the permitting process. We believe that these data represent the best available information on mitigation costs in affected counties.

Comment: Several comments stated that the avoidance and mitigation requirements and mitigation costs used in the DEA are inconsistent with the recent *Gifford Pinchot* decision.

Our Response: Avoidance and mitigation requirements and mitigations costs used in the DEA were based on interviews with those familiar with the permitting process as well as a comprehensive examination of the Service's consultation history. The Ninth Circuit has recently ruled ("Gifford Pinchot", 378 F.3d at 1071) that the Service's regulations defining "adverse modification" of critical habitat are invalid. As a result, there is some uncertainty involved in considering the costs due to the fact that the consequences of designation are more difficult to predict as Service cannot rely on decades of factual information based on prior experience.

Comment: One comment stated that the DEA failed to provide a balanced assessment of economic benefits and costs in relation to the proposed critical habitat designation. The commenter also included a general list of potential benefits that may be associated with the designation of critical habitat and suggested that the Service should include such effects in its economic analysis.

Our Response: Section 4(b)(2) of the Act requires the Secretary to designate critical habitat based on the best scientific data available after taking into consideration the economic impact, and any other relevant impact, of specifying any particular area as critical habitat. The Service's approach for estimating economic impacts includes both economic efficiency and distributional effects. The measurement of economic efficiency is based on the concept of opportunity costs, which reflect the value of goods and services foregone in order to comply with the effects of the designation (e.g., lost economic opportunity associated with restrictions on land use). Where data are available, the economic analyses do attempt to measure the net economic impact. However, no data was found that would allow for the measurement of such an impact, nor was such information submitted during the public comment period.

Most of the other benefit categories submitted by the commenter reflect broader social values, which are not the same as economic impacts. While the Secretary must consider economic and other relevant impacts as part of the final decision-making process under section 4(b)(2) of the Act, the Act explicitly states that it is the government's policy to conserve all threatened and endangered species and the ecosystems upon which they depend. Thus the Service believes that explicit consideration of broader social values for the species and its habitat, beyond the more traditionally defined economic impacts, is not necessary as Congress has already clarified the social importance.

The Service notes that as a practical matter, the difficulty in being able to

develop credible estimates of such values as they are not readily observed through typical market transactions and can only be inferred through advanced, tailor-made studies that are time consuming and expensive to conduct. The Service currently lacks both the budget and time needed to conduct such research before meeting our court-ordered final rule deadline. In sum, the Service believes that society places the utmost value on conserving any and all threatened and endangered species and the habitats upon which they depend and thus needs only to consider whether the economic impacts (both positive and negative) are significant enough to merit exclusion of any particular area without causing the species to go extinct.

Comment: Several comments noted that demographic projections used in the DEA are inconsistent with certain development projects that are either planned or under construction.

Our Response: The projections used in the analysis are believed by CRA to be the best available. In some cases, they may overlook large, individual development projects which are difficult to forecast. Where such projects stand a reasonably foreseeable chance of being built, the FEA has been modified to reflect their presence. Additionally, the FEA incorporates up-to-date projections from the Association of Bay Area Governments which were not available upon publication of the DEA.

Comment: Several comments asked that results be presented at a finer level of detail than the census tract.

Our Response: The census tract is the smallest level of geographical distinction for which data are readily available and credible results can be obtained. Finer levels of detail give a false sense of precision which is not supported by the data or model.

Comment: Several comments stated that the DEA did not adequately consider impacts on agricultural landowners.

Our Response: The DEA calculates impacts on land values according to the impact of critical habitat on the likelihood and profitability of urban development.

Comment: One comment stated that the analysis only considered Phase I of the SMUD Cosumnes power plant expansion, while ignoring the effects of Phase II.

Our Response: The Phase I and Phase II of the Cosumnes power plant have been removed from the designation based the PCEs not being present and the area not meeting our criteria for designation (see "Criteria Used To Identify Critical Habitat").

Comment: A commenter has asserted that there may be a conflict of interest, because we have contracted with Dr. David Sunding and CRA International to develop the economic analysis of this designation of critical habitat for the Central population of the CTS because he previously conducted a study of critical habitat economics funded by the building industry and other commercial interests. The commenter suggests that the use of an economic model originally developed in the course of this study is inappropriate.

Our Response: We do not believe that hiring Dr. David Sunding and CRA International to conduct the economic impact analysis of this critical habitat designation, considering his prior receipt of research funding from the building industry, establishes a conflict of interest. CRA International performed a conflict check prior to initiating work on the current study and no conflicts were discovered. Neither CRA nor Dr. Sunding holds any financial interests that would be benefited as an outcome of the analysis and subsequent critical habitat designation.

Summary of Changes From Proposed Rule

In preparing the final critical habitat designation for the Central population of the CTS, we reviewed comments received on the proposed designation. In addition to minor clarifications in the text pertaining to the geographic regions, we made changes to our proposed designation, as follows:

(1) We revised the proposed critical habitat units based on comments and biological information received during the public comment periods.

(2) Under section 4(a)(3) of the Act, we did not designate DOD lands that have approved INRMPs in place which benefit the species. Under sections 3(5)(a) and 4(b)(2) of the Act, we excluded properties with adequate management plans that cover the CTS and its habitat. For more information, refer to "Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act" below.

(3) We adjusted the boundaries of the proposed units as feasible to remove areas that do not contain the primary constituent elements or were included in the proposed rule as a result of a mapping error.

(4) Collectively, we excluded or removed a total of approximately 183,556 ac (74,284 ha), of land from this final critical habitat designation.

(a) The San Francisco Bay National Wildlife Refuge (East Bay Region, Unit 4) is excluded from critical habit since it is actively managed for the conservation of the species. The San Luis National Wildlife Refuge Complex (Central Valley Region, Units 12 and 13) is also excluded from critical habitat (see "Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act" below) for the same reason.

(b) Fort Hunter-Liggett (Central Coast Region, Unit 5a and 5b), portions of Camp Parks (East Bay Region, Unit 18), and the Naval Weapons Station at Concord (Central Valley Region, Unit 14) are excluded from critical habitat units due to reasons of national security and training mission readiness purposes. The Naval Weapons Station at Concord has also been identified as an area with increased economic costs and would be covered under the Draft East Contra Costa Habitat Conservation Plan should this military facility be subject to base closure.

(c) California Department of Fish and Game's Stone Corral Ecological Reserve, Tulare Co. (Southern San Joaquin, Units 4 and 5b), and Calhoun Cut Ecological Reserve in Solano Co. (portion of Central Valley, Unit 2) are excluded from critical habitat based on management plans and management practices being implemented for the areas. Additionally, a portion of East Bay Region Unit 10 was excluded based on an existing management plan for portions of the unit.

(d) Central Valley Units 14, 15, 16 and portions of Unit 17 (Contra Costa Co.) were excluded based on the Draft East Contra Costa Habitat Conservation Plan.

(e) The Southern San Joaquin Units 1, 2 and 3, Central Valley Unit 3, and East Bay Unit 10 were refined based on information received.

Please refer to Table 1 for the amount of area changed from proposed to final. For a detailed discussion of all exclusions and exemptions, please refer to "Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under Section 4(b)(2) of the Act" below.

(5) We adjusted the Geographic Region boundary as a result of published scientific literature (Shaffer *et al.* 2004). The boundary identified in the proposed rule was based on the unpublished manuscript (Shaffer *et al.* unpublished data) from which the final published literature was developed. The resulting change in the boundary adjusted the number of units in the Central Valley Region, the East Bay Region, and the Central Coast Region. Unit 1 of East Bay Region (as identified in the proposed rule) is now Unit 19 of the Central Valley Region and Unit 4 of Central Coast Region (as identified in the proposed rule) is now Unit 17 of the East Bay Region.

TABLE 1.—PROPOSED AND FINAL CRITICAL HABITAT CHANGES

Geographic region	Federal lands		State lands		Other lands		Total	
	ac	ha	ac	ha	ac	ha	ac	ha
Central Valley:								
Proposed	14,708	5,952	2,416	978	172,013	69,611	189,137	76,541
Final	17	7	0	0	97,028	39,273	97,045	39,280
Southern San Joaquin:								
Proposed	0	0	5,386	2,180	27,239	11,023	32,625	13,203
Final	0	0	0	0	20,293	8,212	20,293	8,212
East Bay:								
Proposed	691	280	9,350	3,784	105,831	42,828	115,872	46,892
Final	20	8	2,767	1,120	66,086	26,744	68,873	27,872
Central Coast:								
Proposed	23,633	9,564	110	45	21,288	8,615	45,031	18,224
Final	0	0	110	45	12,788	5,175	12,898	5,220
Grand Totals:								
Proposed	39,032	15,796	17,262	6,986	326,371	132,078	382,665	154,860
Final	37	15	2,877	1,164	196,195	79,397	199,109	80,576
Change	39,002	15,781	14,385	5,822	130,176	52,681	183,556	74,284

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or 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 carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow government or public access to private lands.

To be included in a critical habitat designation, the habitat within the area occupied by the species must first have features that are "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)).

Habitat occupied at the time of listing may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2) of the Act.) 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 at the time of listing. An area currently occupied by the species but not known to be occupied at the time of listing will likely contain those features essential to the conservation of the species and, therefore, included in the critical habitat designation.

The Service's Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271); and Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658); and the associated Information Quality Guidelines issued by the Service provide criteria, establish procedures, and provide guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. They require Service 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 is generally the listing package for the species. Additional information sources include the recovery plan for the species, 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. All information is used in accordance with the provisions of Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the associated Information Quality Guidelines issued by the Service.

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

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. Federally funded or permitted

projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available in determining areas that contain those features essential to the conservation of the CTS. We have reviewed the overall approach to the conservation of the CTS undertaken by local, State, and Federal agencies operating within the species' range since its proposed listing in 2003 (68 FR 28648; May 23, 2003). We have also reviewed available information that pertains to the upland and aquatic habitat requirements of this species. In our designation, we included only areas that were occupied at the time of listing. These areas were identified by recognized extant species occurrences in CNDDB (2004). We determined critical habitat units on the basis of maintaining self-sustaining extant occurrences that are necessary for the conservation of the species. The critical habitat units represent the genetic range of the Central population of the CTS, and they include representative geographical and elevation ranges, as well as higher density aggregations of extant occurrences within the four geographical regions (see "Criteria" section below). The extant occurrences within critical habitat units are a result of data identified in reports submitted during section 7 consultations, data from biologists holding section 10(a)(1)(A) recovery permits; research published in peer-reviewed articles and presented in academic theses and agency reports, and regional Geographic Information System (GIS) coverages.

The critical habitat units were delineated by creating approximate areas for the units by screen digitizing polygons (map units) using ArcView (Environmental Systems Research Institute, Inc.), a computer GIS program. The polygons were created by overlaying extant CTS location points with 0.7 mile buffers (CNDDB 2004) (see "Criteria" section below), and mapped vernal pool grassland habitats (Holland 1998a, 2003), or other vernal pool or grassland location information, onto SPOT imagery (satellite aerial photography).

The resulting shape files (delineating historic geographical range and potential suitable habitat within each of the four geographic regions) were then evaluated. Elevation and hydrologic ranges were further refined and land areas identified as non-habitat for the CTS (i.e., not containing the primary constituent elements) (see Primary Constituent Elements Section below) were avoided. We also included applied information received during the comment periods that pertain to the lack of suitable habitat areas on specific geographic areas that were originally included in the proposed critical habitat designation. We removed some areas because the areas do not contain one or more PCEs. We excluded areas that do not contain one or more of the primary constituent elements or were not essential for the conservation of the species because: (1) The area is highly degraded and may not be restorable; (2) the area is small, highly fragmented, or isolated and may provide little or no long term conservation value; and (3) other areas within the geographic region were determined to be sufficient to meet the species needs for conservation.

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 propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features, the PCEs, that are essential to the conservation of the species, and that may require special management considerations and 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 four geographic regions used for designation as critical habitat for the Central population of the CTS are designed to provide needed aquatic and upland refugia habitats for adult salamanders to maintain and sustain extant occurrences of CTS throughout their geographic and genetic ranges and provide those habitat components essential for the conservation of the species. Due to the complex life history and dispersal capabilities of CTS, and to the dynamic nature of the environments in which the species is found, the PCEs described below are expected to be found throughout the units that are being designated as critical habitat. Special management, such as habitat rehabilitation efforts (*e.g.*, removal of nonnative predators, control of introduced (other) tiger salamanders, and erosion and sediment control measures), may be necessary throughout the areas being proposed. Critical habitat for the Central population of the CTS will provide for breeding and nonbreeding habitats and for dispersal between these habitats, as well as allowing for an increase in the size of CTS populations. Critical habitat for the Central population of the CTS includes essential aquatic habitat features, essential upland (nonbreeding season) habitat features with underground refugia, and essential dispersal habitat features connecting occupied CTS locations to each other.

Based on our current knowledge of the life history, biology, and ecology of the species and the relationship of its essential life history functions to its habitat, we have determined that the Central population of the CTS requires the following primary constituent elements:

(1) Standing bodies of fresh water (including natural and manmade (*e.g.*, stock)) ponds, vernal pools, and other ephemeral or permanent water bodies which typically support inundation during winter rains and hold water for a minimum of 12 weeks in a year of average rainfall.

(2) Upland habitats adjacent and accessible to and from breeding ponds that contain small mammal burrows or other underground habitat that CTS depend upon for food, shelter, and protection from the elements and predation.

(3) Accessible upland dispersal habitat between occupied locations that allow for movement between such sites.

We describe the relationship between each of these PCEs and the conservation of the salamander in more detail below.

The requisite aquatic habitat described as the first PCE is essential for the Central population of the CTS for providing space, food, and cover necessary to support reproduction and to sustain early life history stages of larval and juvenile CTS. Aquatic and breeding habitats consist of fresh water bodies, including natural and artificially made (*e.g.*, stock) ponds, vernal pools, and vernal pool complexes. To be considered essential, aquatic and breeding habitats must have the capability to hold water for a minimum of 12 weeks in the winter or spring in a year of average rainfall , the amount of time needed for salamander larvae to

metamorphose into juveniles capable of surviving in upland habitats. During periods of drought or less-than-average rainfall, these sites may not hold water long enough for individuals to complete metamorphosis; however, these sites would still be considered essential because they constitute breeding habitat in years of average rainfall. Without these essential aquatic and breeding habitats, the CTS would not survive, reproduce, complete metamorphosis, and survive to adulthood.

Essential upland habitats containing underground refugia described as the second PCE are essential for the survival of the Central population's adult CTS and juveniles that have recently undergone metamorphosis. Adult and juvenile CTS are primarily terrestrial; adult CTS enter aquatic habitats only for relatively short periods of time to breed. For the majority of their life cycle, CTS survive within upland habitats containing underground refugia in the form of small mammal burrows. The Central population of the CTS cannot persist without upland underground refugia. These underground refugia provide protection from the hot, dry weather typical of California in the nonbreeding season. The Central population of the CTS also forage in the small mammal burrows and rely on the burrows for protection from predators. The presence of small burrowing mammal populations is essential for constructing and maintaining burrows. Without the continuing presence of small mammal burrows in upland habitats, CTS would not be able to survive.

The dispersal habitats described as the third PCE are essential for the conservation of the Central population of the CTS. Protecting the ability of California tiger salamander to move freely across the landscape in search of suitable aquatic and upland habitats is essential in maintaining gene flow and for recolonization of sites that may become temporarily extirpated. Lifetime reproductive success for the Central population of the California and other tiger salamanders is naturally low. Trenham *et al.* (2000) found the average female bred 1.4 times and produced 8.5 young that survived to metamorphosis per reproductive effort. This reproduction resulted in roughly 11 metamorphic offspring over the lifetime of a female. In part, this low reproductive success is due to the extended time it takes for CTS to reach sexual maturity; most do not breed until four or five years of age. While individuals may survive for more than ten years, many breed only once. Combined with low survivorship of metamorphosed individuals (in some populations, fewer than 5 percent of marked juveniles survive to become breeding adults (Trenham *et al.* 2000)), reproductive output in most years is not sufficient to maintain populations. This trend suggests that the species requires occasional large breeding events to prevent extirpation (temporary or permanent loss of the species from a particular habitat) or extinction (Trenham *et al.* 2000). With such low recruitment, isolated populations are susceptible to unusual, randomly occurring natural events, as well as human-caused factors that reduce breeding success and individual survival. Factors that repeatedly lower breeding success in isolated vernal pools or ponds can quickly extirpate an occurrence of the species. Therefore, an essential element for successful conservation is the presence and maintenance of sets of interconnected sites that are within the dispersal distance of other ponds (Trenham *et al.* 2001).

Dispersal habitats described as the third PCE are also essential in preserving the Central population of the CTS's population structure. The life history and ecology of the CTS make it likely that this species has a metapopulation structure (Hanski and Gilpin 1991). A metapopulation is a set of extant occurrences or breeding sites within an area, where typical migration from one local occurrence or breeding site to other areas containing suitable habitat is possible, but not routine. Movement between areas containing suitable upland and aquatic habitats (*i.e.*, dispersal) is restricted due to inhospitable conditions around and between areas of suitable habitats. Because many of the areas of suitable habitats may be small and support small numbers of salamanders, local extinction of these small units may be common. A metapopulation's persistence depends on the combined dynamics of these local extinctions and the subsequent recolonization of these areas through dispersal (Hanski and Gilpin 1991; Hanski 1994).

Essential dispersal habitats generally consist of upland areas adjacent to essential aquatic habitats that are not isolated from essential aquatic habitats by barriers that Central population of the CTS cannot cross. Essential dispersal habitats provide connectivity among CTS suitable aquatic and upland habitats. While the Central population of the CTS can bypass many obstacles, and do not require a particular type of habitat for dispersal, the habitats connecting essential aquatic and upland habitats need to be free of barriers (e.g., a physical or biological feature that prevents salamanders from dispersing beyond the feature) to function effectively. Examples of barriers are areas of steep topography devoid of soil or vegetation. Agricultural lands such as row crops, orchards, vineyards, and pastures do not constitute barriers to the dispersal of CTS. We are designating critical habitat that allows for dispersal between extant occurrences within 0.70 mi (1.1 km) of each other. This distance is consistent with the final listing rule (69 FR 47212; August 4, 2004) and the final critical habitat designation for the CTS in Santa Barbara County (69 FR 68568; November 24, 2004). Trenham (pers comm. 2004) predicted that a distance of 0.70 mi would capture 99 percent of all interpond movements between breeding adults. Including interpond movements within the critical habitat designation is essential to the conservation of the species because these movements capture the extent of genetic exchange between individuals and help support a long term conservation strategy for this species.

In summary, the PCEs consist of three components. At a minimum, these elements found in aquatic and upland habitats and connected dispersal habitats that are free of barriers.

Criteria Used To Identify Critical Habitat

We are designating critical habitat on lands that we have determined are occupied at the time of listing and contain the PCEs and those additional features found to be essential to the conservation of the Central population of the CTS.

In our determination of critical habitat for the Central population of the CTS, we selected areas that possess the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. After identifying the principal PCEs that are essential to the conservation of the CTS, we used the PCEs in combination with occurrence data; geographic distribution; GIS data layers for habitat mapping; vegetation, topography, watersheds, and current land uses; scientific information on the biology and ecology of the CTS; and accepted conservation principles for threatened or endangered species.

To identify areas that contain those features which are essential to the conservation of the CTS within the occupied range of the Central population of the CTS, we first looked at the range of the Central population, as was reported and mapped by biologists who had conducted CTS

surveys throughout the range of the species. The range boundaries were developed based on the principles of conservation science, genetics of the species, topography, geology, soils, vernal pool type distribution, and survey information (CNDDB 2004; CDFG 1998). To the best of our ability, we did not include non-habitat areas such as subdivisions, intensive agricultural areas, or areas containing slopes too steep to support aquatic habitats or upland refugia necessary for the conservation of CTS.

We then focused on areas within the range where we had credible records (*e.g.*, museum voucher specimens, reports filed by biologists holding section 10(a)(1)(A) recovery permits) indicating CTS presence (CNDDB 2004). The known locations of Central population of the CTS fall into four geographic regions of Central California. These geographic regions correspond to the four regions identified by Shaffer *et al.* (2004) outside Sonoma and Santa Barbara Counties and are separated by either geological or topographical features, or ecological zones, or both. Our conservation strategy for the Central population focuses on those extant locations that provide sufficient aquatic and upland habitats to ensure high enough adult survival to maintain and sustain extant occurrences of CTS in each of these four geographic regions within the range of the Central population of the species. Wherever possible within these four geographical regions, we included denser groups of aggregated extant occurrences that possessed the minimum size resolution for long term preserve design and are representative of the geographic extents of each separate genetic region. Each of the critical habitat units possesses a unique combination of occupied aquatic and upland habitat types, landscape features, surrounding land uses, vernal pool types, ponds, geographical range, genetic composition, and topography.

We determined that conserving the Central Population of the CTS over the long term requires a five pronged approach: (1) Maintaining the current genetic structure across the species range; (2) maintaining the current geographic, elevational, and ecological distribution; (3) protecting the hydrology and water quality of breeding pools and ponds; (4) retaining or providing for connectivity between breeding locations for genetic exchange and recolonization; and (5) protecting sufficient barrier-free upland habitat around each breeding location to allow for sufficient survival and recruitment to maintain a breeding population over the long term. An explanation of how we determined the amount of upland habitat which contained features that are essential for the conservation of the CTS in each critical habitat unit is described below in more detail.

Protecting the upland refugia as watersheds of occupied extant occurrences of the Central population of the CTS is essential for four reasons: (1) To provide terrestrial foraging, cover, and shelter for CTS upland existence; (2) to ensure that the amount of water entering an extant occupied aquatic habitat is not altered to such an extent to allow predators (such as bullfrogs and fish) to colonize the site; (3) to maintain the hydrologic functioning of the wetland to ensure inundation periods (*e.g.* 12 week minimum in all but the driest years) are maintained; and, (4) to preserve water quality by minimizing the entry of sediments and other contaminants to the known occupied habitat. Therefore, our critical habitat boundaries include the upland refugia of watersheds containing known occupied occurrences within the range of the Central population of the CTS.

We then identified the amount of upland habitat surrounding these extant occurrences where adult CTS live during the majority of their life cycle. To determine a general guideline for the amount of upland habitat necessary to support an occurrence of adult CTS, we reviewed the primary literature regarding CTS upland habitat use, including Trenham (2000), Trenham *et al.* (2000 and 2001), and Trenham and Shaffer (in review).

The best scientific peer-reviewed data indicate that CTS do not remain primarily in burrows close to aquatic habitats and breeding ponds, but instead move some distance out into the surrounding upland landscapes. As described in the Background section, CTS have been found up to 1.2 mi (2 km) from occupied occurrences. Two studies conducted in Monterey and Solano counties provide the best available scientific data on upland movement distances. First, the mark-recapture study of Trenham *et al.* (2001) showed that CTS commonly moved between ponds separated by 2,200 ft (670 m), suggesting that movements of this magnitude are not rare. Second, the ongoing study at Olcott Lake (Solano County) has directly documented the presence of high densities of juvenile and adult CTS at upland locations at least 1,300 ft (400 m) from this high quality breeding pond. In a recent trapping effort, 16 percent of total captures of juvenile salamanders occurred at 2,300 ft (700 m) (Trenham *et al.* 2001). Trenham and Shaffer (in review) determined that conserving upland habitats within 2,200 ft (670 m) of breeding ponds would protect 95 percent of CTS at their study location in Solano County. Protecting the needed upland habitat area with a radius of 2,200 ft (670 m) around a single pond that has a 13 ft (10 m) radius may yield a minimum area of 350 ac (140 ha). However, the size of any occurrence or breeding pond may increase the total amount of necessary aquatic and upland habitat space for survival of any known occurrence.

We used 0.70 mi (1.1 km) dispersal distance (radius) as a guide for the amount of upland habitat around known occupied extant occurrences to be mapped as critical habitat for the purposes of preserving the Central population of the CTS within small mammal burrows (PCE 2). However, although the studies discussed above provide an approximation of the distances that CTS can move from their aquatic habitats, breeding ponds, and known occupied aquatic habitats in search of suitable upland refugia, we recognize that upland habitat features will influence CTS movements in a particular landscape. As a result, in some designated units, we made adjustments to the upland areas to include additional areas up to the watershed boundaries or to include habitat containing the PCEs. In other cases, the critical habitat units were reduced so as not to include non-habitat areas (those not exhibiting the PCEs) from the designation.

Some agricultural lands were included if they were directly adjacent to known extant occurrences and considered essential for upland refugia or connectivity between occurrences and were not considered a barrier to movement.

To determine the areas to be mapped within each unit for the purposes of dispersal (*i.e.* PCE 3), we used a distance of 0.70 mi (1.1 km) as a general guide. The only known study we are aware of that specifically investigated movement of California tiger salamanders between breeding ponds projected that 0.70 mi (1.1 km) would encompass 99 percent of interpond dispersal (Trenham *et al.* 2001). However, we recognize that (as with movements in search of suitable underground refugia) upland habitat features influence CTS movements within a particular landscape.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a habitat conservation plan (HCP) that identifies conservation measures that the permittee agrees to

implement for the species to minimize and mitigate the impacts of the requested incidental take. We often exclude from designated critical habitat non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) under section 10(a)(1)(B) of the Act because the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act.

We are aware of five HCPs under various stages of development; however, these draft HCPs are not proposed for exclusion because we have not made a determination that they meet our issuance criteria nor that they provide adequate conservation for CTS. In addition, they are not ready for public notice and comment.

When defining critical habitat boundaries, we made an effort to exclude all developed areas, such as towns, housing developments, and other lands unlikely to contain primary constituent elements essential for CTS conservation. However, our minimum mapping units do not allow us to exclude all developed lands, such as outbuildings, roads, paved areas, lawns, and other similar areas that are unlikely to contain any of the PCEs in this rule. Federal actions limited to these non habitat areas would not trigger a section 7 consultation, unless those proposed actions would affect other threatened or endangered species and/or the PCEs in adjacent critical habitat.

In summary, we designate as critical habitat four critical geographical regions where the Central population of the CTS are known to be extant because we believe protection of the units within these four regions is essential to the conservation of the species. These extant occurrences represent approximately 68 percent of all extant occurrences across the range of the Central population of CTS. Using a dispersal distance of 0.70 mi (1.1 km) from each of these occurrences, the four geographical areas also include some other occurrences of the CTS.

A brief discussion of each area designated as critical habitat is provided in the unit descriptions below. Additional detailed documentation concerning the essential nature of these areas is contained in our supporting record for this rulemaking.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas which contain those features determined to be essential for conservation may require special management considerations or protections. As we undertake the process of designating critical habitat for a species, we first evaluate lands defined by those physical and biological features essential to the conservation of the species for inclusion in the designation pursuant to section 3(5)(A) of the Act. Secondly, we evaluate lands defined by those features to assess whether they may require special management considerations or protection.

We believe that the areas proposed for critical habitat may require special management considerations or protections due to the threats outlined below:

(1) Introduction of non-native predators such as bullfrogs and fish can be significant threats to the California tiger salamander breeding ponds in Sonoma County;

(2) Activities that could disturb aquatic breeding habitats during the breeding season, such as heavy equipment operation, ground disturbance, maintenance projects (*e.g.* pipelines, roads, powerlines), off-road travel or recreation;

(3) Activities that impair the water quality of aquatic breeding habitat;

(4) Activities that would reduce small mammal populations to the point that there is insufficient underground refugia used by California tiger salamander in Sonoma County for foraging, protection from predators, and shelter from the elements;

(5) Activities that create barriers impassable for salamanders or increase mortality in upland habitat between extant occurrences in breeding habitat; and

(6) Activities that disrupt vernal pool complexes' ability to support California tiger salamander breeding function.

Critical Habitat Designation

We are designating 31 units as critical habitat for the Central population of the California tiger salamander throughout four geographic regions. These final critical habitat areas described below constitute our best assessment at this time of the areas that contain those habitat features essential for the conservation of the Central population of the CTS that may require special management. The four regions containing critical habitat are: (1) The Central Valley Region; (2) the Southern San Joaquin Valley Region; (3) the East Bay Region (including Santa Clara Valley area); and (4) the Central Coast Region. The maps in this final rule present a pictorial representation of the four geographical areas (see Figure 1) and are not accurate with regard to the exact dividing line between the Central Coast, Central Valley, East Bay, and Southern San Joaquin geographical regions.

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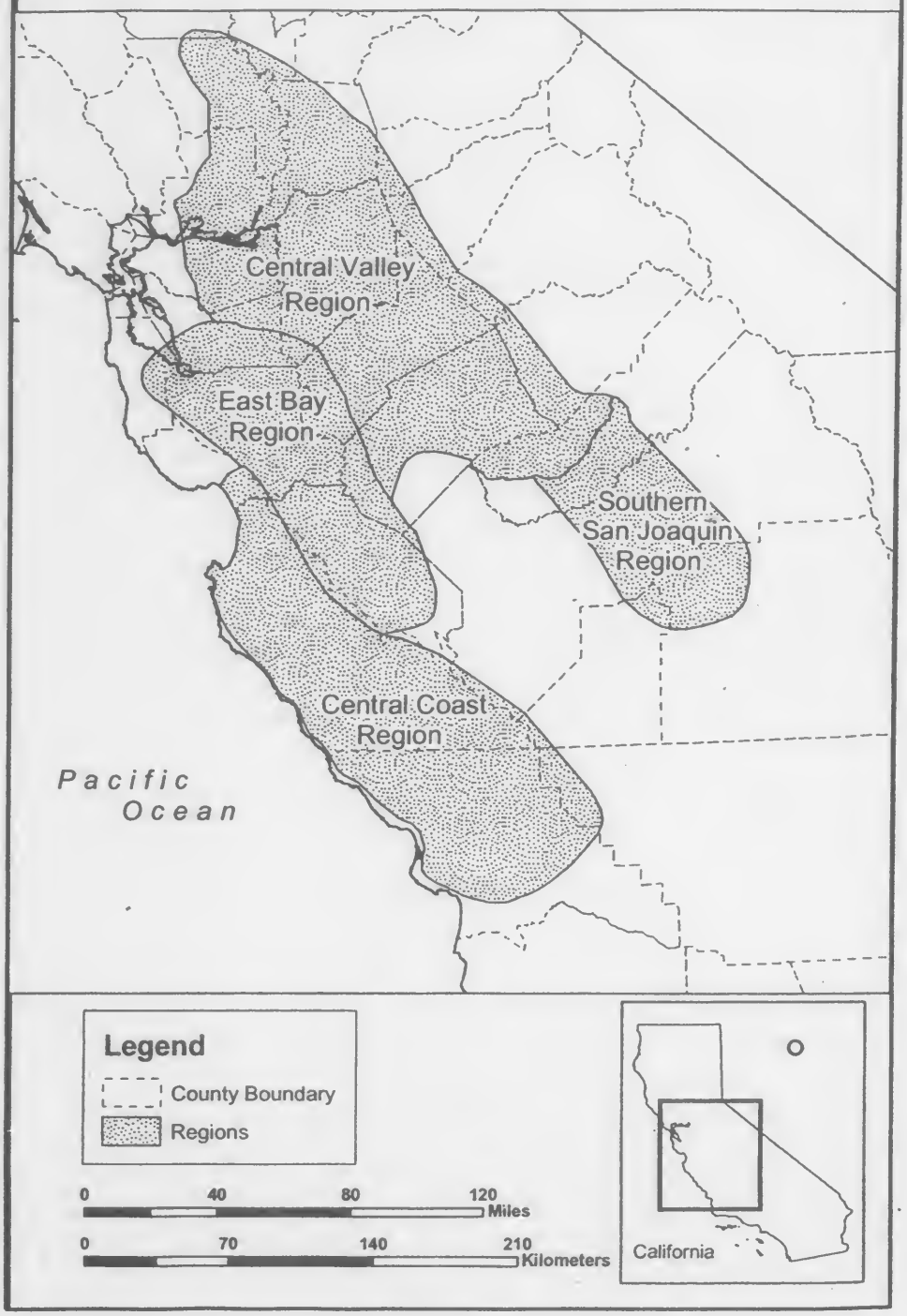
Central Population California Tiger Salamander Regions
Figure 1



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Although we are aware that some amounts of Federal, State, or local government lands occur within these boundaries, the majority of these areas of critical habitat designation occur on privately owned land. The maps in the rule portion of this document begin with Map 7 and run consecutively because they follow Maps 1–6 in the final critical habitat rule for the CTS in Santa Barbara County, which was already published in the **Federal Register** (69 FR 68568, November 24, 2004). Also, Map 36 in the proposed critical habitat rule for the CTS in Sonoma County already published in the **Federal Register** (70 FR 44301, August 2, 2005).

Table 2 shows the approximate sizes of critical habitat units and associated land ownership within each of the four geographical regions.

TABLE 2.—APPROXIMATE SIZES AND LAND OWNERSHIP OF CRITICAL HABITAT UNITS BY GEOGRAPHICAL REGION

Geographic region/proposed unit	Federal lands		State lands		Other lands		Total	
	ac	ha	ac	ha	ac	ha	ac	ha
Central Valley Region								
Unit 1	.....	.....	.....	.....	2,730	1,105	2,730	1,105
Unit 2	.....	.....	.....	.....	5,699	2,306	5,699	2,306
Unit 3	.....	.....	.....	.....	9,966	4,033	9,966	4,033
Unit 4	.....	.....	.....	.....	9,603	3,886	9,603	3,886
Unit 5	.....	.....	.....	.....	3,128	1,266	3,128	1,266
Unit 6	.....	.....	.....	.....	23,491	9,506	23,491	9,506
Unit 7	.....	.....	.....	.....	562	227	562	227
Unit 8	17	7	.....	.....	3,996	1,617	4,013	1,624
Unit 9	.....	.....	.....	.....	17,799	7,203	17,799	7,203
Unit 10	.....	.....	.....	.....	10,585	4,284	10,585	4,284
Unit 11	.....	.....	.....	.....	8,291	3,355	8,291	3,355
Unit 18	.....	.....	.....	.....	1,178	477	1,178	477
Area Total	17	7	.....	.....	97,028	39,266	97,045	39,273
Southern San Joaquin Region								
Unit 1a	.....	.....	.....	.....	3,808	1,541	3,808	1,541
Unit 1b	.....	.....	.....	.....	3,003	1,215	3,003	1,215
Unit 2	.....	.....	.....	.....	4,961	2,008	4,961	2,008
Unit 3a	.....	.....	.....	.....	1,626	658	1,626	658
Unit 3b	.....	.....	.....	.....	2,553	1,033	2,553	1,033
Unit 5	.....	.....	.....	.....	4,342	1,757	4,342	1,757
Area Total	0	0	0	0	20,293	8,212	20,293	8,212
East Bay Region								
Unit 3	.....	.....	.....	.....	619	251	619	251
Unit 5	.....	.....	.....	.....	2,814	1,139	2,814	1,139
Unit 6	.....	.....	2,767	1,120	5,209	2,108	7,976	3,228
Unit 7	.....	.....	.....	.....	9,080	3,675	9,080	3,675
Unit 8	.....	.....	.....	.....	2,535	1,026	2,535	1,026
Unit 9	.....	.....	.....	.....	2,934	1,187	2,934	1,187
Unit 10a	.....	.....	.....	.....	194	79	194	79
Unit 10b	.....	.....	.....	.....	698	282	698	282
Unit 11	.....	.....	.....	.....	6,991	2,829	6,991	2,829
Unit 12	.....	.....	.....	.....	6,642	2,688	6,642	2,688
Unit 13	.....	.....	.....	.....	2,409	975	2,409	975
Unit 14	.....	.....	.....	.....	2,212	895	2,212	895
Unit 15A	.....	.....	.....	.....	2,722	1,102	2,722	1,102
Unit 15B	.....	.....	.....	.....	194	79	194	79
Unit 16	.....	.....	.....	.....	16,952	6,860	16,952	6,860
Unit 17	20	8	.....	.....	3,881	1,571	3,901	1,579
Area Total	20	8	2,767	1,120	66,086	26,744	68,873	27,872
Central Coast Region								
Unit 3	.....	.....	110	45	3,555	1,439	3,665	1,483
Unit 6	.....	.....	.....	.....	9,233	3,736	9,233	3,736
Area Total	.....	.....	110	45	12,788	5,175	12,898	5,219
Grand Totals	37	15	2,877	1,164	196,195	79,397	199,109	80,576

The critical habitat of the Central population of the California tiger salamander represents occupied aquatic and upland habitats throughout the species' range in California and includes selective representative aquatic and upland habitat areas to capture the genetic, geographic, and ecological variability of the species, which, when taken together, should ensure the long term conservation of the species. Genetic variation within the species is represented by units within each of four large geographic regions " Central Valley, Southern San Joaquin, East Bay, and Central Coast. Brief descriptions of the critical habitat units and reasons why these units are essential for the conservation of the California tiger salamander are presented below. To the best of our knowledge, each unit contains essential occupied aquatic, upland, and dispersal habitat features. Table 3 below contains the approximate area of critical habitat designated within each county.

TABLE 3.—APPROXIMATE CRITICAL HABITAT WITHIN EACH COUNTY

County	Proposed designation		Final designation		Change between proposed and final designation	
	Acres	Hectares	Acres	Hectares	Acres	Hectares
Alameda	67,599	27,356	1,178	477	66,421	26,880
Amador	1,506	609	1,506	609	0	0
Calaveras	4,944	2,001	3,606	1,459	1,338	542
Contra Costa	43,232	17,496	0	0	43,232	17,495
Fresno	16,375	6,627	7,416	3,001	8,959	3,626
Kern	1,496	605	1,496	605	0	0
Kings	885	358	885	358	0	0
Madera	17,413	7,047	15,089	6,106	2,325	941
Mariposa	321	130	321	130	0	0
Merced	49,748	20,132	32,963	13,339	16,785	6,793
Monterey	32,392	13,109	4,159	1,683	28,233	11,426
Sacramento	10,191	4,124	9,966	4,033	225	91
San Benito	24,575	9,945	24,308	9,837	267	108
San Joaquin	21,120	8,547	17,516	7,089	3,604	1,458
San Luis Obispo	7,736	3,131	7,736	3,131	0	0
Santa Clara	42,751	17,301	39,450	15,965	3,301	1,336
Solano	5,944	2,405	5,699	2,306	245	99
Stanislaus	24,406	9,877	17,891	7,240	6,515	2,637
Tulare	6,243	2,526	5,197	2,103	1,046	423
Yolo	3,789	1,533	2,730	1,105	1,059	429
Total	382,666	154,860	199,109	80,577	183,557	74,283

We present brief descriptions of all units, and reasons why they are essential for the conservation of the Central population of the CTS, below.

Central Valley Geographic Region

The Central Valley Geographic Region is generally found in an area from northern Yolo County south and southeast to the northern half of Madera County, including eastern Solano and Contra Costa counties. It is 4.9 million ac (1.9 million ha) in size. Within the Central Valley Geographic Region we are designating 12 critical habitat units for the Central population of the California tiger salamander that total approximately 97,045 ac (39,273 ha). The 12 critical habitat units contain PCEs and include a total of 44 extant occurrences of CTS. The 12 units occur in four of 17 vernal pool regions within California. These four regions are Solano-Colusa, Southeastern Sacramento Valley, Southern Sierra Foothills, and San Joaquin Valley. The units are distributed across the Region and represent the varying habitats and environmental conditions available to the California tiger salamander within the area. A fundamental concept in conservation biology is that species that are protected across their ranges have lower chances of extinction (Soule and Simberloff 1986; Noss *et al.* 2002). By including units across the geographic range of the species within this region we are conserving the diversity of the species and its habitat across its range. Special management requirements for these units include management of erosion and sedimentation, pesticide application, introduction of predators such as bullfrogs and mosquito fish, disturbance activities associated with development that may alter the hydrologic functioning of the aquatic habitat and alter upland refugia and dispersal habitat, and activities such as road development that may result in barriers to dispersal.

Unit 1, Dunnigan Creek Unit, Yolo County

This unit is the only unit in Yolo County, encompasses approximately 2,730 acres (1,105 ha). This unit contains all three of the PCEs. Three extant occurrences of the species have been documented within this unit. Unit 1 is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Central Valley Geographical Region. Unit 1 represents the northern portion of the range and the represents the northern portion of the Solano-Colusa vernal pool region. Unit 1 is roughly bordered by Interstate 5 on the east, Bird Creek on the south, and Buckeye Creek on the north and west. Land ownership is private. Threats that require special management considerations for this unit include agricultural land conversion and the introduction of predators such as mosquito fish into seasonal wetlands for the control of mosquitoes.

Unit 2, Jepson Prairie Unit, Solano County

This unit encompasses approximately 5,699 ac (2,306 ha), and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Central Valley

Geographic Region. Unit 2 represents the northwestern portion of the species' distribution and represents the southern end of Solano-Colusa vernal pool region in Solano County. This unit contains all three of the PCEs and four extant occurrences of the species in one aggregation. Unit 2 generally is located south of Dixon, west of State Route 113, north of Creed Road, and east of Travis Air Force Base. This unit is mostly privately owned but also includes some California Department of Fish and Game lands. Threats that require special management considerations for this unit include loss and destruction of occupied habitat due to agricultural land conversion.

Unit 3, Southeastern Sacramento Unit, Sacramento County

This unit encompasses approximately 9,966 ac (4,033 ha), is the only unit in Sacramento County, and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Central Valley Geographic Region. Unit 3 represents the northern-central portion of the range of the species, the southern portion of the Southeastern Sacramento Valley vernal pool region, and is only one of a few occupied areas in the Sacramento Valley. This unit contains all three of the PCEs. A cluster of eight extant occurrences has been documented in this unit. Unit 3 generally is bordered on the south by the Sacramento and San Joaquin County border dividing line, Laguna Creek on the north, the Sacramento and Amador County border dividing line on the east, and Alta Mesa Road on the west. Land ownership is private. Threats that require special management considerations for this unit include road construction, agricultural land conversion, urban development, and predators such as bullfrogs. Development and agricultural land conversion could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity. Aquatic predators such as bullfrogs require special management because they can impair breeding success.

Unit 4, Northeastern San Joaquin Unit, and Amador Counties

This unit encompasses approximately 9,603 ac (3,886 ha), is the only one in San Joaquin and Amador counties, and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Central Valley Geographic Region. Unit 4 is the second unit in the Southeastern Sacramento Valley vernal pool region. This unit contains all three of the PCEs and five extant occurrences in one aggregation. Unit 4 roughly is found over an area south of the San Joaquin and Sacramento county dividing line, east of Day Creek Road, north of Liberty Road, and west of Comanche and Jackson Valley Roads. Land ownership is private. Threats that require special management considerations for this unit include developments and associated road construction that could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity.

Unit 5, Indian Creek Unit, Calaveras County

This unit encompasses appropriately 3,128 ac (1,266 ha). This unit is essential to the conservation of the CTS because it is needed to maintain the current geographic and ecological distribution of the species within the Central Valley Geographic Region. Unit 5 represents the northeastern portion of the range and the Southeastern Sacramento Valley vernal pool region. Four extant occurrences of the species have been documented in this unit. It contains all three PCEs and generally is bordered by State Route 26 on the south and east, Warren Road on the west, and State Route 12 on the north. Land ownership is private. Threats that require special management considerations for this unit include urban developments, agricultural land conversions, and associated infrastructure including road construction that could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity.

Unit 6, Rock Creek Unit, Calaveras, San Joaquin, and Stanislaus Counties

This 23,491 ac (9,506 ha) unit is essential to the conservation of the Central population of the California tiger salamander because it is needed to maintain the current geographic and ecological distribution of the species within the Central Valley Geographic Region. Unit 6 contains all three of the PCEs and represents the northern end of the Southern Sierra Foothills vernal pool region and a portion of the east-central portion of the San Joaquin Valley. This unit contains five extant occurrences of the species in one aggregation. This unit is approximately located west of San Joaquin County Road J6, north of Sonora Road, east of Stanislaus County Road J12, and south of the Calaveras River. Land ownership is private. Threats that require special management considerations for this unit include urban developments, agricultural land conversions, and associated infrastructure including road construction, which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity.

Unit 7, Rodden Lake Unit, Stanislaus County

This unit contains approximately 562 ac (227 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Central Valley Geographic Region. Unit 7 is located within the northern end of the Southern Sierra Foothill vernal pool region in the eastern San Joaquin Valley, the only unit near the Stanislaus River. Three extant occurrences of the Central CTS have been documented within this unit. This unit is roughly bounded by Horseshoe Road on the east, Frankenheimer Road on the north, Twenty Eight Mile Road on the west, and the Stanislaus River of the south. Land ownership is private. Threats that require special management considerations for this unit include urban developments, agricultural land conversions, and associated infrastructure including road construction, which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity.

Unit 8, La Grange Ridge Unit, Stanislaus and Merced Counties

This unit contains approximately 4,013 ac (1,624 ha) and is essential for the conservation of the Central CTS because it is needed to maintain the current geographic and ecological distribution of the species within the Central Valley Geographic Region. Unit 8 occurs within the northeastern area of the 2,167,907 ac (877,352 ha) Southern Sierra Foothills vernal pool region and represents the east central portion of the species' distribution within the Central Valley Geographic Region. It contains

five extant occurrences of the species and all three of the PCEs. This unit is roughly defined as west of Cardoza Ridge, east of Los Cerritos Road, south of State Route 132, and north of Fields Road. Land ownership is private. Threats that require special management considerations for this unit include Threats that require special management considerations for this unit include urban developments, agricultural land conversions, and associated infrastructure including road construction that could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity.

Unit 9, Fahrens Creek Unit, Merced County

This unit contains 17,799 ac (7,203 ha) and is essential for the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Central Valley Geographic Region. Unit 9 represents the 2,167,907 ac (877,352 ha) South Sierra Foothills vernal pool region in Merced County, the central portion of the species' distribution in the eastern San Joaquin Valley, and the south-eastern portion of the species' distribution in the Central Valley Geographic Region. Twenty extant occurrences of the species are documented in this unit. This unit is located generally northeast from Merced, east of the Merced and Mariposa county dividing line, north of Bear Creek, and south of the Merced River. Land ownership of the unit is private. Threats that require special management considerations for this unit urban developments, agricultural land conversions, and associated infrastructure including road construction which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity.

Unit 10, Miles Creek Unit, Merced County

This unit contains approximately 10,585 ac (4,284 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Central Valley Geographic Region. Unit 10 is the only other unit that occurs within the Southern Sierra Foothill vernal pool region in Merced County and represents the central portion of the species' distribution in the eastern San Joaquin Valley and the south-eastern portion of the species' distribution in the Central Valley Geographic Region. Nine extant occurrences have been documented within this unit, which is located generally east of Owens Lake in Mariposa County, west of Cunningham Road in Merced County, south of South Bear Creek Road in Merced County, and north of Childs Avenue. Land ownership is private. Threats that require special management considerations for this unit include urban developments, agricultural land conversions, and associated infrastructure including road construction which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity.

Unit 11, Rabbit Hill Unit, Madera County

This unit contains 8,291 ac (3,355 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Central Valley Geographic Region. Unit 11 represents the Sierra Foothills vernal pool region in Madera County and is the southernmost unit within the Central Valley Geographic Region. This unit contains all three of the primary constituent elements, including vernal pools and upland dispersal habitats that support six extant occurrences of the species. Unit 11 is generally located west of Hensley Lake, south of Knowles Junction, west of the Daulton Mine, and north of the Fresno River. Land ownership is private. Threats that require special management considerations for this unit include urban developments, agricultural land conversions, and associated infrastructure including road construction which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity.

Units 12–17 have been excluded from the final designation. See section *"Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act*—for more information.

Unit 18, Doolan Canyon Unit, Alameda County

This unit contains approximately 1,178 ac (477 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species in the Central Valley Geographic Region. Unit 18 represents the 485,120 ac (196,328 ha) Livermore vernal pool region and the western portion of the Central Valley Geographic Region. Two extant occurrences of the species are found in this unit. Unit 18 is south of the Contra Costa County line near Collier Canyon Road on the east and the south, and the City of Dublin on the west. Land ownership is private. Threats that require special management considerations for this unit include urban developments, agricultural land conversions, and associated infrastructure including road construction which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity.

Unit 19, Patterson Unit, Alameda

Unit 19 has been excluded based on economic reasons. See *"Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act" for more information.*

Southern San Joaquin Valley Geographic Region

The Southern San Joaquin Valley Geographic Region contains approximately 1.4 million ac (566,580 ha) and is found from the southern half of Madera County south to northeastern Kings County and northwestern Tulare County. Within this Geographic Region we designate four critical habitat units that total approximately 20,293 ac (8,212 ha). The four critical habitat units contain approximately 20 known extant occurrences the Central population of the California tiger salamander. The critical habitat units represent the San Joaquin Valley and Southern Sierra Foothills vernal pool regions in the southern San Joaquin Valley. It is critical to conserve the CTS within a range of habitat types to capture the geographic, ecological, and genetic variability found in nature. Protecting a variety of occupied habitats and ecologic conditions will increase the ability of the species to survive random environmental (*e.g.* predators), natural (*e.g.* disease), demographic (*e.g.* low recruitment) or genetic (*e.g.* inbreeding) events.

The critical habitat units of the Southern San Joaquin Valley Geographical Region are essential to the conservation of the California tiger salamander because these units represent the range of geographic, genetic, and ecological variation found in nature and they contain the PCEs that support essential functions including, but not limited to, breeding, metamorphosing, dispersing, feeding, sheltering, and aestivating. Special management requirements for these units include management of erosion and sedimentation, pesticide application, introduction of predators such as bullfrogs and mosquito fish, disturbance activities associated with development that may alter the hydrologic functioning of the aquatic habitat, upland disturbance activities that may alter upland refugia and dispersal habitat, and activities such as road development and widening that may develop barriers for dispersal.

Units 1a and 1b, Millerton Unit, Madera County

This 6,811 ac (2,756 ha) unit is comprised of two sub-units; Unit 1a (3,808 ac (1,541 ha)) and Unit 1b (3,003 ac (1,215 ha)). This unit is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species in the Southern San Joaquin Geographic Region. Unit 1 represents the Southern Sierra Foothills vernal pool region, one of two differing vernal pool regions in the Southern San Joaquin Geographic Region, and the southeastern portion of the species' distribution in the San Joaquin Valley. Unit 1 is the only unit within this vernal pool region in Madera County. The two subunits contain nine extant occurrences of the species. These subunits are located west of State Highway 41 and generally north of the San Joaquin River. The eastern boundary is approximately the western side of Millerton Lake, and the northern boundary is south of Berry Hill along O'Neal Road. Land ownership is private. Threats that require special management considerations for this unit include urban development, agricultural conversion, and associated infrastructure, including road construction, which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity.

Unit 2, Northeast Fresno, Fresno County

This unit is approximately 4,961 ac (2,008 ha) and is essential for the conservation of the Central population of the California tiger salamander because it is needed to maintain the current geographic and ecological distribution of the species in the Southern San Joaquin Geographic Region. Unit 2 represent the Southern Sierra Foothills vernal pool region within Fresno County, the northern end of the Southern San Joaquin Geographic Region, and the southern portion of the species' distribution in the San Joaquin Valley. This unit contains all three of the PCEs and 6 extant occurrence records This unit is located northeast of Fresno, southwest of Millerton Lake, east of Friant Road, and generally west of Academy. Land ownership is private. Threats that require special management considerations for this unit include urban development, agricultural conversion, and associated infrastructure including road construction which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity.

Units 3a and 3b, Hills Valley Unit, Fresno and Tulare Counties

This 4,181 ac (1,692 ha) unit is comprised of the two subunits Unit 3a (1,626 ac (658 ha)) and Unit 3b (2,553 ac (1,033 ha)). This unit is essential to the conservation of the Central population of the California tiger salamander because it is needed to maintain the current geographic and ecological distribution of the species in the Southern San Joaquin Geographic Region. The subunits comprising Unit 3 represent the foothills of northwest Tulare County, the Southern Sierra Foothills vernal pool region, and the southeastern portion of the species' distribution within the San Joaquin Valley. These subunits contain all three of the PCEs and five extant occurrences of the species. This unit is located south of State Highway 180, generally west of George Smith and San Creek Roads, north of Curtis Mountain, and east of Cove Road. Land ownership is private. Threats that require special management considerations for this unit include urban development, agricultural conversion, and associated infrastructure including road construction which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity.

Unit 4, Seville Unit, Tulare County

This 415 ac (168 ha) unit has been excluded from the final designation. See section "*Relationship of Critical Habitat to State Managed Ecological Reserve Land—Exclusions Under Section 4(b)(2) of the Act*" for more information

Unit 5, Cottonwood Creek Unit, Tulare County

Unit 5 is approximately 4,342 ac (1,757 ha) and represents a significant area at the very southernmost portion of the range of the Central population of the California tiger salamander. This unit was originally called unit 5A in the proposed designation. This unit is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Southern San Joaquin Geographic Region. Unit 5 represents a low-elevation vernal pool complex within the San Joaquin Valley vernal pool region. Four extant occurrences have been documented within this unit, which is roughly bordered by County Road J36 on the north, Dinuba Road on the east, Avenue 352 on the south, and County Road 112 on the west. Land ownership is mostly private. Threats that require special management considerations for this unit include urban development, agricultural conversion, and associated infrastructure including road construction which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity.

Subunit 5B (629 ac (255 ha)) has been excluded from the final designation. See section "*Relationship of Critical Habitat to State Managed Ecological Reserve Land—Exclusions Under Section 4(b)(2) of the Act*" for more information.

East Bay Geographic Region

The East Bay Geographic Region is found in Alameda County, south to Santa Benito and Santa Clara counties, and west to the eastern portions of San Joaquin and Merced Counties. The East Bay Region contains 2.4 million ac (971,280 ha) and has approximately 24,045 ac (9,731 ha) of critical habitat. Within the East Bay Geographic Region we are designating 14 critical habitat units for the California tiger salamander that contain a number of extant occurrences of the Central population of

the California tiger salamander. The 14 critical habitat units within the Bay Area Geographic Region occur in the Livermore, Central Coast, and San Joaquin vernal pool regions. Special management requirements for these units include management of erosion and sedimentation, pesticide application, introduction of predators such as bullfrogs and mosquito fish, disturbance activities associated with development that may alter the hydrologic functioning of the aquatic habitat, upland disturbance activities that may alter upland refugia and dispersal habitat, and activities such as road development and widening that may develop barriers for dispersal.

It is critical to conserve the Central population of the California tiger salamander within the range of habitat types to capture the geographic and genetic variability found in nature. Protecting a variety of occupied habitats and conditions will increase the ability of the species to survive random environmental (*e.g.* predators), natural (*e.g.* disease), demographic (*e.g.* low recruitment), or genetic (*e.g.* inbreeding) events. The critical habitat units within the East Bay Geographic Region are essential to the conservation of the Central population of the California tiger salamander because these units collectively maintain the geographic, genetic, and genetic variability that currently exists within the range of the species. Some of the designated units are in pristine condition as indicated by the best scientific and commercial data, and habitat quality was another factor which we considered in our determination of what habitat is essential.

Unit 1, Patterson Unit, Alameda County

This 5,267 ac (2,132 ha) unit was moved to the Central Valley Region (see Unit 19 of Central Valley Region above). This unit has been excluded based on economic reasons. See "*Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act*" for more information.

Unit 2, Mendenhall Unit, Alameda County, was excluded from the final designation based on economic reasons. See "*Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act*" for more information.

Unit 3, Alameda Creek Unit, Santa Clara County

This unit contains 619 ac (251 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Bay Area Geographic Region. Unit 3 represents the north-central portion of the Bay Area Geographic Region and the northwestern Livermore vernal pool region. This unit contains all three of the PCEs and three extant occurrences. Unit 3 generally is located north of Calaveras Reservoir, east of Sugar Butte, west of Fremont, and south of Livermore. Land ownership is a mixture of county parks and private lands. Threats that require special management considerations for this unit include urban development, agricultural conversion, and associated infrastructure including road construction which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity. Feral pigs and bullfrogs may require special management because can impair breeding success.

Unit 4, San Francisco Bay Unit, Alameda County

This 1,073 ac (434 ha) unit was excluded from the final critical habitat designation. See section "*Relationship of Critical Habitat to U.S. Fish and Wildlife Refuge Land—Exclusions Under Section 4(b)(2) of the Act*" for more information.

Unit 5, Poverty Ridge Unit, Santa Clara County

This unit is approximately 2,814 ac (1,139 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Bay Area Geographic Region. Unit 5 represents the north-central portion of the Bay Area Geographic Unit and the southern end of the Livermore vernal pool region. It contains all three of the PCEs and six extant occurrences of the species. This unit is generally located west of Alum Rock, south of the Alameda and Contra Costa Counties dividing line, west of Kincaid Road, and north of Master Hill. Land ownership is private. Threats include conversion of grazing land to housing and commercial development.

Unit 6, Smith Creek Unit, Santa Clara County

This unit is approximately 7,976 ac (3,228 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Bay Area Geographic Region. Unit 6 represents the north-central part of the range of the species within the Bay Area Geographic region and the northern range of the Central Coast vernal pool region. This unit contains all three of the PCEs and 10 extant occurrences of the species. Unit 6 is generally located west of Sugarloaf Mountain, south of Packard Ridge, east of Masters Hill, and north of Panochita Hill. This unit contains county, private, and University of California-owned lands. Threats that require special management considerations include urban development, agricultural conversion, and associated infrastructure including road construction which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity.

Unit 7, San Felipe Creek Unit, Santa Clara County

This unit is approximately 9,080 ac (3,675 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Bay Area Geographic Region. Unit 7 represents the center of the Bay Area Geographic Region and the north-central part of the Central Coast vernal pool region. It contains all three of the PCEs and four extant occurrences of the species. Unit 7 is generally located in west of Silver Creek, south of Panochita Hill, east of Bollinger Mountain, and north of Morgan Hill. Land ownership is private. Threats that require special management considerations include urban development, agricultural conversion, and associated infrastructure including road construction which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity.

Unit 8, Laurel Hill Unit, Santa Clara County

This unit is approximately 2,535 ac (1,026 ha) and is essential for the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Bay Area Geographic Region. Unit 8 represents the northwestern portion of the species' range in the Bay Area Geographic Region and the northwestern area of the Central Coast vernal pool region on the western side of the Santa Clara Valley. This unit contains all three of the PCEs and three extant occurrences. Unit 8

generally is located east of Morgan Hill, south of San Jose, west of the Santa Cruz Mountains, and north of Croy Ridge. Land ownership is private. Threats that require special management considerations for this unit include urban development and associated infrastructure including road construction which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity. Bullfrogs present in aquatic habitat may require special management because they can impair breeding success.

Unit 9, Cebata Flat Unit, Santa Clara County

This unit contains approximately 2,934 ac (1,187 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the East Bay Geographic Area. Unit 9 represents the center of the Bay Area Geographic Region and the central area of the Central Coast vernal pool region. It contains all three of the PCEs and three extant occurrences of the species. Unit 9 is generally located west of Gilroy, south of Henry Coe State Park, east of Lake Mountain, and north of Canada Road. Land ownership is private. Threats that require special management considerations for this unit include urban development, and associated infrastructure including road construction which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity. Bullfrogs present in aquatic habitat may require special management because they can impair breeding success.

Units 10a and 10b, Lions Peak Unit, Santa Clara County

This unit is comprised of 892 ac (360 ha) in two subunits: (Unit 10a (194 ac (79 ha) and Unit 10b (698 ac (282 ha). It is essential for the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Bay Area Geographic Region. Unit 10 represents only the second unit on the west side of the Santa Clara Valley within the center of the Bay Area Geographic Region and the center of the Central Coast vernal pool region. It contains all three of the PCEs and six extant occurrences of the species. Unit 10 is generally found east of State Highway 101, south of Morgan Hill, north of Hecker Pass Highway, and west of Uvas Reservoir. Land ownership is private. Threats that require special management considerations for this unit include urban development and associated infrastructure including road construction which could destroy or degrade aquatic habitat essential for breeding and rearing; destroy, degrade, or fragment upland habitat essential for growth, feeding, resting, and aestivation; or destroy, degrade, or fragment habitat essential for dispersal and connectivity. Bullfrogs present in aquatic habitat may require special management because they can impair breeding success.

Unit 11, Braen Canyon Unit, Santa Clara County

This unit is comprised of 6,991 ac (2,829 ha) of habitat and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Bay Area Geographic Region. Unit 11 represents the eastern central portion of the species range within the Bay Area Geographic Region and the central portion of the Central Coast vernal pool region. It contains all three of the PCEs and five extant occurrences of the species. Unit 11 is found in southern Santa Clara County generally west of Gilroy, south of Kelly Lake, east of Pacheco Lake, and north of Jamison Road. Land ownership is private. Threats that may require special management include erosion and sedimentation, pesticide application, introduction of predators such as bullfrogs and mosquito fish, disturbance activities associated with development that may alter the hydrologic functioning of the aquatic habitat, upland disturbance activities that may alter upland refugia and dispersal habitat, and activities such as road development and widening that may develop barriers for dispersal.

Unit 12, San Felipe Unit, Santa Clara and San Benito Counties

This unit is comprised of 6,642 ac (2,688 ha) of habitat and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Bay Area Geographic Region. Unit 12 represents part of the center of the distribution within the Bay Area Geographic Region and the southernmost portion of Santa Clara County, northern San Benito County, and center of the Central Coast vernal pool region. It contains all three of the PCEs and 10 extant occurrences of the species. Unit 12 generally is found west of Camadero, south of Kickham Peak, east of San Joaquin Peak, and north of Dunneville. Land ownership is private. Threats include erosion and sedimentation, pesticide application, introduction of predators such as bullfrogs and mosquito fish, disturbance activities associated with development that may alter the hydrologic functioning of the aquatic habitat, upland disturbance activities that may alter upland refugia and dispersal habitat, and activities such as road development and widening that may develop barriers for dispersal.

Unit 13, Los Banos Unit, Merced County

This unit is comprised of 2,409 ac (975 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Bay Area Geographic Region. Unit 13 represents a portion of the southeastern range of the species within the Bay Area Geographic Region and the San Joaquin Valley vernal pool region. It contains all three of the PCEs and three extant occurrences of the species. Unit 13 generally is located east of Los Banos Reservoir, north of Bullard Mountain, west of Cathedral Peak, and south of San Luis Reservoir State Recreation Area. Land ownership is private. Threats include erosion and sedimentation, pesticide application, introduction of predators such as bullfrogs and mosquito fish, disturbance activities associated with development that may alter the hydrologic functioning of the aquatic habitat, upland disturbance activities that may alter upland refugia and dispersal habitat, and activities such as road development and widening that may develop barriers for dispersal.

Unit 14, Landgon Unit, Merced County

This unit is comprised of 2,212 ac (895 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Bay Area Geographic Region. Unit 14 represents the easternmost distribution of the species within the Bay Area Geographic Region and is the only other unit that occurs within the San Joaquin Valley vernal pool region. It contains all of the PCEs and three extant occurrences of the species. Unit 14 generally is found west of Sweeney Hill, south of Gasten Bide Road, and north of Ortigalita Peak. Land ownership is private. Threats include erosion and sedimentation, pesticide application, introduction of predators such as bullfrogs and

mosquito fish, disturbance activities associated with development that may alter the hydrologic functioning of the aquatic habitat, upland disturbance activities that may alter upland refugia and dispersal habitat, and activities such as road development and widening that may develop barriers for dispersal.

Units 15A and 15B, Ana Creek Unit, San Benito County

This unit is approximately 3,165 ac (1,280 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Bay Area Geographic Region. The unit is comprised of two subunits, 15A (2,722 ac (1,102 ha)) and 15B (194 ac (79 ha)). These subunits represent the southwestern portion of the species' range within the Bay Area Geographic Region and in the southern Central Coast vernal pool region. They contain all three of the PCEs and nine extant occurrences of the species. Unit 15A and B are generally located west of Hollister, north of Tres Pinos, east of Cibo Peak, and south of Coyote Peak. Land ownership is private. Threats include erosion and sedimentation, pesticide application, introduction of predators such as bullfrogs and mosquito fish, disturbance activities associated with development that may alter the hydrologic functioning of the aquatic habitat, upland disturbance activities that may alter upland refugia and dispersal habitat, and activities such as road development and widening that may develop barriers for dispersal.

Unit 16, Bitterwater Unit, San Benito County

This unit is approximately 16,952 ac (6,860 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the East Bay Geographic Region. Unit 16 represents the southernmost range of the species within the Bay Area Geographic Region and the southern end of the Central Coast vernal pool region. It contains all three of the PCEs and nine extant occurrences of the species. Unit 16 generally is found south of Pinnacles, east of Hernandez Reservoir, north of Lonoak, and west of Murphy Flat. Land ownership is private. Threats include erosion and sedimentation, pesticide application, introduction of predators such as bullfrogs and mosquito fish, disturbance activities associated with development that may alter the hydrologic functioning of the aquatic habitat, upland disturbance activities that may alter upland refugia and dispersal habitat, and activities such as road development and widening that may develop barriers for dispersal.

Unit 17, Gloria Valley Unit, Monterey and San Benito Counties (Formerly Central Coast Region, Unit 4)

This unit is comprised of 3,881 ac (1,571 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the East Bay Geographic Region. Unit 17 represents the northeastern portion of the range of the species within the Bay Area Geographic Region and the western area of the Central Coast vernal pool region. It contains all three of the PCEs and 10 extant occurrences of the species. Unit 17generally is located north of Soledad, east of the Pinnacles National Monument, south of Tres Pinos, and west of Gonzales. Land ownership is private. Threats include erosion and sedimentation, pesticide application, introduction of predators such as bullfrogs and mosquito fish, disturbance activities associated with development that may alter the hydrologic functioning of the aquatic habitat, upland disturbance activities that may alter upland refugia and dispersal habitat, and activities such as road development and widening that may develop barriers for dispersal.

Central Coast Geographic Region

The Central Coast Geographic Region is located from Monterey County to northeastern San Luis Obispo County and northwestern Tulare County. The Central Coast Geographic Region is 3.6 million ac (1.5 million ha) in size and contains two critical habitat units for the Central population of the California tiger salamander that total approximately 25,373 ac (10,268 ha). The critical habitat units within the Central Coast Geographic Region contain 14 extant occurrences of California tiger salamander that encompass a migration distance of 0.70 mi (1.1 km) from each cluster of known extant occurrences that compose the critical habitat units. Critical habitat is designated within the Central Coast, Livermore, and Carrizo vernal pool regions. Special management requirements for these units include management of erosion and sedimentation, pesticide application, introduction of predators such as bullfrogs and mosquito fish, disturbance activities associated with development that may alter the hydrologic functioning of the aquatic habitat, upland disturbance activities that may alter upland refugia and dispersal habitat, and activities such as road development and widening that may develop barriers for dispersal.

It is essential to conserve the Central population of the California tiger salamander within the range of habitat types to capture the geographic and genetic variability found in nature. Protecting a variety of occupied habitats and conditions will increase the ability of the species to survive random environmental (e.g. predators), natural (e.g. disease), demographic (e.g. low recruitment) or genetic (e.g. inbreeding) events. The critical habitat units within the Central Coast Geographic Region are essential to the conservation of the Central population of the California tiger salamander because these units collectively maintain the geographic, genetic, and genetic variability that currently exists within the range of the species. Some of the designated units are in pristine condition as indicated by the best scientific and commercial data, and habitat quality was another factor we considered in our determination of what habitat is essential.

Unit 1, Crazy Horse Canyon Unit, Monterey County

This 4,341 ac (1,757 ha) unit was excluded from the final critical habitat designation. See section. See "*Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act*" for more information.

Unit 2, Pilarcitos Canyon Unit, Monterey County

This 8,135 ac (3,292 ha) unit was excluded from the final critical habitat designation. See section. See "*Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act*" for more information.

Unit 3, Haystack Hill Unit, Monterey County

This unit is comprised of 3,665 ac (1,483 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Central Coast Geographic Region. Unit 3 represents the center of the Central Coast Geographic Region and the northwestern area of the Central Coast vernal pool region. It contains all three of the PCEs and 10 extant occurrences of the species. Unit 3 generally is located north of Soledad, east of Paloma Ridge, west of Jamesberg, and south of Carmel Valley. Land ownership within this unit is a mixture of private and

Hastings Natural History State Reserve. Threats include erosion and sedimentation, pesticide application, introduction of predators such as bullfrogs and mosquito fish, disturbance activities associated with development that may alter the hydrologic functioning of the aquatic habitat, upland disturbance activities that may alter upland refugia and dispersal habitat, and activities such as road development and widening that may develop barriers for dispersal.

Unit 4, Gloria Valley Unit, Monterey and San Benito Counties

This unit has been moved to the East Bay Region based on new information on geographic boundaries (see unit 17 East Bay Region).

Units 5A and 5B, Fort Hunter Liggett Unit, Monterey County

These subunits were excluded from the final critical habitat designation (15,395 ac (6,230 ha)). See "*Relationship of Critical Habitat to Military Lands—Application of Section 4(a)(3) and Exclusions under Section 4(b)(2) of the Act*" for more information.

Unit 6, Choice Valley, Kern and San Luis Obispo Counties

This unit is comprised of 9,233 ac (3,736 ha) and is essential to the conservation of the species because it is needed to maintain the current geographic and ecological distribution of the species within the Central Coast Geographic Region. Unit 6 represents the very southern extension of the species' range in the Central Coast Geographic Region and is the only unit within the Carrizo vernal pool region. It contains all three of the PCEs and four extant occurrences of the species. Unit 6 generally is located in an area north of the Carrisa Highway, east of Antelope Valley, south of Cottonwood, and west of Shandon. Land ownership is private. Threats include erosion and sedimentation, pesticide application, introduction of predators such as bullfrogs and mosquito fish, disturbance activities associated with development that may alter the hydrologic functioning of the aquatic habitat, upland disturbance activities that may alter upland refugia and dispersal habitat, and activities such as road development and widening that may develop barriers for dispersal.

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. In our regulations at 50 CFR 402.02, we define destruction or adverse modification as "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical."

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 critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. 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)). 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 their 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 critical habitat.

Federal activities that may affect California tiger salamanders or their critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the U.S. Army Corps of Engineers 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 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 may also jeopardize the continued existence of the California tiger salamander. Federal activities that, when carried out, may adversely affect critical habitat for the California tiger salamander include, but are not limited to:

(1) Actions that would regulate activities affecting waters of the United States by the Army Corps under section 404 of the Clean Water Act;

(2) Actions that change water flow regimes, damming, diversion, and channelization by any Federal agency;

(3) Actions that include road construction and maintenance, right-of-way designation, and regulation funded or permitted by the Federal Highway Administration;

(4) Voluntary conservation measures by private landowners funded by the Natural Resources Conservation Service;

(5) Actions regulating airport improvement activities by the Federal Aviation Administration;

(6) Licensing of construction of communication sites by the Federal Communications Commission; and

(7) Funding of activities by the U.S. Environmental Protection Agency, Department of Energy, Federal Emergency Management Agency, Federal Highway Administration, or any other Federal agency.

We consider all critical habitat units to be occupied by the species at the time of listing. In this designation, we included only areas which were occupied at the time of listing. These areas were identified by documented extant species occurrences in CNDDB (2004) at the time of listing. We consider all of these units included in this final designation to be essential to the conservation of the Central population of the California tiger salamander because they represent the geographic, genetic, and ecological variability found in nature, but do not include all areas occupied by the species at the time of listing. Collectively, they provide sufficient quantity, quality, and distribution of habitat for the Central population of the California tiger salamander to survive random environmental (e.g. predators), natural (e.g. disease), demographic (e.g. low recruitment) or genetic (e.g. inbreeding) events.

Application of Section 3(5)(A) and 4(a)(3) and Exclusions Under 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 or 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 or protection 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 two criteria: (1) The plan provides management, protection or enhancement to the PCEs at least equivalent to that provided by a critical habitat designation; and (2) the Service has reasonable expectation the management, protection or enhancement actions will continue for the foreseeable future.

Section 318 of fiscal year 2004 the National Defense Authorization Act (Pub. L. No. 108–136) amended the Endangered Species Act to address the relationship of Integrated Natural Resources Management Plans (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.

Further, 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.

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 consider 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, but are not limited to, those covered by the following types of plans if they provide assurances that the conservation measures they outline will be implemented and effective such as: (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, and (5) National Wildlife Refuge System Comprehensive Conservation Plans.

Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed species incidental to otherwise lawful activities. An incidental take permit application must be supported by a HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the requested incidental take. We exclude non-Federal public lands and private lands that are covered by an existing operative HCP and executed implementation agreement (IA) under section 10(a)(1)(B) of the Act from designated critical habitat if the benefits of exclusion outweigh the benefits of inclusion as discussed in section 4(b)(2) of the Act.

Before addressing the specifics of the benefits of the inclusion and the benefits of exclusion of particular areas of the proposed designation, we address some general points regarding the uncertainty of describing those benefits.

The key to the benefits of inclusion, and a significant factor in the benefits of exclusion, is the application of the prohibition of destruction or adverse modification of critical habitat as a result of a federally-related action. The attendant requirement for action agencies to consult with the Service in order to avoid adverse modification of critical habitat can result in the modification of the federal action. Any benefit to the species (or other benefit) caused by such a project modification to avoid adverse modification of critical habitat in a particular area is a benefit of designating that area as critical habitat. Conversely, those project modifications can have costs, negative consequences, or result in a loss of other benefits to the species or society. Maintenance of the benefits that might otherwise be forgone and avoidance of costs can be a primary benefit of excluding an area from critical habitat.

There is necessarily some uncertainty involved in considering the benefits accruing from either inclusion or exclusion of areas in the designation, as required by section 4(b)(2), due to the fact that the Service must anticipate the future federal actions and the results of future consultations all of which are necessarily speculative. Further uncertainty was created when the Ninth Circuit in *Gifford Pinchot Task Force* v. *USFWS*, 378 F. 3d 1059 (Ninth Cir. 2004) invalidated the Service's regulatory definition of "destruction or adverse modification" at 50 CFR 402.02 As a result, the consequences of designation are more difficult than ever to predict as Service cannot rely on decades of factual information based on prior experience.

While the Service has not yet promulgated a new regulatory definition, the Director has issued guidance to help ensure that section 7 consultations undertaken in the interim are consistent with *Gifford Pinchot*.

Regarding the relationship between the benefits identified and actions that may take place in the absence of critical habitat the Service as a general matter engages in a broad consideration of the impacts of the designation. However, when ultimately determining what areas, if any, to exclude from a final designation, the Service only weighs those impacts that will actually be affected by the decision of whether or not to exclude the area.

Section 4(b)(2) requires the Secretary to designate critical habitat "after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat." The statute continues by authorizing the Secretary to "exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat," unless the exclusion will result in extinction of the species.

Admittedly, due to the uncertainties discussed above, as well as the additional uncertainty in assigning potential impacts among a variety of causes, it is more difficult to identify those impacts attributable solely to the designation of critical habitat than to identify impacts from section 7 generally, or, even more broadly, conservation efforts for the species. Our analysis relies on reasonable assumptions about the relationship of the incremental impacts of the designation as well as any broader effects we have identified. In many cases, lacking a significant factual basis for the impacts due to the short time the newer *Gifford Pinchot* standard has been in effect, we rely on qualitative descriptions of those incremental impacts.

Relationship of Critical Habitat to Military Lands—Application of Section 4(a)(3)

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resource Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on military lands. Each INRMP includes an assessment of the ecological needs on the installation, including the need 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 the ecological needs of listed species; and a monitoring and adaptive management plan. We consult with the military on the development and implementation of INRMPs for installations with listed species. We are prohibited from designating as critical habitat any lands or other geographical areas owned or controlled by the DOD, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act, 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. In order to provide a benefit to the species, the INRMP must meet the following three criteria: (1) A current INRMP must be complete and provide a benefit to the species; (2) the plan must provide assurances that the conservation management strategies will be implemented; and (3) the plan must provide assurances that the conservation management strategies will be effective, by providing for periodic monitoring and revisions (adaptive management) as necessary. 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 military installation, including conservation provisions for 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.

We have exempted lands owned by Naval Weapons Station-Concord, Camp Parks, and Fort Hunter Liggett from the final critical habitat designation pursuant to section 4(a)(3) of the Act based on legally operative INRMPs that provide a benefit to the California tiger salamander. This includes portions of Central Valley Region Units 14 and 18 and portions of Central Coast Units 5a and 5b. Detailed discussions of the exemptions of military lands are discussed by installation below.

Naval Weapons Station—Concord and Camp Parks

The Department of the Navy, Naval Weapons Station, Seal Beach Detachment, Concord (Detachment Concord) (Contra Costa County), and the Parks Reserve Force Training Area (PRFTA) (Alameda and Contra Costa Counties) (referred to as the Concord Naval Weapons Station and Camp Parks respectively in the proposed rule) have approved INRMPs in place that provide a benefit for the California tiger salamander. These two military installations overlap portions of Central Valley Region units 14 and 18.

The Naval Weapons Station-Concord completed its INRMP in 1997, and it was approved by the Service in July 2003. Conservation measures included in the INRMP for the California tiger salamander at Detachment Concord include: (1) Restricting military training and construction in aquatic habitats known to support the salamander; (2) providing information and education programs to base personnel and the public regarding sensitive species and their habitats; (3) applying pesticides for burrowing rodent control in areas where salamanders may occur in accordance with those measures outlined in the final listing rule for this species; and (4) providing funding and support for California tiger salamander population census and habitat evaluation surveys. In addition, the entire area proposed as critical habitat is being leased for grazing in accordance with Natural Resource Conservation Service guidelines. The purpose of the grazing program is to assist in controlling noxious weeds, and the proceeds received from the program assist in funding natural resource management programs at Detachment Concord. The Secretary has determined that this INRMP provided a benefit to the California tiger salamander, and therefore we are exempting these lands from this critical habitat designation pursuant to section 4(a)(3) of the Act.

Camp Parks completed its INRMP, and it was approved by the Service through a section 7 consultation in July

2003. The INRMP provides conservation measures for the California tiger salamander and provides management direction on conserving listed and imperiled species and their habitats on the base. In addition, Camp Parks actively consults with us on all actions that may affect California tiger salamander on the base and has implemented conservation measures as recommended. Camp Parks has worked with us and developed an Endangered Species Management Plan (ESMP) as an appendix to its INRMP. The ESMP was drafted in part for the California tiger salamander and includes nonnative predator control and other conservation measures that benefit the salamander. Camp Parks has already implemented several portions of the ESMP and had done so prior to the final approval of the INRMP. Therefore, we have determined that the INRMP, as implemented, provides a conservation benefit to the California tiger salamander. As a result, the lands essential to the conservation of the California tiger salamander on Camp Parks are exempt from this designation of critical habitat pursuant to section 4(a)(3) of the Act.

Fort Hunter-Liggett

The Department of the Army, U.S. Army Reserve Command, Fort Hunter-Liggett (Monterey County) has a completed INRMP in place that provides a benefit to the California tiger salamander. We completed formal and informal consultations on the effects of the INRMP on listed species in March 2005. Central Coast Units 5a and 5b occur almost entirely on land managed by Fort Hunter-Liggett. Fort Hunter-Liggett is an unusual case, in that the best available information (Doty in litt. 2004) indicates that all tiger salamanders there are hybrids between California tiger salamanders and eastern tiger salamanders (*A. tigrinum*). However, the INRMP includes commitments by the Army to implement appropriate management and coordinate with the Service and researchers regarding research on and management of hybrid tiger salamanders. The Army is also planning to prepare an Endangered Species Management Plan that will address both the California tiger salamander and the vernal pool fairy shrimp. This plan should include provisions to protect vernal pool habitat and to cooperatively plan and fund research on hybrid tiger salamander management at Fort Hunter-Liggett. Because such research could be helpful in developing techniques to reduce hybridization as a threat to pure native California tiger salamanders, we believe that actions at Fort Hunter-Liggett will provide a conservation benefit for the California tiger salamander, even though it is unlikely that pure populations remain there. Therefore, the lands essential to the conservation of the California tiger salamander on Fort Hunter-Liggett are exempt from this designation of critical habitat pursuant to section 4(a)(3) of the Act.

Relationship of Critical Habitat to U.S. Fish and Wildlife Refuge Land—Exclusions Under Section 4(b)(2) of the Act

San Francisco Bay National Wildlife Refuge Complex

Portions of the Warm Springs Unit of the Don Edwards San Francisco National Wildlife Refuge were included in the proposed designation of critical habitat (East Bay Region Unit 4, Alameda County, 275 ac). A Draft Habitat Management Plan (HMP) has been developed by the refuge staff for the California tiger salamander and its habitat on the refuge. The Draft HMP would integrate seasonal cattle grazing, prescribed burning, vegetation mowing, and herbicide treatment enhancement measures to assist in the conservation of several listed species, including the California tiger salamander. Vegetation management through seasonal livestock grazing and properly timed prescribed burning is anticipated to promote the establishment of native plants and lengthen the vernal pool inundation period, thereby enhancing breeding habitat for the California tiger salamander. Livestock will be excluded from vernal pools that support high numbers of California tiger salamanders until monitoring demonstrates that grazing is beneficial to these species. Mowing and herbicide spraying is expected to replace isolated stands of unpalatable, nonnative vegetation with shorter plant species, which would benefit dispersing or migrating California tiger salamander.

An intra-Service section 7 consultation was conducted on the Draft HMP and a concurrence memorandum was completed in June 2003 (Service 2003). The memorandum stated that the management activities would not likely adversely affect the California tiger salamander. The Draft HMP is expected to be finalized in 2005. The remainder of the unit has undergone section 7 consultation (Service 2004) and either has been developed or was part of the on-site avoidance for the project and has been protected through conservation easements and management measures which have been put in place to conserve the California tiger salamander on-site. These lands subsequently were deeded to the Refuge and will be managed under the HMP. All essential habitat for the California tiger salamander within the San Francisco Bay National Wildlife Refuge is excluded under section 4(b)(2) of the Act from critical habitat based on the conservation benefits provided to the California tiger salamander under the Refuge's draft management plan, and conservation easements and ongoing management that has been put in place on lands that have been deeded to the Refuge through the section 7 process.

San Luis National Wildlife Refuge Complex

Approximately 16,786 ac (6,793 ha) of land are proposed to be designated as critical habitat for the California tiger salamander within the San Luis National Wildlife Refuge Complex in western Merced County. Management goals and objectives of the Refuge include the following objectives that provide conservation benefit for several federally listed species that have been documented on the Refuge, including the California tiger salamander: (1) Managing and providing habitat for endangered or sensitive species; (2) maintaining and enhancing the overall biodiversity associated with the existing mix of vegetative communities; and, (3) providing an area for compatible management oriented research and education/interpretation and recreational programs which may include observation, photography, hunting. Building upon the concepts originally outlined in the San Joaquin Basin Action Plan, a detailed habitat restoration plan has been developed for the West Bear Creek Unit. Fish and Wildlife Service staff at San Luis NWR directed all aspects of the project planning, design, and implementation. Local contractors and Refuge field crews did the actual construction and wetlands development. Refuge staff and volunteers implemented the native grassland and woody riparian habitat restoration. In addition, the United States Bureau of Reclamation, the U.S. Fish and Wildlife Service, and the California Department of Fish and Game, under a cooperative agreement called the San Joaquin Basin Action Plan, are in the process of jointly developing a habitat acquisition and wetland enhancement project in approximately 23,500 acres of lands within the Northern San Joaquin River Basin. All essential habitat for the Central population of California tiger salamander within the San Luis National Wildlife Refuge Complex is excluded under section 4(b)(2) of the

Act from critical habitat based on the current management goals of the refuge to protect and enhance vernal pools and wetlands for threatened and endangered species, including the California tiger salamander.

(1) Benefits of Inclusion

There is minimal benefit from designating critical habitat for the California tiger salamander on National Wildlife Refuge lands because these lands are already managed for the conservation of wildlife. The primary benefit to designation of critical habitat is the requirement that federal agencies consult with the Service to ensure that their actions are not likely to result in the destruction or adverse modification of critical habitat. If critical habitat were designated in these areas, any future consultations would have to be undertaken consistent with the decision in *Gifford Pinchot*. It is highly unlikely that any federal action would be proposed, much less take place, that would appreciably diminish the value of the habitat on the refuges for the conservation of the California tiger salamander. As discussed in detail above, a primary purpose of these refuges is to conserve fish, wildlife, and plants and their habitat, such as the California tiger salamander. As a result, we do not anticipate any action on either refuge would destroy or adversely modify the areas proposed as critical habitat. Therefore, including those areas in the final designation will not lead to any changes to actions on the refuges to avoid destroying or adversely modifying that habitat.

Moreover, both refuges are developing comprehensive resource management plans that will provide for protection and management of all trust resources, including federally listed species and sensitive natural habitats. These plans, and many of the management actions undertaken to implement them, have already undergone or will have to undergo consultation under section 7 of the Act and be evaluated for their consistency with the conservation needs of listed species. Another possible benefit of including these lands as critical habitat would be to educate the public regarding the conservation value of these vernal pool areas and the Central population of California tiger salamander. However, giving special management priority and emphasis to the conservation of listed species, and public education and interpretation, are priorities already established for the National Wildlife Refuge System by the National Wildlife Refuge Administration Act of 1966, as amended, and the National Wildlife Refuge System Improvement Act of 1997. We believe that critical habitat designation provides little gain in the way of increased recognition for special habitat values on lands that are expressly managed to protect and enhance those values. Therefore, we conclude that the California tiger salamander currently is realizing conservation benefits from existing management on National Wildlife Refuges, and that designation of critical habitat will not have any appreciable effect to either cause the modification of a Federal action to avoid adverse modification, or on the development or implementation of public education programs on the two National Wildlife Refuge Complexes.

(2) Benefits of Exclusion

While the consultation requirement associated with critical habitat on National Wildlife Refuge land adds little benefit, it would require the use of resources to ensure regulatory compliance that could otherwise be used for on-the-ground management of targeted listed or sensitive species. Therefore, the benefits of exclusion include the reduction of administrative costs of section 7 compliance by eliminating the need for reinitiating the section 7 consultation process to address newly-designated critical habitat on areas which have undergone consultation in the past, and eliminating the need for a separate analysis of the effects of an action on critical habitat in future consultations.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

The lands essential for the conservation of the California tiger salamander on the San Francisco Bay National Wildlife Refuge Complex and the San Luis National Wildlife Refuge complex already are publicly owned and managed to conserve fish, wildlife, and plants and their habitats, including the California tiger salamander. In addition, environmental education and interpretation are among the priority public uses the refuge system. As a result, we conclude that the benefits of excluding National Wildlife Refuge lands from the final critical habitat designation outweigh the benefits of including them. Exclusion of these lands will not increase the likelihood that management activities would be proposed which would appreciably diminish the value of the habitat for conservation of the species. Designation of critical habitat on the San Francisco and San Luis National Wildlife Refuge Complexes provides redundant, but no additional increment of conservation value for the California tiger salamander in terms of management emphasis or public recognition or education than currently exists. Further, such exclusion will not result in the extinction of the California tiger salamander. In accordance with section 4(b)(2) of the Act, we have excluded lands within the San Francisco Bay and San Luis National Wildlife Refuge Complexes from final critical habitat. The total amount of refuge land excluded from the final designation is approximately 17,601 ac (7,123 ha).

Relationship of Critical Habitat to State Managed Ecological Reserve Land—Exclusions Under Section 4(b)(2) of the Act

The State of California establishes Ecological Reserves "to protect threatened or endangered native plants, wildlife, or aquatic organisms or specialized habitat types, both terrestrial and nonmarine aquatic, or large heterogeneous natural gene pools" (Fish and Game Code section 580). They are to "be preserved in a natural condition, or which are to be provided some level of protection as determined by the commission, for the benefit of the general public to observe native flora and fauna and for scientific study or research" (Fish and Game Code section 584).

Take of species except as authorized by State Fish and Game Code is prohibited on both State Ecological Reserves (section 583). While public uses are permitted on most ecological reserves, such uses are only allowed at times and in areas where listed and sensitive species are not adversely affected (CDFG in litt. 2003). The management objectives for these State lands include: "to specifically manage for targeted listed and sensitive species to provide protection that is equivalent to that provided by designation of critical habitat; to provide a net benefit to the species through protection and management of the land; to ensure adequate information, resources, and funds are available to properly manage the habitat; and to establish conservation objectives, adaptive management, monitoring and reporting processes to assure an effective management program * * *" (CDFG in litt. 2003).

We proposed as critical habitat, but have now considered for exclusion from the final designation, as described below, the California Department of Fish and Game (CDFG) owned lands within the Calhoun Cut and Stone Corral Ecological Reserves (Portion of Unit 2 Central Valley Region, and Unit 4 Southern San Joaquin Region).

(1) Benefits of Inclusion

There is minimal benefit from designating critical habitat for the Central population of the California tiger salamander within the ecological reserves because these lands are already managed for the conservation of wildlife. The primary benefit to designation of critical habitat is the requirement that federal agencies consult with the Service to ensure that their actions are not likely to result in the destruction or adverse modification of critical habitat. If critical habitat were designated in these areas, any future consultations would have to be undertaken consistent with the decision in *Gifford Pinchot*. It is highly unlikely that any federal action would be proposed, much less take place, that would appreciably diminish the value of the habitat on the State ecological reserves for the conservation of the California tiger salamander. As discussed in detail above, a primary purpose of these reserves is to "specifically manage for targeted listed and sensitive species to provide protection that is equivalent to that provided by designation of critical habitat; to provide a net benefit to the species through protection and management of the land; to ensure adequate information, resources, and funds are available to properly manage the habitat; and to establish conservation objectives, adaptive management, monitoring and reporting processes to assure an effective management program * * *" (CDFG in litt. 2003). As a result, we do not anticipate any action on either State-managed ecological reserves which would destroy or adversely modify the areas proposed as critical habitat. Therefore, including those areas in the final designation will not lead to any changes to actions on the ecological reserves to avoid destroying or adversely modifying that habitat.

One possible benefit of including these lands as critical habitat would be to educate the public regarding the conservation value of these vernal pool areas and the Central population of California tiger salamander. However, critical habitat designation provides little gain in the way of increased recognition for special habitat values on lands that are expressly managed to protect and enhance those values. Additionally, the designation of critical habitat will not have any appreciable effect on the development or implementation of public education programs on these areas.

The designation of critical habitat would require consultation with us for any action undertaken, authorized, or funded by a Federal agency that may affect the species or its designated critical habitat. However, the management objectives for State ecological reserves already include specifically managing for targeted listed and sensitive species (CDFG in litt. 2003) such as the California tiger salamander; therefore, the benefit from additional consultation is likely also to be minimal.

(2) Benefits of Exclusion

While the consultation requirement associated with critical habitat on State-managed ecological reserves adds little benefit, it would require the use of resources to ensure regulatory compliance that could otherwise be used for on-the-ground management of targeted listed or sensitive species. Therefore, the benefits of exclusion include the reduction of administrative costs of section 7 compliance by eliminating the need for reinitiating the section 7 consultation process to address newly-designated critical habitat on areas which have undergone consultation in the past, and eliminating the need for a separate analysis of the effects of an action on critical habitat in future consultations.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

The lands essential for the conservation of the Califonria tiger salamander on the Calhoun Cut and Stone Corral Ecological Reserves already are publicly owned and managed for targeted listed and sensitive species, including the California tiger salamander. In addition, the State has informed us that funds are available to properly manage the habitat; and to establish conservation objectives, adaptive management, monitoring and reporting processes to assure an effective management program as described above. The designation of critical habitat will not have any appreciable effect on the development or implementation of public education programs because these lands already are publicly owned and critical habitat designation provides little gain in the way of increased recognition for special habitat values on lands that are expressly managed to protect and enhance those values.

Exclusion of these lands will not increase the likelihood that management activities would be proposed which would appreciably diminish the value of the habitat for conservation of the Central population of the California tiger salamander. Thus, designation of critical habitat on the Calhoun Cut and Stone Corral Ecological Reserves provides redundant, but no additional increment of conservation value for the California tiger salamander in terms of management emphasis or public recognition than currently exists. We therefore conclude that the benefits of excluding the Calhoun Cut and Stone Corral Ecological Reserves and from the final critical habitat designation outweigh the benefits of including them. Further, such exclusion will not result in the extinction of the California tiger salamander. In accordance with section 4(b)(2) of the Act, we have excluded California Department of Fish and Game owned lands within the Calhoun Cut and Stone Corral Ecological Reserves in portions of Unit 2 (Central Valley Region) and Unit 4 (Southern San Joaquin Region). The total amount of State-owned lands excluded within ecological reserves is approximately 1,289 ac (522 ha).

Relationship of Critical Habitat to Habitat Conservation Plan Lands—Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic impacts, when designating critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. Development of an HCP is a prerequisite for the issuance of an incidental take permit pursuant to section 10(a)(1)(B) of the Act. An incidental take permit application must be supported by an HCP that identifies conservation measures that the permittee agrees to implement for the species to minimize and mitigate the impacts of the permitted incidental take. HCPs vary in size and may provide for incidental take coverage and conservation management for one or many federally-listed species. Additionally, more than one applicant may participate in the development and implementation of an HCP. Large regional HCPs expand upon the basic requirements set forth in section 10(a)(1)(B) of the Act because they reflect a voluntary, cooperative approach to large-scale habitat and species conservation planning. Many of the large regional HCPs in southern California have been, or are being, developed to provide for the conservation of numerous federally-listed species and unlisted sensitive species and the habitat that provides for their biological needs. These HCPs are designed to proactively implement conservation actions to address future projects that are anticipated to occur

within the planning area of the HCP. However, given the broad scope of these regional HCPs, not all projects envisioned to potentially occur may actually take place. The State of California also has a NCCP process that is very similar to the federal HCP process and is often completed in conjunction with the HCP process. We recognize that many of the projects with HCPs also have State-issued NCCPs. In the case of approved regional HCPs and accompanying Implementing Agreements (IAs) (*e.g.*, those sponsored by cities, counties, or other local jurisdictions) that provide for incidental take coverage, a primary goal of these regional plans is to provide for the protection and management of habitat essential for species conservation, while directing development to other areas. We considered, but did not designate as critical habitat, on lands within the Draft East Contra Costa County HCP under section 4(b)(2) of the Act. This draft HCP includes Central Valley Region Units 14, 15, 16, and a portion of Unit 17. We believe the benefits of excluding lands within this draft HCP from the final critical habitat designation will outweigh the benefits of including them. The following represents our rationale for excluding these areas.

Draft East Contra Costa County Habitat Conservation Plan (ECCHCP)

The draft ECCHCP has been drafted and we expect it to be available for public review and comment in the fall of 2005. We expect a finalized plan before the end of 2006. Participants in this HCP include the County of Contra Costa; the cities of Brentwood, Clayton, Oakley, and Pittsburg, California; the Contra Costa Water District; and the East Bay Regional Park District. The draft ECCHCP encompasses the eastern portion of Contra Costa County from approximately west of Concord to Sand Mound Slough and Clifton Court Forebay on the east. The draft ECCHCP is also a subregional plan under the State's Natural Community Conservation Planning (NCCP) process and was developed in cooperation with the California Department of Fish and Game. The draft ECCHCP identifies the California tiger salamander as a covered species and has identified areas where growth and development are expected to occur, as well as several conservation measures, including (1) preserving between 24,100–28,800 ac and restoring between 116–118 ac of California tiger salamander habitat; (2) preserving major habitat connections linking existing public lands; (3) incorporating a range of habitat and population management and enhancement measures including monitoring; (4) fully mitigating the impacts to covered species; (5) maintaining ecosystem processes; and, (6) contributing to the recovery of covered species. When the conservation measures are implemented they will benefit California tiger salamander conservation by preserving and restoring existing wetland and upland habitat and creating new wetland habitat for the species. We expect that the draft ECCHCP will provide substantial protection for all three of the primary constituent elements for the Central population of the California tiger salamander, and that protected lands will receive special management they require through funding mechanisms that will be implemented under the ECCHCP.

(1) Benefits of Inclusion

The primary benefit to designation of critical habitat is the requirement that federal agencies consult with the Service to ensure that their actions are not likely to result in the destruction or adverse modification of critical habitat. If critical habitat were designated in these areas, primary constituent elements in these areas would be protected from destruction or adverse modification by federal actions using a conservation standard based on the Ninth Circuit's decision in *Gifford Pinchot*. This requirement would be in addition to the requirement that proposed Federal actions would not be likely to jeopardize the species' continued existence. However, inasmuch as these areas currently are occupied by the species, consultation for activities which might adversely impact the species, including possibly significant habitat modification (see definition of "harm" at 50 CFR 17.3) would be required, even without the critical habitat designation. The requirement to conduct such consultation would occur regardless of whether the authorization for incidental take occurs under either section 7 or section 10 of the Act.

As discussed above, we expect the ECCHCP to provide substantial protection of the PCEs and special management of essential habitat for the Central population of the California tiger salamander on ECCHCP conservation lands. We expect the ECCHCP to provide a greater level of management for the Central population of the California tiger salamander on private lands than would designation of critical habitat on private lands. Moreover, inclusion of these non-Federal lands as critical habitat would not necessitate additional management and conservation activities that would exceed the approved ECCHCP and its implementing agreement. As a result, we do not anticipate any action on these lands would destroy or adversely modify the areas proposed as critical habitat. Therefore, we do not expect that including those areas in the final designation will lead to any changes to actions on the conservation lands to avoid destroying or adversely modifying that habitat.

A benefit of including an area as critical habitat designation is the education of landowners and the public regarding the potential conservation value of these areas. The inclusion of an area as critical habitat may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this conservation benefit has largely been achieved for the California tiger salamander through the hearings and workshops that have been held in the East Bay area associated with the listing of the species and subsequent proposal to designate critical habitat.

(2) Benefits of Exclusion

The benefits of excluding lands within HCPs from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by a critical habitat designation. Many HCPs, particularly large regional HCPs such as the ECCHCP, take many years to develop and, upon completion, become regional conservation plans that are consistent with the recovery objectives for listed species that are covered within the plan area. In fact, designating critical habitat in areas covered by a pending HCP could result in the loss of species' benefits if participants abandon the voluntary HCP process, in part because of the strength of the perceived additional regulatory compliance that such designation would entail. The time and cost of regulatory compliance for a critical habitat designation do not have to be quantified for them to be perceived as additional Federal regulatory burden sufficient to discourage continued voluntary participation in plans targeting listed species conservation.

Furthermore, an HCP or NCCP/HCP application must itself be consulted upon. Such a consultation would review the effects of all activities covered by the HCP which might adversely impact the species, including possibly significant habitat modification (see definition of "harm" at 50 CFR 17.3), even without the critical habitat designation. In addition, Federal actions

not covered by the HCP in areas occupied by listed species would still require consultation under section 7 of the Act and would be reviewed for possibly significant habitat modification in accordance with the definition of harm referenced above. This standard also would apply to all consultation conducted in the interim period prior to finalization of the ECCHCP, whether incidental take exemption is provided under section 7 or section 10 of the Act.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We have reviewed and evaluated for the California tiger salamander. Based on this evaluation, we find that the benefits of exclusion of the lands essential to the conservation of the California tiger salamander in the planning area for the draft ECCHCP outweigh the benefits of including Central Valley Region, Units 14, 15, 16 and a portion of Unit 17 as critical habitat.

The exclusion of these lands from critical habitat will help preserve the partnerships that we have developed with the local jurisdiction and project proponent in the development of the ECCHCP. The educational benefits of critical habitat, including informing the public of areas that are essential for the long term conservation of the species, are still accomplished from material provided on our Web site and through public notice and comment procedures required to establish the ECCHCP. The public also has been informed through the public participation that occurs during the development of this regional HCP. For these reasons, we believe that designating critical habitat has little benefit in areas covered by the draft ECCHCP. We do not believe that this exclusion would result in the extinction of the species because the draft ECCHCP seeks to: (1) Preserve approximately 34,800 ac and restore between 234–368 ac of habitat that contains the PCEs and is essential to the conservation of the Central population of the California tiger salamander; (2) preserve major habitat connections linking existing public lands; (3) incorporate a range of habitat and population management and enhancement measures; (4) fully mitigate the impacts of covered species, including the Central population of the California tiger salamander; (5) maintain ecosystem processes; and (6) contribute to the recovery of covered species.

Relationship of Critical Habitat to Other Land—Exclusions Under Section 4(b)(2) of the Act

East Bay Region Unit 10

A portion of East Bay Region Unit 10 warrants exclusion from the final critical habitat designation. Based on information received during the comment period, approximately 281 ac (114 ha) of the unit currently consists of commercially or agriculturally developed property and no longer contains one or more of the PCEs. Because the features considered essential for the California tiger salamander are no longer present as a result of the development, we have removed these lands from the critical habitat designation.

An additional 591 ac (239 ha) has been designated as open space areas as a result of the development. Conservation easements specifically including measures to protect, preserve, and enhance habitat for the California tiger salamander have been placed on the open space areas. These open spaces areas still contain those features considered essential for the California tiger salamander as identified in this final rule and will be managed to protect those features.

(1) Benefits of Inclusion

There is minimal benefit from designating critical habitat for the California tiger salamander within the open space areas because these lands are already managed for the conservation of the California tiger salamander. One possible benefit of including these lands as critical habitat would be to educate the public regarding the conservation values of these areas and the habitat they support. However, critical habitat designation provides little gain in the way of increased recognition for special habitat values on lands that are expressly managed to protect and enhance those values. Additionally, the designation of critical habitat will not have any appreciable effect on the development or implementation of public education programs in these areas.

Another possible benefit to including these lands is that the designation of critical habitat can serve to educate landowners and the public regarding the potential conservation values of an area. This may focus and contribute to conservation efforts of other parties by clearly delineating areas of high conservation value for certain species. However, this area already is publicly-owned by a non-Federal entity, and we believe that critical habitat designation provides little gain in the way of increased recognition for special habitat values on lands that are expressly managed to protect and enhance those values. Additionally, we believe that this education benefit has largely been achieved. The additional educational benefits that might arise from critical habitat designation are largely accomplished through the proposed rule and request for public comment that accompanied the development of this critical habitat regulation. We have accordingly determined that the benefits of designating critical habitat on this property covered by the described conservation measures above are small.

The designation of critical habitat would require consultation with us for any action undertaken, authorized, or funded by a Federal agency that may affect the species or its designated critical habitat. However, the open space area management plan already includes specific management actions targeting listed and sensitive species, including the California tiger salamander; therefore, the benefit from additional consultation is likely also to be minimal.

In summary, we conclude that the Central population of the California tiger salamander currently is realizing conservation benefits from existing management of these areas, and that designation of critical habitat will not have any appreciable effect to either cause the modification of a Federal action to avoid adverse modification, or on the development or implementation of public education programs.

(2) Benefits of Exclusion

While the consultation requirement associated with critical habitat on the open space areas would provide little benefit, it would require the use of resources to ensure regulatory compliance that could otherwise be used for on-the-ground management of the targeted listed or sensitive species, including the Central population of the California tiger salamander. The benefits of exclusion include the reduction of administrative costs by eliminating the need for a separate analysis of the effects of an action on critical habitat in future consultations, whether incidental take exemption is provided through section 7 or section 10. The open space areas are currently managed through a mitigation, monitoring, and reporting program (MMRP); a Wildlife Management Plan (WMP); and a conservation easement that is funded in perpetuity. The MMRP, WMP, and the conservation easement specifically identify measures designed to protect, preserve, and enhance habitat for the California tiger salamander. Such

measures include: (1) Create three new salamander breeding ponds; (2) enhance an existing breeding pond; (3) place signage around sensitive habitat; (4) implement a permanent bullfrog control program; (5) prohibit new introduction of fish to any waters on the property; (6) limit use of rodenticides and extent of rodent control; and (7) monitor for noxious chemicals in ground and surface water. Therefore, the benefits of exclusion include relieving additional regulatory burden that might be imposed by the critical habitat, which could divert resources from substantive resource protection to procedural regulatory efforts.

(3) The Benefits of Exclusion Outweigh the Benefits of Inclusion

Based on the above considerations, and consistent with the direction provided in section 4(b)(2) of the Act and the Federal District Court decision concerning critical habitat (*Center for Biological Diversity* v. *Norton*, Civ. No. 01–409 TUC DCB D. Ariz. Jan. 13, 2003), we have determined that the benefits of excluding a portion of East Bay Region unit 10 as critical habitat outweigh the benefits of including it as critical habitat for the Central population of the California tiger salamander. This is because these lands are already managed to protect and enhance unique and important natural resource values specifically for the California tiger salamander. Exclusion of these lands will not increase the likelihood that management activities would be proposed which would appreciably diminish the value of the habitat for the conservation of the species. In addition, we believe that critical habitat designation provides little gain in the way of increased public recognition for special habitat values on public lands that are expressly managed to protect and enhance those values. We do not believe that this exclusion would result in the extinction of the species because the MMRP, WMP, and conservation easement seek to: (1) Preserve approximately 591 ac of habitat; (2) enhance and create breeding habitat; (3) incorporate a range of habitat and population management and enhancement measures beneficial to the salamander; (4) limit use of rodenticides and extent of rodent control; and (5) monitor for noxious chemicals in ground and surface water.

Relationship of Critical Habitat to Economic Impacts—Exclusions Under Section 4(b)(2) of the Act

This section allows the Secretary to exclude areas from critical habitat for economic reasons if she determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat, unless the exclusion will result in the extinction of the species concerned. This is a discretionary authority Congress has provided to the Secretary with respect to critical habitat. Although economic and other impacts may not be considered when listing a species, Congress has expressly required their consideration when designating critical habitat.

In general, we have considered in making the following exclusions that all of the costs and other impacts predicted in the economic analysis may not be avoided by excluding the area, due to the fact that all of the areas in question are currently occupied by the Central population of CTS and there will be requirements for consultation under Section 7 of the Act, or for permits under section 10 (henceforth "consultation"), for any take of this species, which should also serve to protect the species and its habitat, and other protections for the species exist elsewhere in the Act and under State and local laws and regulations. In conducting economic analyses, we are guided by the 10th Circuit Court of Appeal's ruling in the New Mexico Cattle Growers Association case (248 F.3d at 1285), which directed us to consider all impacts, "regardless of whether those impacts are attributable co-extensively to other causes." As explained in the analysis, due to possible overlapping regulatory schemes and other reasons, there are also some elements of the analysis that may overstate some costs.

Conversely, the Ninth Circuit has recently ruled ("Gifford Pinchot", 378 F.3d at 1071) that the Service's regulations defining "adverse modification" of critical habitat are invalid because they define adverse modification as affecting both survival and recovery of a species. The Court directed us to consider that determinations of adverse modification should be focused on impacts to recovery. While we have not yet proposed a new definition for public review and comment, compliance with the Court's direction may result in additional costs associated with the designation of critical habitat (depending upon the outcome of the rulemaking). In light of the uncertainty concerning the regulatory definition of adverse modification, our current methodological approach to conducting economic analyses of our critical habitat designations is to consider all conservation-related costs. This approach would include costs related to sections 4, 7, 9, and 10 of the Act, and should encompass costs that would be considered and evaluated in light of the *Gifford Pinchot* ruling.

In addition, we have received several credible comments on the economic analysis contending that it underestimates, perhaps significantly, the costs associated with this critical habitat designation. Both of these factors should be considered in the test and balancing against the possibility that some of the costs shown in the economic analysis might be attributable to other factors, or are overly high, and so would not necessarily be avoided by excluding the area for which the costs are predicted from this critical habitat designation.

We recognize that we have excluded a significant portion of the proposed critical habitat. Congress expressly contemplated that exclusions under this section might result in such situations when it enacted the exclusion authority. House Report 95–1625, stated on page 17: "Factors of recognized or potential importance to human activities in an area will be considered by the Secretary in deciding whether or not all or part of that area should be included in the critical habitat * * * In some situations, no critical habitat would be specified. In such situations, the Act would still be in force prevent any taking or other prohibited act * * * " (emphasis supplied). We accordingly believe that these exclusions, and the basis upon which they are made, are fully within the parameters for the use of section 4(b)(2) set out by Congress. In reaching our decision about which areas should be excluded from the final critical habitat designation for economic reasons, we considered the following factors to be important: (1) The most costly census tracts, approximately the top 80 percent; (2) at or near the 80 percent threshold, a substantial break in costs from one census tract to the next that indicates disproportionate impacts; and (3) costs of public works projects such as transportation or other infrastructure.

The draft economic analysis published in the **Federal Register** on July 18, 2005 (70 FR 41183) analyzed the economic effects of the proposed critical habitat designation for the Central population of California tiger salamander in 20 California counties. The economic impacts of critical habitat designation vary widely among counties, and even within counties. The counties most impacted by the critical habitat designation to the new housing industry and public projects include Alameda ($193 million), Contra Costa ($91 million), Monterey ($67 million),

Santa Clara ($33 million), San Benito ($23 million), and Fresno ($15 million). Further, economic impacts are unevenly distributed within counties. The analysis was conducted at the census tract level, resulting in a high degree of spatial precision.

Mitigation requirements increase the cost of development and avoidance requirements are assumed to reduce the construction of new housing. In the base scenario where critical habitat reduces the amount of new housing, designation of critical habitat for the Central population of the California tiger salamander is expected to impose losses of over $441 million relating to lost development opportunity over a 20-year period, between the present and 2025. A second scenario, in which increased costs and the reduction in developable land are accommodated through densification, or in other words, in the event that on-site avoidance can be accomplished through density increases alone, welfare losses from critical habitat for the Central population of the California tiger salamander would be approximately $370 million over the same 20-year period.

Alameda County is expected to experience the largest economic impacts from critical habitat—over $193 million in surplus lost in the rationed housing or base scenario. As shown in the map of impacts in Alameda County, these impacts are concentrated in census tracts northwest of Livermore and southeast of Pleasanton. Economic impacts generally decline in those census tracts which are progressively further of the developed city centers. The four most impacted counties are the same in both scenarios: Alameda, Contra Costa, Monterey, and Santa Clara. These counties appear to experience impacts that are significantly larger than is the case in other counties " nearly twice as large as the next most impacted county. The ten most impacted counties are identical under the two scenarios.

A copy of the final economic analysis with supporting documents are included in our administrative record and may be obtained by contacting U.S. Fish and Wildlife Service, Branch of Endangered Species (see **ADDRESSES** section).

Application of Section 4(b)(2)—Economic Exclusion to 12 Census Tracts

We have considered, but are excluding from critical habitat for the Central population of the California tiger salamander essential habitat in the 12 census tracts and counties listed in Table 2.

TABLE 2.—EXCLUDED CENSUS TRACTS AND COSTS

Census tract	County	Welfare impact in draft EA ($)	Adjusted welfare impact in final EA ($)
06001450721	Alameda	$54,235,596	$68,357,184
06013355104	Contra Costa	37,728,800	43,721,380
06053010501	Monterey	42,654,944	42,654,944
06001450701	Alameda	44,538,812	37,760,320
06001451101	Alameda	15,160,546	32,343,348
06001450100	Alameda	8,283,346	30,483,876
06053014103	Monterey	22,393,324	22,393,324
06085512100	Santa Clara	14,745,986	22,264,860
06001441503	Alameda	2,085,401	19,553,670
06013355200	Contra Costa	21,156,608	17,426,460
06069000600	San Benito	14,625,198	14,625,198
06019005515	Fresno	13,393,774	13,393,774
Total			364,978,338

The notice of availability of the draft economic analysis (70 FR 41183, July 18, 2005) solicited public comment on the potential exclusion of high cost areas. As we finalized the economic analysis, we identified high costs associated with the proposed critical habitat designation to public projects in San Benito County. These public projects were the widening of State Routes 25 and 156. The final economic analysis indicates additional costs in census tracts in which these projects were located were approximately $4.9 million for the two projects. On the basis of the significance of these costs, we determined that these two routes be excluded from the designation. In addition, the economic analysis also identified a section of Highway 680 in Alameda County as having significant costs as a result of the designation of critical habitat. The critical habitat unit associated with the project area is one of those identified in Table 2 above for exclusion and no additional exclusion of this area is necessary.

(1) Benefits of Inclusion of the 12 Excluded Census Tracts

The areas excluded are currently occupied by the Central population of the California tiger salamander, as shown in Table 2. If these areas were designated as critical habitat, any actions with a Federal nexus which may adversely affect the critical habitat would require a consultation with us, as explained above in the section of this notice entitled "Effects of Critical Habitat Designation". Primary constituent elements in these areas would be protected from destruction or adverse modification by federal actions using a conservation standard based on the Ninth Circuit's decision in *Gifford Pinchot*. This requirement would be in addition to the requirement that proposed Federal actions avoid likely jeopardy to the species' continued existence. However, inasmuch as all these units are currently occupied by the species, consultation for activities which may adversely affect the species, including possibly significant habitat modification (see definition of "harm" at 50 CFR 17.3), would be required, even without the critical habitat designation. The requirement to conduct such consultation would occur regardless of whether the authorization for incidental take occurs under either section 7 or section 10 of the Act. For the occupied areas there is still a requirement for a jeopardy analysis to ensure Federal actions are note likely to jeopardize the continued existence of the species.

We determined, however, in the economic analysis that designation of critical habitat could result in approximately $364,978,338 in costs in

these 12 census tracts, the majority of which are directly related to residential development impacts. We believe that the potential decrease in residential housing development that could be caused by this designation of critical habitat for the Central population of the California tiger salamander would minimize impacts to and potentially provide some protection to the species, the vernal pool complexes and ponds where they reside, and the physical and biological features essential to the species' conservation (*i.e.*, the primary constituent elements). Thus, this decrease in residential housing development would directly translate into a potential benefit to the species that would result from this designation.

Another possible benefit of a critical habitat designation is education of landowners and the public regarding the potential conservation value of these areas. This may focus and contribute to conservation efforts by other parties by clearly delineating areas of high conservation values for certain species. However, we believe that this education benefit has largely been achieved, or is being achieved in equal measure by other means. Although we have not yet begun the recovery planning process for the Central population of the California tiger salamander the designation of critical habitat would assist in the identification of potential core recovery areas for the species. The critical habitat designation and recovery plan would provide information geared to the general public, landowners, and agencies about areas that are important for the conservation of the species and what actions they can implement to further the conservation of the Central population of the California tiger salamander within their own jurisdiction and capabilities, and contains provisions for ongoing public outreach and education as part of the recovery process.

In summary, we believe that inclusion of the 12 census tracts as critical habitat would provide some additional Federal regulatory benefits for the species. However, that benefit is limited to some degree by the fact that the proposed critical habitat is occupied by the species, and therefore there must, in any case, be consultation with the Service over any Federal action which may affect the species in those 12 census tracts. The additional educational benefits which might arise from critical habitat designation are largely accomplished through the multiple opportunities for public notice and comments which accompanied the development of this regulation, publicity over the prior litigation, and public outreach associated with the development of the draft and, ultimately, the implementation of the final recovery plan for the Central population of the California tiger salamander.

(2) Benefits of Exclusion of the 12 Excluded Census Tracts

The economic analysis conducted for this proposal estimates that the costs associated with designating these 12 census tracts would be approximately $364,978,338. Costs would be associated with the Central population of the California tiger salamander in amounts shown in Table 2 above. By excluding these census tracts, some or all of these costs will be avoided. Two important public-sector projects, widening of State Routes 25 and 156, will avoid the costs associated with critical habitat designation.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion of the 12 Census Tracts

We believe that the benefits from excluding these lands from the designation of critical habitat—avoiding the potential economic and human costs, both in dollars and jobs, predicted in the economic analysis—exceed the educational and regulatory benefits which could result from including those lands in this designation of critical habitat.

We have evaluated and considered the potential economic costs on the residential development industry relative to the potential benefit for the Central population of the California tiger salamander and its primary constituent elements derived from the designation of critical habitat. We believe that the potential economic impact of up to approximately $365 million on the development industry significantly outweighs the potential conservation and protective benefits for the species and their primary constituent elements derived from the residential development not being constructed as a result of this designation.

We also believe that excluding these lands, and thus helping landowners avoid the additional costs that would result from the designation, will contribute to a more positive climate for Habitat Conservation Plans and other active conservation measures which provide greater conservation benefits than would result from designation of critical habitat—even in the post-*Gifford Pinchot* environment—which requires only that the there be no adverse modification resulting from actions with a Federal nexus. We therefore find that the benefits of excluding these areas from this designation of critical habitat outweigh the benefits of including them in the designation.

We believe that the required future recovery planning process would provide at least equivalent value to the public, State and local governments, scientific organizations, and Federal agencies in providing information about habitat that contains those features considered essential to the conservation of the Central population of the California tiger salamander, and in facilitating conservation efforts through heightened public awareness of the plight of the listed species. Draft recovery plans would contains explicit objectives for ongoing public education, outreach, and collaboration at local, state, and federal levels, and between the private and public sectors, in recovering the Central population of the California tiger salamander.

(4) Exclusion Will Not Result in Extinction of the Species

We believe that exclusion of these lands will not result in the extinction of the Central population of the California tiger salamander as these areas are considered occupied habitat. Actions which might adversely affect the species are expected to have a Federal nexus, and would thus undergo a section 7 consultation with the Service. The jeopardy standard of section 7, and routine implementation of habitat preservation through the section 7 process, as discussed in the economic analysis, provide assurance that the species will not go extinct. In addition, the species is protected from take under section 9 of the Act. The exclusion leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

Critical habitat is being designated for the species in other areas that will be accorded the protection from adverse modification by Federal actions using the conservation standard based on the Ninth Circuit decision in *Gifford Pinchot*. Additionally, the species occurs on lands protected and managed either explicitly for the species, or indirectly through more general objectives to protect natural values, this provides protection from extinction while conservation measures are being implemented. For example, the Central population of California tiger salamander is protected on lands such as conservation banks and other natural areas protected by perpetual conservation easements and managed specifically for the species *e.g.*, Jepson Prairie. The species also occurs on lands

managed to protect and enhance wetland values under the Wetlands Reserve Program of the Natural Resource Conservation Service. The Central population of the California tiger salamander are protected on lands such as conservation banks protected by perpetual conservation easements and managed specifically for the species and its habitat, *e.g.*, , Fitzgerald Ranch Conservation Bank, Ohlone Conservation Bank, and Viera Sandy Mush Conservation Bank; National Wildlife Refuges, *e.g.*, San Luis NWR Complex, and San Francisco Bay NWR Complex; and also on a variety of natural areas managed to maintain and enhance natural values, *e.g.*, Grasslands Ecological Area.

We believe that exclusion of the 12 census tracts will not result in extinction of the Central population of the California tiger salamander as they are considered occupied habitat. Federal Actions which might adversely affect the species would thus undergo a consultation with the Service under the requirements of section 7 of the Act. The jeopardy standard of section 7, and routine implementation of habitat preservation as part of the section 7 process, as discussed in the draft economic analysis, provide insurance that the species will not go extinct. The exclusion leaves these protections unchanged from those that would exist if the excluded areas were designated as critical habitat.

Critical habitat is being designated for the Central population of the California tiger salamander in other areas that will be accorded the protection from adverse modification by federal actions using the conservation standard based on the Ninth Circuit decision in *Gifford Pinchot*. Additionally, the species occurs on lands protected and managed either explicitly for the species, or indirectly through more general objectives to protect natural values, this factor acting in concert with the other protections provided under the Act for these lands absent designation of critical habitat on them, and acting in concert with protections afforded each species by the remaining critical habitat designation for the species, lead us to find that exclusion of these 12 census tracts will not result in extinction of the Central population of the California tiger salamander.

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 July 18, 2005 (70 FR 41183). We accepted comments on the draft analysis until August 3, 2005.

The primary purpose of the economic analysis is to estimate the potential economic impacts associated with the designation of critical habitat for the Central population of the CTS. This information is intended to assist the Secretary in making decisions about whether the benefits of excluding particular areas from the designation outweigh the benefits of including those areas in the designation. This economic analysis considers the economic efficiency effects that may result from the designation, including habitat protections that may be co-extensive with the listing of the species. It also addresses distribution of impacts, including an assessment of the potential effects on small entities and the energy industry. This information can be used by the Secretary to assess whether the effects of the designation might unduly burden a particular group or economic sector.

This analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land use activities can exist in the absence of critical habitat. These impacts may result from, for example, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be part of the regulatory and policy baseline.

A copy of the draft economic analysis with supporting documents is included in our administrative record and may be obtained by contacting us (see **ADDRESSES** section) or by downloading from the Internet at *http://sacramento.fws.gov/*.

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 will not have an annual effect on the economy of $100 million or more or affect the economy in a material way. Due to the tight timeline for publication in the **Federal Register**, the Office of Management and Budget (OMB) has not formally reviewed this rule. As explained above, we prepared an economic analysis of this action. We used this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat. We also used it to help determine whether to exclude any area from critical habitat, as provided for under section 4(b)(2), if we determine that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless we determine, based on the best scientific and commercial data available, that the failure to designate such area as critical habitat will result in the extinction of the species.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (RFA) (as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the 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 an 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 factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA also amended the RFA to require a certification statement.

Small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses. Small businesses include manufacturing and mining concerns with fewer than

500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule, as well as the types of project modifications that may result. In general, the term "significant economic impact" is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define "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 some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or implement that may affect CTS. Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities.

In general, two different mechanisms in section 7 consultations could lead to additional regulatory requirements for the approximately four small businesses, on average, that may be required to consult with us each year regarding their project's impact on the Central population of the CTS and its habitat. First, if we conclude, in a biological opinion, that a proposed action is likely to jeopardize the continued existence of a species or adversely modify its critical habitat, we can offer "reasonable and prudent alternatives." Reasonable and prudent alternatives are alternative actions that can be implemented in a manner consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that would avoid jeopardizing the continued existence of listed species or result in adverse modification of critical habitat. A Federal agency and an applicant may elect to implement a reasonable and prudent alternative associated with a biological opinion that has found jeopardy or adverse modification of critical habitat. An agency or applicant could alternatively choose to seek an exemption from the requirements of the Act or proceed without implementing the reasonable and prudent alternative. However, unless an exemption were obtained, the Federal agency or applicant would be at risk of violating section 7(a)(2) of the Act if it chose to proceed without implementing the reasonable and prudent alternative(s).

Second, if we find that a proposed action is not likely to jeopardize the continued existence of a listed animal or plant species, we may identify reasonable and prudent measures designed to minimize the amount or extent of take and require the Federal agency or applicant to implement such measures through non-discretionary terms and conditions. We may also identify discretionary conservation recommendations designed to minimize or avoid the adverse effects of a proposed action on listed species or critical habitat, help implement recovery plans, or develop information that could contribute to the recovery of the species.

Based on our experience with consultations pursuant to section 7 of the Act for all listed species, virtually all projects–including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations in section 7 consultations can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures, by definition, must be economically feasible and within the scope of authority of the Federal agency involved in the consultation. We can only describe the general kinds of actions that may be identified in future reasonable and prudent alternatives. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and this critical habitat designation. Within the final critical habitat units, the types of Federal actions or authorized activities that we have identified as potential concerns are:

(1) Activities affecting waters of the United States by the Corps under section 404 of the Clean Water Act;

(2) Water flows, damming, diversion, and channelization implemented or licensed by Federal agencies;

(3) Timber harvest, grazing, mining, and recreation by the U.S. Forest Service and BLM;

(4) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities;

(5) Hazard mitigation and post-disaster repairs funded by the Federal Emergency Management Agency; and

(6) Activities funded by the Environmental Protection Agency, U.S. Department of Energy, or any other Federal agency.

It is likely that a developer or other project proponent could modify a project or take measures to protect the Central population of the CTS. The kinds of actions that may be included if future reasonable and prudent alternatives become necessary include conservation set-asides, management of competing nonnative species, restoration of degraded habitat, and regular monitoring. These are based on our understanding of the needs of the species and the threats it faces, as described in the final listing rule and proposed critical habitat designation. These measures are not likely to result in a significant economic impact to project proponents.

In summary, we have considered whether this would result in a significant economic effect on a substantial number of small entities. We have determined, for the above reasons and based on currently available information, that it is not likely to affect a substantial number of small entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include Corps permits, permits we may issue under section 10(a)(1)(B) of the Act, Federal Highway Administration funding for road improvements, hydropower licenses issued by Federal Energy Regulatory Commission, and regulation of timber harvest, grazing, mining, and recreation by the U.S.

Forest Service and BLM. A regulatory flexibility analysis is not required.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Refer to the draft economic analysis for a discussion of the effects of this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This final rule to designate critical habitat for the Central population of the CTS is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make 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) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. As such, Small Government Agency Plan is not required.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by the Central population of the CTS imposes no additional restrictions to those currently in place and, therefore, has little incremental 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 are more clearly defined, and the PCEs of the habitat necessary to the survival 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 are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the Central population of the CTS.'

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. 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 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationships With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and the Department of the Interior's Manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands essential for the conservation of the Central population of the CTS. Therefore, designation of critical habitat for the Central population of the CTS has not been designated on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Sacramento Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this package is the Sacramento Fish and Wildlife Office.

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

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

PART 17—[AMENDED]

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

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

■ 2. In § 17.11(h), revise the entry for "Salamander, California tiger, in Santa Barbara County Population" in the List of Endangered and Threatened Wildlife as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
AMPHIBIANS							
*	*	*	*	*	*		*
Salamander, California tiger.	*Ambystoma californiense.*	U.S.A. (CA)	U.S.A. (CA—California).	T	667E, 702, 744	17.95(d)	17.43(c)
*	*	*	*	*	*		*

■ 3. In § 17.95(d), amend the entry for the designation of critical habitat for California tiger salamander (*Ambystoma californiense*) in Santa Barbara County as follows:

■ a. Revise the entry's heading;

■ b. Immediately following the heading, add a new subheading;

■ c. Immediately following the map in paragraph (d)(10)(iii), add a new subheading; and

■ d. Add paragraphs (11) through (51); to read as set forth below:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(d) *Amphibians*

* * * * *

California Tiger Salamander (*Ambystoma californiense*)

California Tiger Salamander (*Ambystoma californiense*)in Santa Barbara County

* * * * *

Central Population of the California Tiger Salamander (*Ambystoma californiense*)

(11) Critical habitat units are depicted for the Central population of the California tiger salamander in California on the maps below.

(12) The PCEs of critical habitat for the Central population of the California tiger salamander (*Ambystoma californiense*) are the habitat components that provide:

(i) Standing bodies of fresh water (including natural and manmade (*e.g.*, stock)) ponds, vernal pools, and other ephemeral or permanent water bodies which typically support inundation during winter rains and hold water for a minimum of 12 weeks in a year of average rainfall;

(ii) Upland habitats adjacent and accessible to and from breeding ponds that contain small mammal burrows or other underground habitat that CTS depend upon for food, shelter, and protection from the elements and predation; and

(iii) Accessible upland dispersal habitat between occupied locations that allow for movement between such sites.

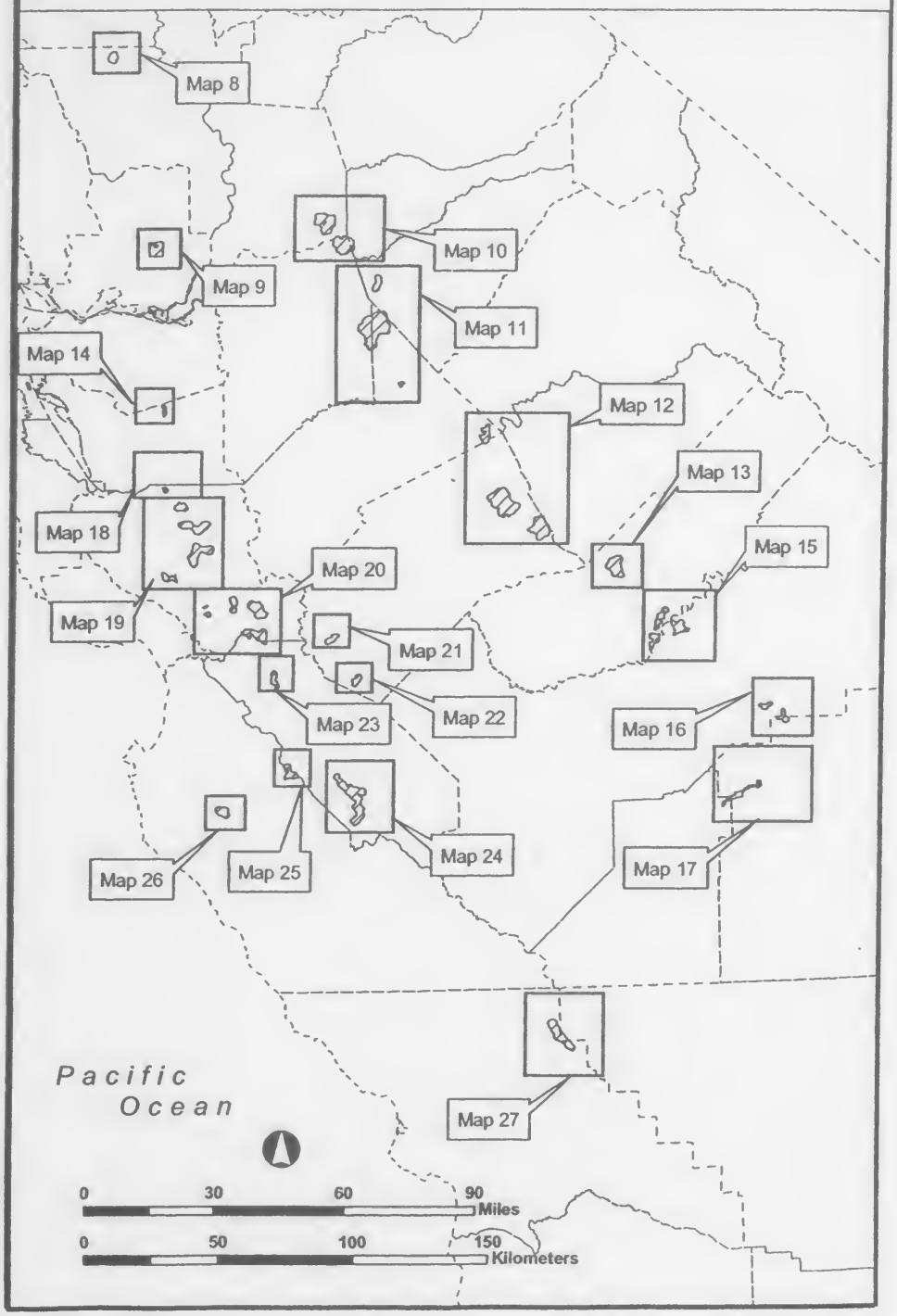
(13) Critical habitat does not include manmade structures existing on the effective date of this rule and not containing one or more of the PCEs, such as buildings, aqueducts, airports, and roads, and the land on which such structures are located.

(14) Critical habitat units are described below. Data layers defining map units were created by screen digitizing habitat boundaries using ArcMap GIS.

(15) Note: Map 7 (Index map) follows:

BILLING CODE 4310–55–P

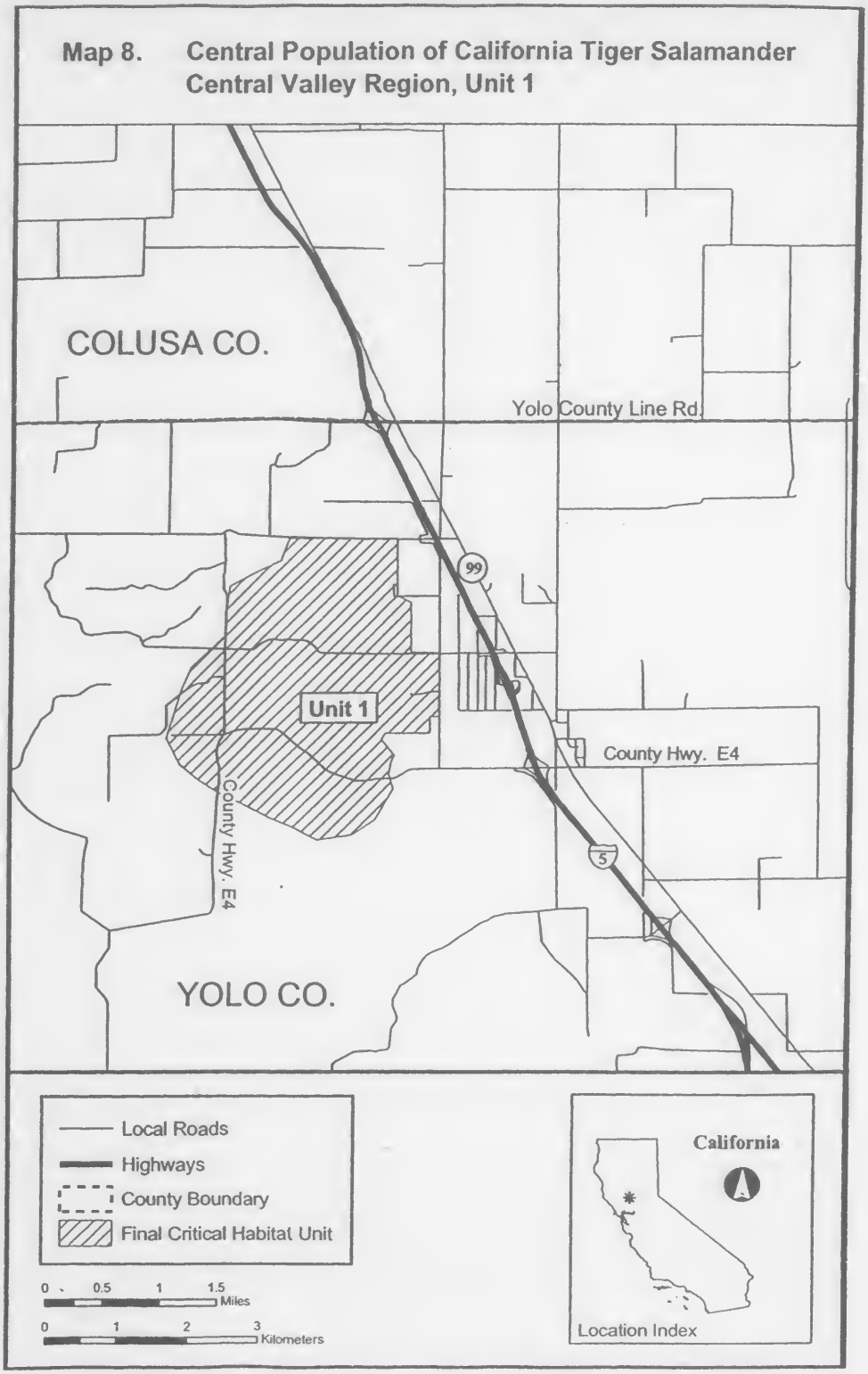
Map 7. Central Population of California Tiger Salamander Map Index of Final Critical Habitat Locations



(16) Central Valley Region: Unit 1, Yolo County, California.

(i) From USGS 1:24,000 scale quadrangles Wildwood School, Dunnigan, Bird Valley, Zamora. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 586407, 4303194; 585908, 4303117; 585550, 4303309; 585255, 4303424; 584910, 4303603; 584500, 4303795; 584231, 4303962; 583975, 4304179; 583783, 4304551; 583988, 4305229; 584116, 4305537; 584321, 4305729; 584602, 4305997; 584615, 4306446; 584654, 4306689; 584922, 4306830; 585089, 4306906; 585370, 4307047; 585486, 4307355; 585914, 4307355; 586996, 4307355; 587000, 4306558; 587204, 4306457; 587208, 4305759; 587600, 4305747; 587609, 4305701; 587617, 4304857; 587488, 4304855; 587486, 4304740; 587486, 4304618; 586854, 4304617; 586795, 4304534; 586983, 4304309; 586935, 4304197; 586912, 4304035; 586970, 4303827; 586715, 4303400; returning to 586407, 4303194.

(ii) Note: Map 8 (Central Valley Region, Unit 1) follows:

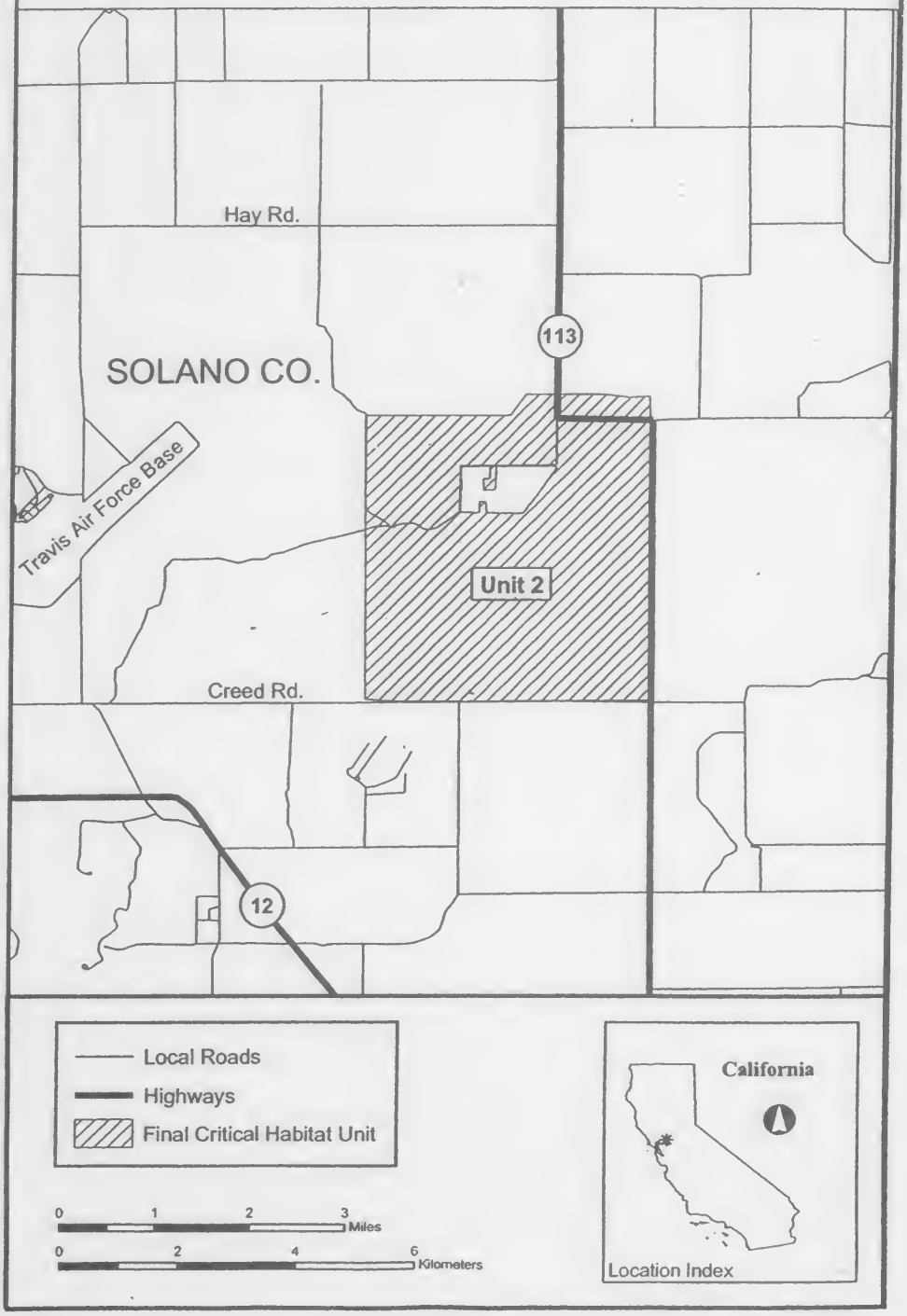

Map 8. Central Population of California Tiger Salamander
Central Valley Region, Unit 1
COLUSA CO.
Yolo County Line Rd.
99
Unit 1
County Hwy. E4
County Hwy. E4
5
YOLO CO.
Local Roads
Highways
County Boundary
Final Critical Habitat Unit
0 0.5 1 1.5
Miles
0 1 2 3
Kilometers
California
Location Index

(17) Central Valley Region: Unit 2, Solano County, California.

(i) From USGS 1:24,000 scale quadrangles Dozier, and Birds Landing. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 601869, 4237342; 601865, 4236938; 601654, 4236932; 601647, 4237125; 601764, 4237131; 601764, 4237339; 601264, 4237328; 601264, 4237123; 601288, 4237127; 601297, 4236925; 601267, 4236923; 601266, 4236556; 601589, 4236551; 601590, 4236740; 601703, 4236734; 601710, 4236549; 602349, 4236539; 602884, 4237289; 602883, 4237336; returning to 601869, 4237342.; excluding land bounded by: 603666, 4238548; 604112, 4238500; 604463, 4238516; 604510, 4237050; 604494, 4233370; 601674, 4233354; 600161, 4233354; 599699, 4233386; 599667, 4238197; 602105, 4238197; 602375, 4238548; 602822, 4238548; 603666, 4238548

(ii) Note: Map 9 (Central Valley Region, Unit 2) follows:

Map 9. Central Population of California Tiger Salamander Central Valley Region, Unit 2



(18) Central Valley Region: Unit 3, Sacramento County, California.

(i) From USGS 1:24,000 scale quadrangles Clay, and Goose Creek. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 664836, 4248038; 665672, 4248010; 668028, 4248080; 667972, 4246477; 668014, 4245543; 668070, 4244525; 668098, 4244093; 667735, 4243954; 667443, 4243758; 667178, 4243424; 666927, 4242866; 666982, 4242588; 666885, 4242323; 666718, 4242016; 666606, 4241667; 666216, 4241361; 665644, 4241193; 665337, 4241207; 664947, 4241249; 664766, 4241124; 664362, 4241138; 664125, 4241110; 663790, 4240970; 663246, 4242100; 663149, 4242323; 662884, 4242936; 663316, 4243312; 663302, 4243758; 663051, 4243898; 662633, 4243954; 662563, 4244121; 662563, 4244665; 662368, 4244679; 661713, 4244706; 660626, 4244623; 660626, 4244804; 660723, 4245013; 660514, 4245180; 660500, 4245613; 660514, 4245919; 660654, 4246337; 660960, 4246672; 661072, 4247048; 660779, 4247146; 660695, 4247369; 660793, 4247732; 660904, 4248219; 661211, 4248526; 661629, 4248721; 664822, 4248735; 664905, 4248554; returning to 664836, 4248038; excluding land bounded by: 663699, 4245563; 663773, 4245470; 663872, 4245529; 663908, 4245484; 664132, 4245487; 664193, 4245525; 664343, 4245508; 664446, 4245534; 664455, 4245223; 664686, 4245225; 664681, 4245603; 664669, 4245660; 664669, 4245731; 664793, 4245767; 664776, 4245798; 664712, 4245836; 664686, 4245962; 664629, 4246000; 664643, 4246107; 664517, 4246081; 664512, 4246171; 664315, 4246178; 664236, 4246190; 663987, 4246188; 663813, 4245903; 663732, 4245860; and returning to 663699, 4245563.; and excluding land bounded by: 663893, 4245225; 663790, 4245261; 663740, 4245213; 663759, 4244776; 663937, 4244476; 664146, 4244482; 664133, 4245143; returning to 663893, 4245225.

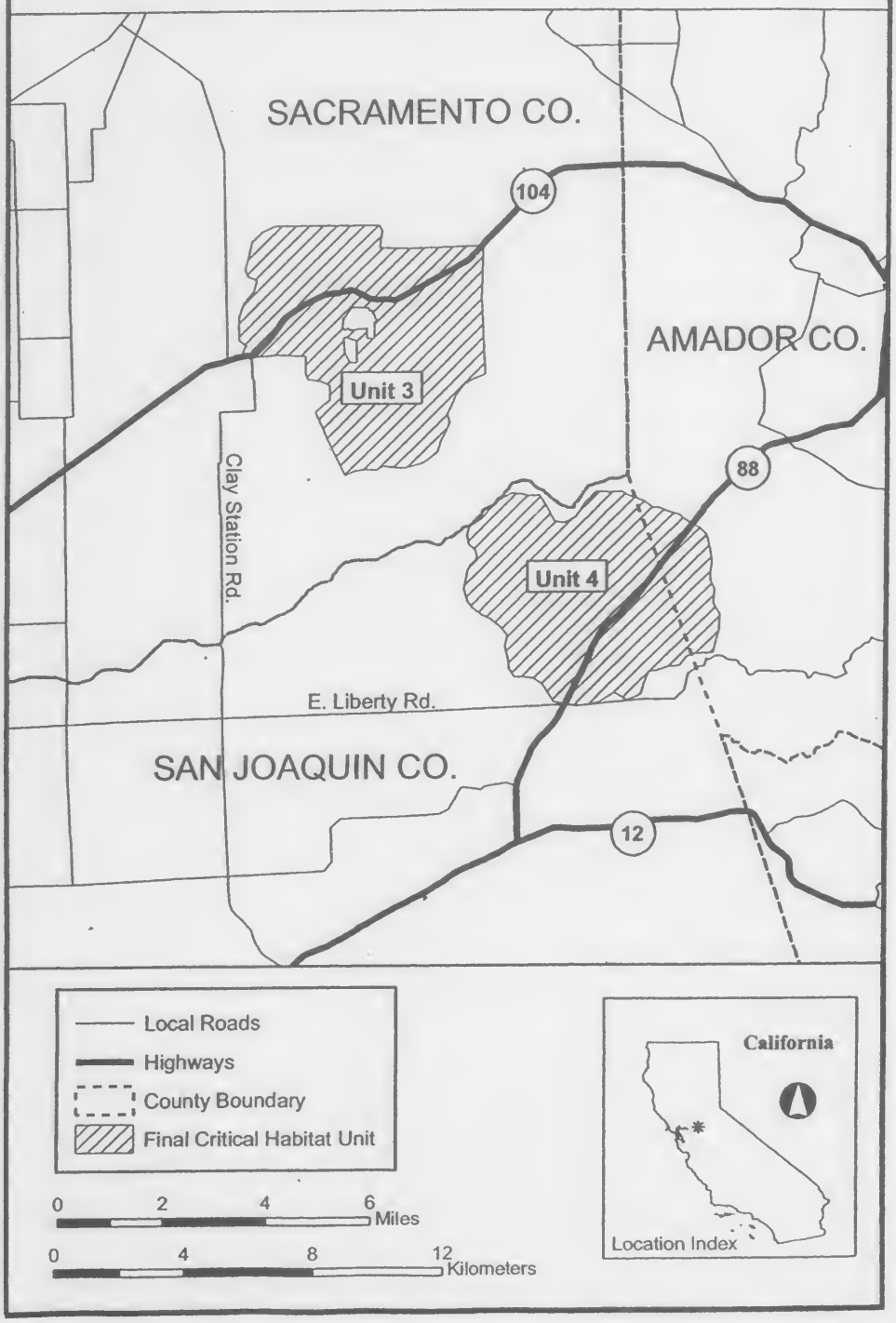
(ii) Note: Central Valley Region, Unit 3 is depicted on Map 10—Units 3 and 4—see paragraph (19)(ii).

(19) Central Valley Region: Unit 4, Amador County, California, and San Joaquin County, California.

(i) From USGS 1:24,000 scale quadrangles Goose Creek, Ione, Clements, and Wallace. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 672313, 4240429; 672654, 4240270; 672756, 4240232; 673017, 4240134; 673290, 4239940; 673438, 4239952; 673699, 4239838; 674062, 4239736; 674380, 4239498; 674698, 4239304; 674925, 4239089; 675039, 4238646; 675084, 4238248; 675039, 4237771; 675050, 4237658; 675175, 4237396; 675130, 4236954; 675346, 4236613; 675323, 4236045; 675198, 4235738; 675152, 4235409; 674653, 4235398; 674499, 4235346; 674346, 4235295; 674119, 4235023; 673812, 4234989; 673449, 4234864; 673188, 4234841; 673040, 4234455; 672961, 4234114; 672506, 4233944; 672313, 4234069; 672154, 4234160; 671723, 4233910; 671257, 4233774; 670905, 4233796; 670587, 4233830; 670246, 4233898; 670099, 4234160; 669905, 4234455; 669656, 4234637; 669292, 4234682; 669054, 4234682; 668883, 4234932; 668815, 4235295; 668747, 4235602; 668815, 4235977; 668622, 4236227; 668281, 4236499; 668020, 4236613; 667736, 4236806; 667566, 4237022; 667452, 4237408; 667566, 4237976; 667657, 4238135; 667816, 4238328; 667861, 4238441; 667804, 4238623; 667589, 4238827; 667555, 4239111; 667623, 4239339; 668009, 4239600; 668202, 4239827; 668497, 4240134; 668940, 4240395; 669201, 4240372; 669440, 4240327; 669803, 4240338; 670064, 4239906; 670269, 4239520; 670564, 4239463; 670928, 4239657; 671212, 4240099; 671564, 4240429; 671916, 4240406; returning to 672313, 4240429.

(ii) Note: Unit 4 is depicted on Map 10—Units 3 and 4—which follows:

Map 10. Central Population of California Tiger Salamander Central Valley Region, Units 3, 4



(20) Central Valley Region: Unit 5, Calaveras County, California.

(i) From USGS 1:24,000 scale quadrangles Goose Creek, Ione, Clements, and Wallace. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 683568, 4220263; 682958, 4220198; 682573, 4220519; 682460, 4220664; 682316, 4221113; 682316, 4221499; 682348, 4221772; 682508, 4222125; 682589, 4222494; 682974, 4222976; 683343, 4223345; 683279, 4223762; 683375, 4224067; 683343, 4224501; 683183, 4224790; 683086, 4225352; 683215, 4225657; 683456, 4225994; 683632, 4226170; 683953, 4226283; 684114, 4226411; 684467, 4226411; 684804, 4226267; 685157, 4226026; 685334, 4225496; 685350, 4224982; 685334, 4224549; 685510, 4224115; 685494, 4223682; 685382, 4223297; 685173, 4222976; 685029, 4222719; 684852, 4222205; 684772, 4221900; 684643, 4221483; 684531, 4220985; 684306, 4220664; 683921, 4220391; returning to 683568, 4220263.

(ii) Note: Central Valley Region, Unit 5 is depicted on Map 11—Units 5, 6, and 7—see paragraph (22)(ii).

(21) Central Valley Region: Unit 6, Calaveras County, California, Stanislaus County, California, and San Joaquin County, California.

(i) From USGS 1:24,000 scale quadrangles Valley Springs SW, Jenny Lind, Farmington, and Bachelor Valley. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 686359, 4213033; 686987, 4212296; 687479, 4211559; 687315, 4210958; 687542, 4210371; 687779, 4209756; 687643, 4209128; 687725, 4208582; 688134, 4208308; 688544, 4207789; 688844, 4207298; 688571, 4206424; 688349, 4206061; 688544, 4205714; 688708, 4205277; 688372, 4204505; 686597, 4204505; 685277, 4204505; 684693, 4204235; 684316, 4203393; 683884, 4202567; 683811, 4201719; 683900, 4199972; 683710, 4199678; 683164, 4199104; 682563, 4198831; 682285, 4198727; 682126, 4198667; 681470, 4198503; 680869, 4198858; 680665, 4199223; 680627, 4200080; 679933, 4200062; 679777, 4200279; 679777, 4201016; 679882, 4201242; 680596, 4201279; 680584, 4201670; 680077, 4201672; 679832, 4202382; 679764, 4202757; 679752, 4203304; 679504, 4203338; 679531, 4203829; 679149, 4204048; 678630, 4204212; 678220, 4204649; 677810, 4204976; 677346, 4205495; 677264, 4206069; 677264, 4206834; 677483, 4207817; 678329, 4208145; 678603, 4208308; 678684, 4209100; 678821, 4209483; 680253, 4210794; 681850, 4211270; 681985, 4211350; 682777, 4211817; 683589, 4212297; 684384, 4212766; 685533, 4212474; 685557, 4212491; returning to 686359, 4213033.

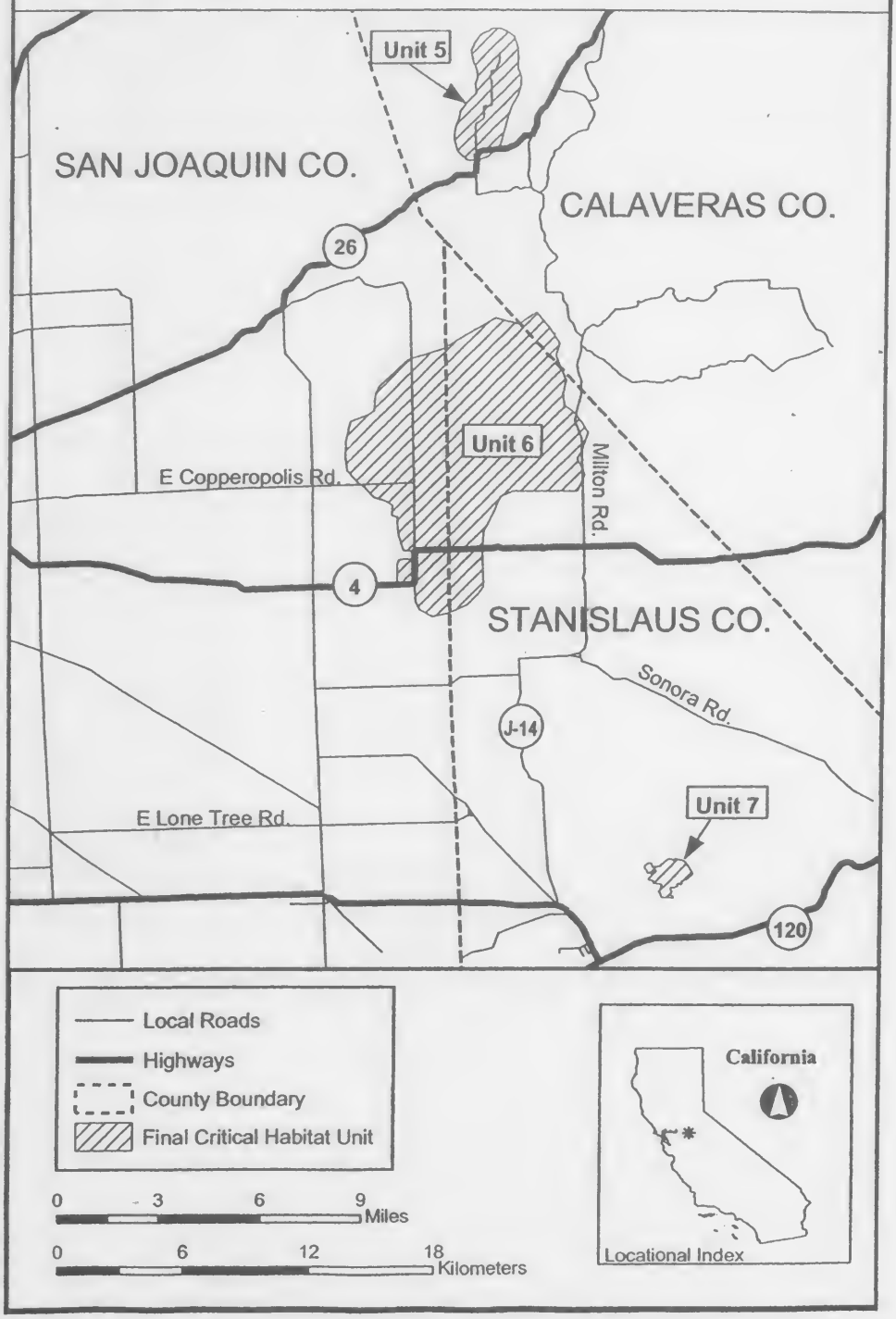
(ii) Note: Central Valley Region, Unit 6 is depicted on Map 11—Units 5, 6, and 7—see paragraph (22)(ii).

(22) Central Valley Region: Unit 7, Stanislaus County, California.

(i) From USGS 1:24,000 scale quadrangle Oakdale. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 693428, 4186960; 693463, 4186942; 693504, 4186969; 693517, 4186960; 693709, 4186853; 693941, 4186479; 694034, 4186323; 694003, 4186260; 693941, 4186198; 693900, 4186166; 693816, 4186086; 693771, 4186059; 693646, 4186006; 693588, 4185993; 693544, 4185975; 693544, 4185930; 693517, 4185877; 693526, 4185792; 693495, 4185805; 693459, 4185836; 693423, 4185823; 693397, 4185863; 693352, 4185859; 693330, 4185828; 693303, 4185756; 693298, 4185712; 693218, 4185689; 693191, 4185645; 693138, 4185640; 693080, 4185676; 693026, 4185671; 693000, 4185645; 692964, 4185582; 693000, 4185511; 693049, 4185493; 693018, 4185440; 693022, 4185386; 692995, 4185333; 692991, 4185284; 693058, 4185261; 693098, 4185243; 693093, 4185168; 692986, 4185177; 692527, 4185172; 692514, 4185243; 692506, 4185297; 692501, 4185303; 692478, 4185364; 692456, 4185413; 692420, 4185449; 692456, 4185515; 692509, 4185627; 692523, 4185716; 692523, 4185774; 692523, 4185823; 692433, 4185841; 692179, 4185850; 692152, 4185903; 692157, 4185966; 691916, 4186028; 691925, 4186064; 692010, 4186122; 692041, 4186175; 692090, 4186220; 692121, 4186260; 692179, 4186327; 692246, 4186349; 692277, 4186389; 692291, 4186421; 692273, 4186461; 692228, 4186470; 692144, 4186447; 692108, 4186434; 692108, 4186376; 692099, 4186323; 692019, 4186314; 691987, 4186345; 691970, 4186345; 691921, 4186345; 691880, 4186345; 691858, 4186385; 691858, 4186434; 691840, 4186452; 691800, 4186470; 691782, 4186496; 691747, 4186532; 691729, 4186568; 691738, 4186621; 691773, 4186675; 691818, 4186719; 691858, 4186746; 691903, 4186764; 691947, 4186795; 691987, 4186804; 692045, 4186804; 692144, 4186608; 692228, 4186626; 692326, 4186639; 692398, 4186644; 692478, 4186644; 692540, 4186768; 692607, 4186755; 692634, 4186786; 692670, 4186849; 692790, 4186933; 692848, 4186969; 692911, 4187000; 693026, 4187005; 693067, 4186951; 693125, 4186947; 693174, 4186951; 693200, 4187027; 693379, 4186987; returning to 693428, 4186960.

(ii) Note: Central Valley Region, Unit 7 is depicted on Map 11—Units 5, 6, and 7—which follows:

Map 11. Central Population of California Tiger Salamander Central Valley Region, Units 5, 6, 7



(23) Central Valley Region: Unit 8, Stanislaus County, California, and Merced County, California.

(i) From USGS 1:24,000 scale quadrangles La Grange, and Snelling. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 725431, 4171496; 725601, 4170824; 725374, 4170317; 725561, 4169703; 725374, 4168849; 725587, 4168488; 725787, 4167394; 725257, 4165657; 725200, 4165472; 725093, 4164938; 724466, 4164337; 724132, 4164284; 723759, 4164284; 723267, 4164611; 723238, 4164631; 722571, 4165765; 722250, 4166366; 721817, 4167393; 723498, 4167406; 723802, 4167803; 723935, 4168465; 724279, 4168677; 724252, 4169047; 723894, 4169053; 723869, 4168849; 723432, 4168835; 723458, 4168663; 722664, 4168650; 722651, 4169074; 722584, 4170027; 723086, 4170091; 723352, 4169961; 723869, 4170371; 724200, 4170411; 724133, 4170861; 724199, 4171065; 724438, 4171245; 724888, 4171192; 724914, 4171391; 725153, 4171457; returning to 725431, 4171496.

(ii) Note: Central Valley Region, Unit 8 is depicted on Map 12—Units 8, 9, and 10—see paragraph (25)(ii).

(24) Central Valley Region: Unit 9, Merced County, California.

(i) From USGS 1:24,000 scale quadrangles Yosemite Lake, Haystack Mtn., Merced, and Planada. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 737111, 4141220; 736885, 4140606; 736578, 4140319; 735779, 4139868; 735411, 4139418; 735001, 4138885; 734755, 4138516; 734345, 4138352; 733977, 4138291; 733198, 4137390; 732850, 4137308; 732625, 4137738; 732707, 4138230; 732359, 4138414; 732133, 4138373; 731990, 4138230; 731969, 4138127; 731744, 4137922; 731457, 4137308; 731129, 4137082; 730904, 4137349; 730638, 4137697; 730310, 4137656; 729900, 4137717; 729593, 4137758; 729409, 4138127; 729368, 4138332; 729081, 4138516; 729224, 4138783; 729532, 4139008; 729511, 4139315; 729204, 4139418; 728897, 4139520; 729429, 4140278; 729224, 4140667; 728897, 4140933; 728692, 4140892; 728282, 4140708; 728118, 4140667; 727914, 4140729; 727729, 4141077; 727606, 4141077; 727442, 4141179; 727238, 4141282; 726848, 4141302; 726725, 4141445; 726643, 4141753; 726725, 4141937; 726562, 4142654; 726562, 4142838; 726439, 4142982; 726172, 4143084; 725660, 4143105; 725476, 4143187; 725599, 4143412; 725476, 4143822; 725333, 4143965; 725087, 4144026; 724943, 4144149; 724902, 4144477; 725066, 4144948; 725455, 4145235; 725968, 4145399; 726193, 4145522; 726480, 4145890; 726930, 4146095; 727381, 4146136; 727729, 4146485; 728180, 4146874; 728630, 4147263; 728897, 4147591; 729388, 4147795; 729900, 4147816; 730392, 4147857; 730945, 4148103; 731478, 4148021; 732010, 4147714; 732297, 4147283; 732338, 4146915; 732625, 4146525; 733034, 4146157; 733260, 4145890; 733260, 4145276; 733116, 4144784; 733362, 4144211; 733608, 4143801; 733854, 4143514; 734120, 4143289; 734550, 4142982; 735370, 4142797; 736189, 4142593; 736619, 4142470; 737111, 4141978; returning to 737111, 4141220.

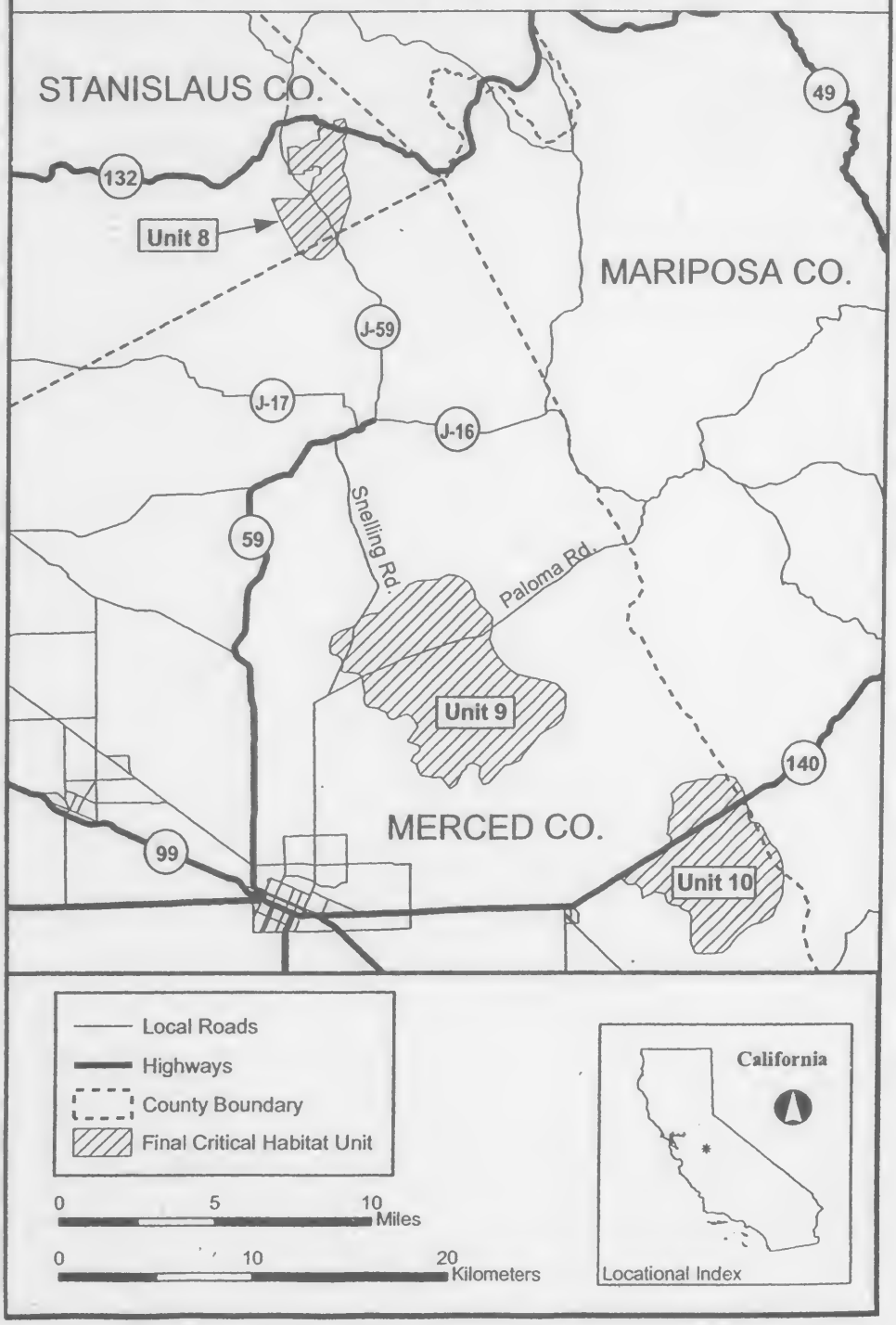
(ii) Note: Central Valley Region, Unit 9 is depicted on Map 12—Units 8, 9, and 10—see paragraph (25)(ii):

(25) Central Valley Region: Unit 10, Merced County, California, and Mariposa County, California.

(i) From USGS 1:24,000 scale quadrangles Planada, and Owens Reservoir. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 745886, 4137625; 746150, 4137196; 746265, 4136981; 746447, 4136371; 746447, 4136305; 746529, 4136041; 746530, 4136009; 746546, 4135595; 746645, 4135364; 746760, 4135315; 746880, 4135309; 747140, 4135298; 747338, 4135067; 747519, 4134655; 747750, 4134226; 748031, 4133945; 748229, 4133533; 748311, 4133170; 748353, 4132808; 748361, 4132741; 748394, 4132625; 748394, 4132394; 748344, 4132047; 748328, 4131750; 748212, 4131371; 748064, 4131123; 747866, 4130579; 747684, 4130414; 747288, 4130232; 746826, 4130117; 746562, 4129952; 746100, 4129589; 745820, 4129275; 745605, 4128978; 745292, 4128714; 744863, 4128648; 744367, 4128632; 743856, 4128665; 743608, 4129209; 743608, 4129572; 743608, 4130232; 743641, 4130579; 743493, 4130793; 743179, 4130942; 743014, 4131107; 742684, 4131123; 742404, 4131255; 742288, 4131684; 742024, 4131750; 741727, 4131783; 741628, 4131684; 741150, 4131453; 741117, 4131932; 740820, 4132180; 740407, 4132163; 740061, 4132444; 740358, 4132757; 740589, 4132922; 740919, 4133153; 741249, 4133351; 741414, 4133417; 741826, 4133681; 742156, 4133929; 742585, 4134308; 742618, 4134556; 742371, 4134721; 742437, 4134853; 742470, 4135067; 742453, 4135331; 742486, 4135595; 742618, 4135727; 742668, 4135859; 742684, 4136255; 742668, 4136437; 742585, 4136800; 742783, 4136981; 742882, 4137097; 743146, 4137344; 743460, 4137410; 743740, 4137460; 744103, 4137559; 744450, 4137542; 744632, 4137592; 744863, 4137757; 745077, 4137790; 745393, 4137760; 745424, 4137757; returning to 745886, 4137625.

(ii) Note: Central Valley Region, Unit 10 is depicted on Map 12—Units 8, 9, and 10—which follows:

Map 12. Central Population of California Tiger Salamander Central Valley Region, Units 8, 9, 10

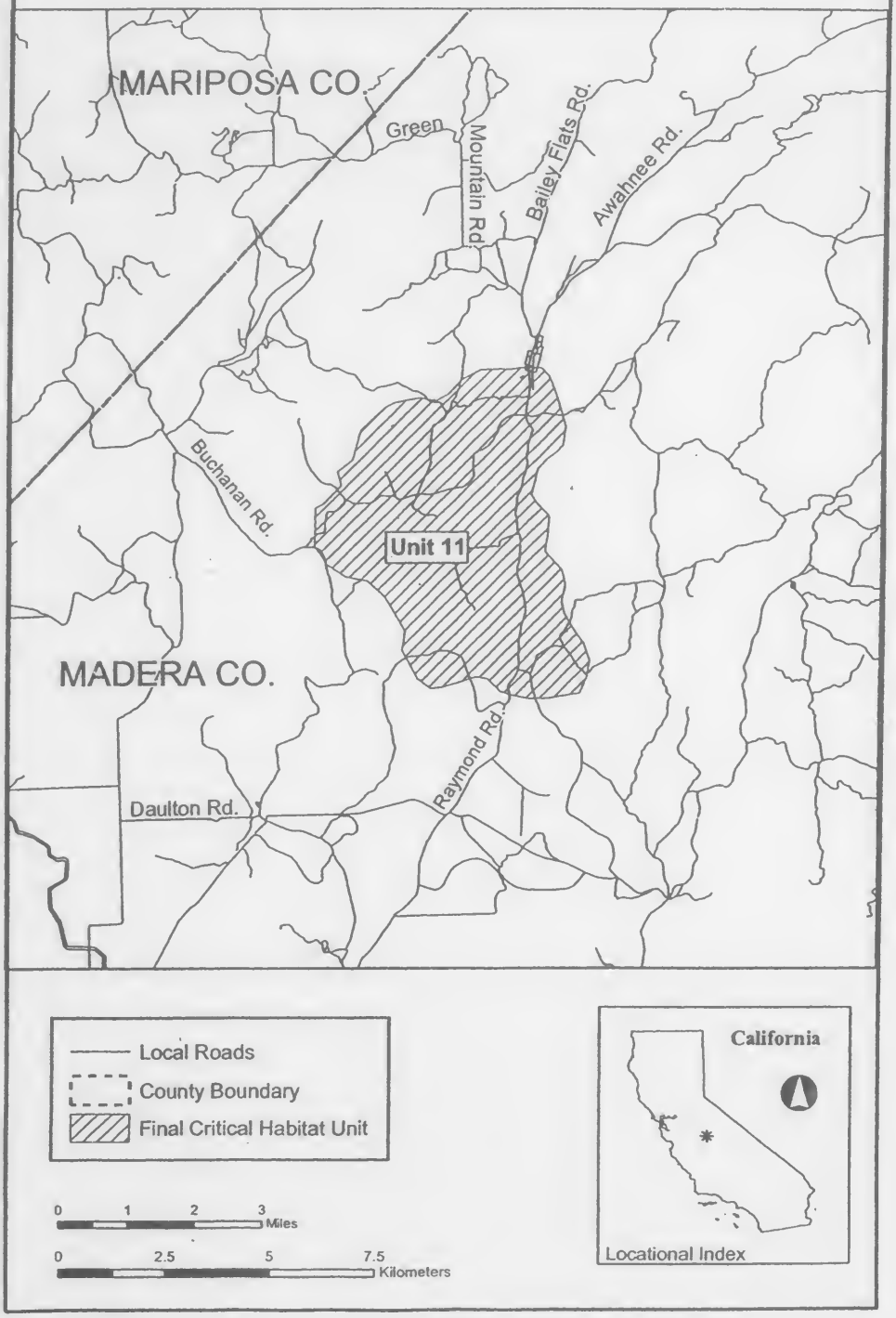


(26) Central Valley Region: Unit 11, Madera County, California.

(i) From USGS 1:24,000 scale quadrangle Raymond. Land bounded by the following UTM Zone 11, NAD83 coordinates (E,N): 236646, 4118534; 236735, 4119457; 236919, 4119535; 237364, 4119940; 237297, 4120289; 237671, 4120535; 237749, 4120814; 237895, 4121224; 238305, 4121557; 238526, 4121737; 238726, 4121829; 239329, 4121896; 239728, 4121811; 240005, 4121943; 240340, 4122266; 240817, 4122475; 241265, 4122461; 241503, 4122431; 241714, 4122463; 242088, 4122454; 242236, 4122430; 242404, 4122240; 242517, 4121903; 242649, 4121386; 242729, 4121007; 242656, 4120563; 242498, 4120423; 242265, 4120288; 242025, 4120049; 241933, 4119770; 241837, 4119447; 241973, 4119229; 242224, 4118929; 242164, 4118469; 242064, 4118071; 242454, 4117612; 242521, 4117249; 242406, 4116852; 242463, 4116564; 242691, 4116146; 242868, 4115880; 243004, 4115423; 242888, 4115011; 242718, 4114693; 241980, 4114620; 241532, 4114633; 241135, 4114733; 240843, 4114856; 240549, 4115174; 240283, 4115221; 239933, 4115138; 239492, 4115032; 239192, 4115021; 238894, 4115279; 238776, 4115541; 238564, 4115973; 238623, 4116194; 238668, 4116431; 238374, 4116988; 238226, 4117252; 237848, 4117650; 237318, 4117788; 236903, 4118099; 236797, 4118315; returning to 236646, 4118534.

(ii) Note: Map 13 (Central Valley Region, Unit 11) follows:

Map 13. Central Population of California Tiger Salamander Central Valley Region, Unit 11

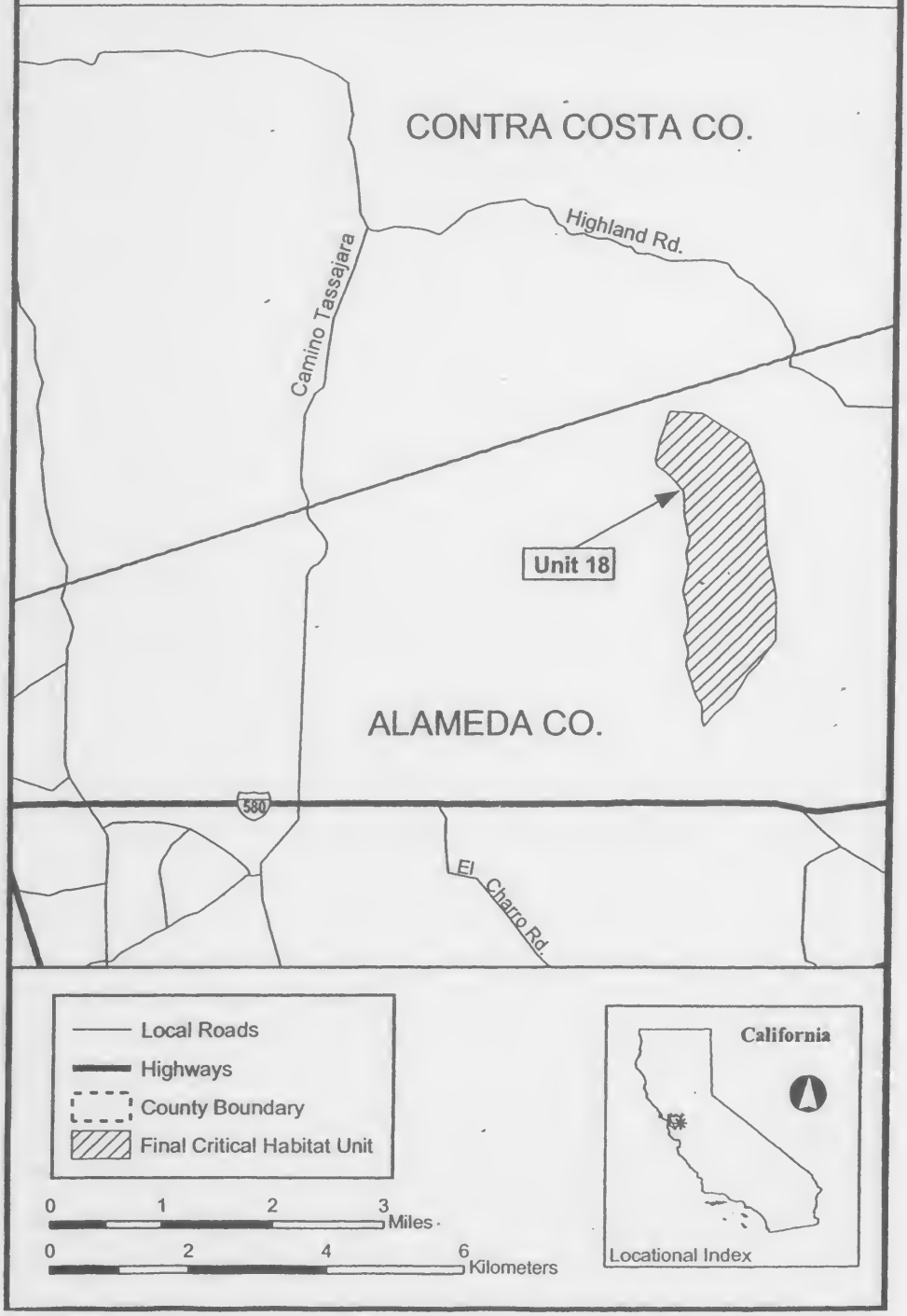


(27) Central Valley Region: Unit 18, Alameda County, California.

(i) From USGS 1:24,000 scale quadrangle Tassajara, and Livermore. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 606493, 4148131; 606445, 4148064; 606428, 4148018; 606432, 4147932; 606450, 4147848; 606466, 4147818; 606558, 4147771; 606599, 4147772; 606755, 4147834; 606834, 4147825; 606924, 4147745; 606959, 4147723; 606992, 4147438; 606865, 4146951; 606716, 4146634; 606357, 4146443; 606039, 4146380; 605807, 4146487; 605801, 4146507; 605762, 4146550; 605680, 4146592; 605678, 4146593; 605573, 4146697; 605446, 4146951; 605479, 4147194; 605495, 4147179; 605532, 4147116; 605552, 4147114; 605551, 4147218; 605591, 4147274; 605593, 4147302; 605461, 4147339; 605440, 4147342; 605404, 4147396; 605341, 4147607; 605300, 4147660; 605329, 4147701; 605322, 4147708; 605273, 4147694; 605244, 4147731; 605245, 4147738; 605236, 4147742; 605192, 4147798; 605044, 4148010; 605102, 4148319; 605127, 4148265; 605220, 4148111; 605251, 4148083; 605294, 4148086; 605431, 4148129; 605537, 4148188; 605655, 4148273; 605680, 4148317; 605768, 4148412; 605818, 4148448; 605900, 4148447; 605946, 4148417; 606075, 4148398; 606134, 4148371; 606201, 4148308; 606331, 4148228; 606492, 4148189; 606500, 4148167; returning to 606493, 4148131.

(ii) Note: Map 14 (Central Valley Region, Unit 18) follows:

Map 14. Central Population of California Tiger Salamander Central Valley Region, Unit 18



(28) Southern San Joaquin Region: Unit 1a, Madera County, California.

(i) From USGS 1:24,000 scale quadrangles Little Table Mtn., Millerton Lake West, Lanes Bridge, and Friant. Land bounded by the following UTM Zone 11, NAD83 coordinates (E,N): 253140, 4094581; 253210, 4094842; 253281, 4095121; 253387, 4095398; 253645, 4095559; 253861, 4095616; 253852, 4096041; 253748, 4096349; 253653, 4096816; 253632, 4097047; 253685, 4097593; 253940, 4097984; 254341, 4098171; 254443, 4098377; 254346, 4098808; 254531, 4099222; 254727, 4099510; 254695, 4099849; 254591, 4100174; 254965, 4100204; 255341, 4100552; 255900, 4100711; 256220, 4100727; 256431, 4101262; 256505, 4101877; 256706, 4102254; 256840, 4102405; 257279, 4102626; 257811, 4102645; 258162, 4102587; 258498, 4102301; 258635, 4101955; 258734, 4101560; 258553, 4100933; 258138, 4100535; 257954, 4100347; 257908, 4100348; 257918, 4100725; 257542, 4100727; 257557, 4101144; 257113, 4101161; 256981, 4098268; 256639, 4098365; 255431, 4098363; 255427, 4097540; 256213, 4097523; 256203, 4096729; 254978, 4096742; 254920, 4094736; 254503, 4094762; 254503, 4094758; 253976, 4094771; 253976, 4094613; 253892, 4094501; 253919, 4094443; 253916, 4094397; 253914, 4094362; 253868, 4094365; 253822, 4094362; 253718, 4094252; 253710, 4094201; 253710, 4094200; 253701, 4094209; 253429, 4094386; 253140, 4094581.

(ii) Note: Southern San Joaquin Region, Unit 1a is depicted on—Units 1a, 1b, and 2—see paragraph (30)(ii).

(29) Southern San Joaquin Region: Unit 1b, Madera County, California.

(i) From USGS 1:24,000 scale quadrangle Lanes Bridge. Land bounded by the following UTM Zone 11, NAD83 coordinates (E,N): 251184, 4092207; 251205, 4092542; 251262, 4093159; 252944, 4093159; 253152, 4093075; 253259, 4093191; 253246, 4093164; 253246, 4092760; 253951, 4092757; 254008, 4092773; 254065, 4092790; 254068, 4092831; 254018, 4092849; 253977, 4092852; 253939, 4092895; 253937, 4092936; 253960, 4092986; 253988, 4093030; 254024, 4093028; 254075, 4093024; 254098, 4092992; 254134, 4092985; 254195, 4092981; 254190, 4092910; 254216, 4092832; 254223, 4092791; 254226, 4092744; 254465, 4092734; 254461, 4092342; 254633, 4092331; 254636, 4092535; 254698, 4092551; 254738, 4092615; 254757, 4092670; 254772, 4092746; 254777, 4092832; 254817, 4092901; 254877, 4092959; 254914, 4092978; 254971, 4092712; 254985, 4092375; 254980, 4092021; 254713, 4091436; 254292, 4091214; 253805, 4091086; 253542, 4090837; 253614, 4090584; 253836, 4090446; 253770, 4090238; 253503, 4089936; 253348, 4089733; 253173, 4089528; 253141, 4089490; 253105, 4089475; 252915, 4089348; 252875, 4089294; 252838, 4089192; 252842, 4089126; 252835, 4089116; 252636, 4088822; 252641, 4088627; 252573, 4088288; 252564, 4088242; 252170, 4087611; 251840, 4087437; 251615, 4087239; 251458, 4087089; 251407, 4087039; 251122, 4087288; 251185, 4087726; 251211, 4088132; 251215, 4088486; 251168, 4088861; 251100, 4089184; 251100, 4089751; 251111, 4089927; 251999, 4089960; 252301, 4089976; 252328, 4090400; 252364, 4090982; 252307, 4091198; 251941, 4091292; 251477, 4091232; 251191, 4091481; 251185, 4091658; returning to 251184, 4092207.

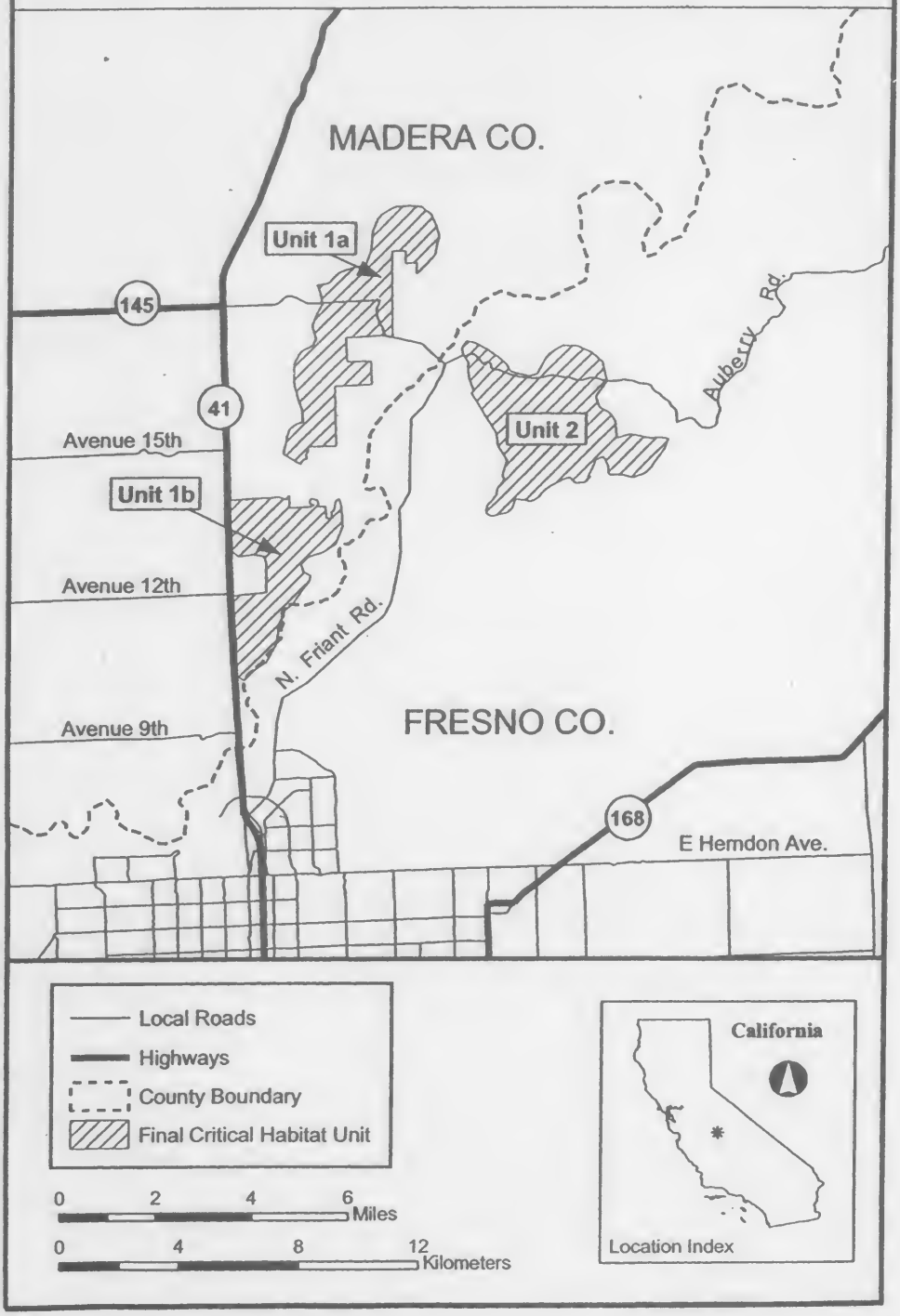
(ii) Note: Southern San Joaquin Region, Unit 1b is depicted on Map 15—Units 1A, 1B, and 2—see paragraph (30)(ii).

(30) Southern San Joaquin Region: Unit 2, Fresno County, California.

(i) From USGS 1:24,000 scale quadrangle Friant. Land bounded by the following UTM Zone 11, NAD83 coordinates (E,N): 259307, 4097734; 259442, 4097902; 259483, 4097988; 259743, 4097901; 260153, 4097663; 260490, 4097393; 260773, 4097110; 260916, 4096853; 261506, 4096656; 261810, 4096708; 262107, 4097203; 262261, 4097388; 262718, 4097625; 263193, 4097577; 263655, 4097318; 263988, 4096978; 264104, 4096298; 263703, 4095827; 263821, 4095465; 264110, 4095270; 264211, 4095169; 264294, 4094979; 264329, 4094398; 264769, 4094484; 264988, 4094446; 265443, 4094298; 265672, 4094337; 266030, 4094264; 265865, 4093902; 265521, 4093499; 265441, 4093345; 265199, 4093165; 264774, 4093047; 264401, 4093181; 264044, 4093188; 263971, 4093270; 264002, 4093471; 263856, 4093802; 263594, 4093711; 263462, 4093422; 263323, 4093192; 263373, 4093166; 263222, 4092989; 262867, 4092976; 262704, 4093198; 262451, 4093108; 262142, 4092986; 261885, 4092843; 261639, 4092593; 261510, 4092512; 261139, 4092518; 260841, 4092572; 260715, 4092261; 260534, 4092127; 260512, 4092123; 260039, 4092041; 259874, 4092120; 259842, 4092143; 259838, 4092231; 259887, 4092407; 259978, 4092494; 260034, 4092547; 260200, 4092731; 260241, 4092941; 260482, 4093245; 260433, 4093402; 260625, 4093897; 260461, 4094183; 260327, 4094416; 260317, 4094701; 260313, 4094838; 259541, 4096215; 259541, 4096227; 259623, 4096279; 259542, 4096507; 259542, 4096570; 259485, 4096704; 259472, 4096979; 259490, 4097262; 259412, 4097426; 259331, 4097555; returning to 259307, 4097734.

(ii) Note: Southern San Joaquin Valley Region, Unit 2 is depicted on Map 15—Units 1a, 1b, and 2—which follows:

Map 15. Central Population of California Tiger Salamander Southern San Joaquin Region, Units 1a, 1b, 2



(31) Southern San Joaquin Region: Unit 3a, Fresno County, California.

(i) From USGS 1:24,000 scale quadrangle Orange Cove North. Land bounded by the following UTM Zone 11, NAD83 coordinates (E,N): 290111, 4064680; 291311, 4064655; 292277, 4064495; 292897, 4064406; 293304, 4064906; 293877, 4065270; 294584, 4065309; 294577, 4064940; 294973, 4064926; 294962, 4064261; 294150, 4064279; 294132, 4063716; 293340, 4063754; 293311, 4063118; 292970, 4062774; 292103, 4062528; 291469, 4062793; 291158, 4063413; 291086, 4063868; 290091, 4063956; returning to 290111, 4064680.

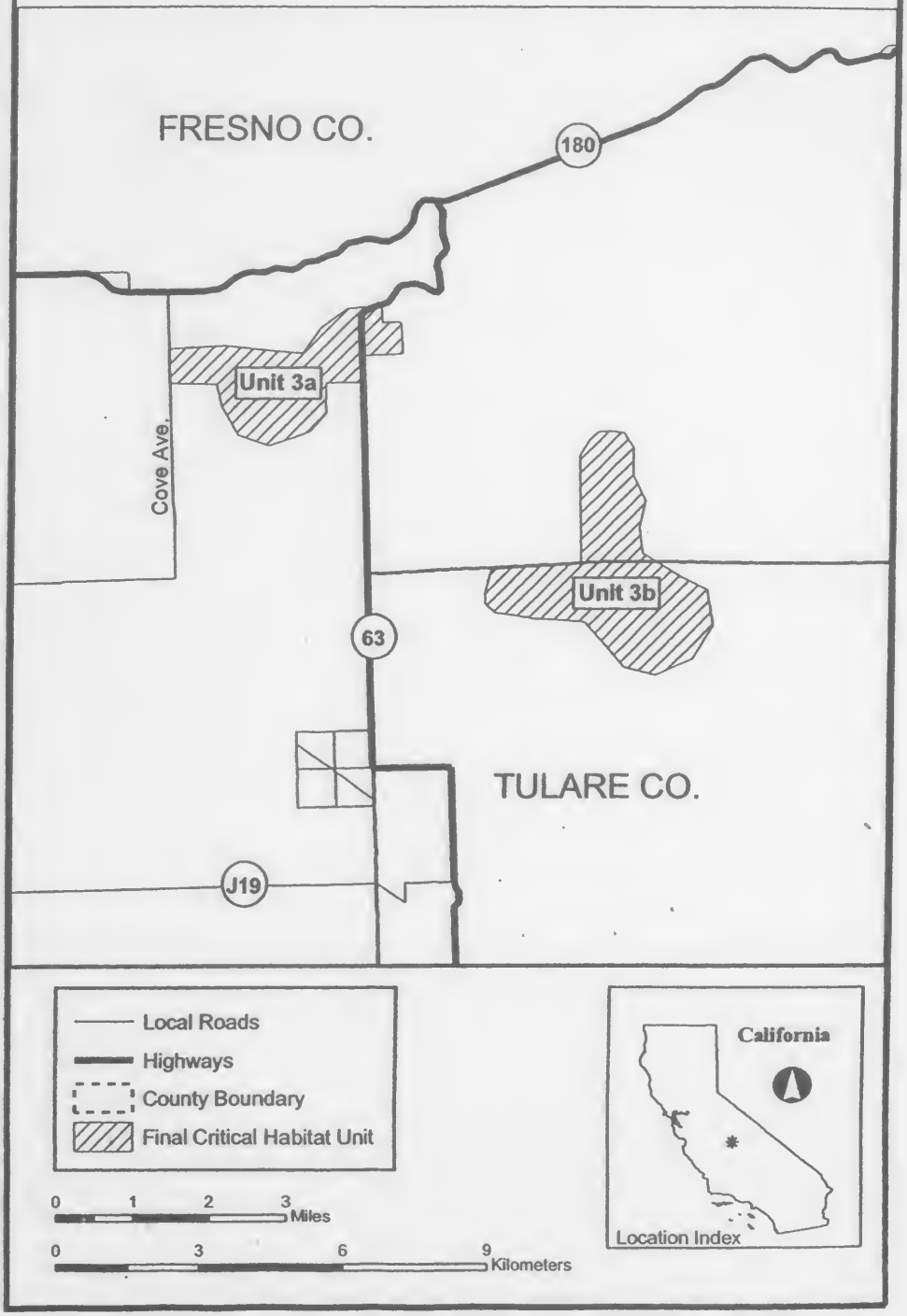
(ii) Note: Southern San Joaquin Region, Unit 3a is depicted on Map 16—Units 3A and 3B—see paragraph (32)(ii).

(32) Southern San Joaquin Region: Unit 3b, Fresno County, California, and Tulare County, California.

(i) From USGS 1:24,000 scale quadrangles Orange Cove North, and Tucker Mtn. Land bounded by the following UTM Zone 11, NAD83 coordinates (E,N): 296384, 4058957; 296398, 4059181; 296564, 4059658; 298431, 4059652; 298432, 4059676; 298529, 4061925; 298738, 4062217; 298933, 4062407; 299169, 4062400; 299471, 4062349; 299655, 4062030; 299619, 4061457; 299860, 4060916; 299700, 4060350; 299740, 4059797; 300013, 4059606; 300483, 4059275; 301039, 4058965; 301116, 4058185; 300650, 4057538; 299855, 4057238; 299218, 4057453; 298847, 4057926; 298453, 4058427; 297933, 4058509; 297411, 4058567; 297115, 4058636; 296596, 4058743; returning to 296384, 4058957.

(ii) Note: Southern San Joaquin Valley Region, Unit 3b is depicted on Map 16—Units 3a and 3b—which follows:

Map 16. Central Population of California Tiger Salamander Southern San Joaquin Region, Unit 3a, 3b

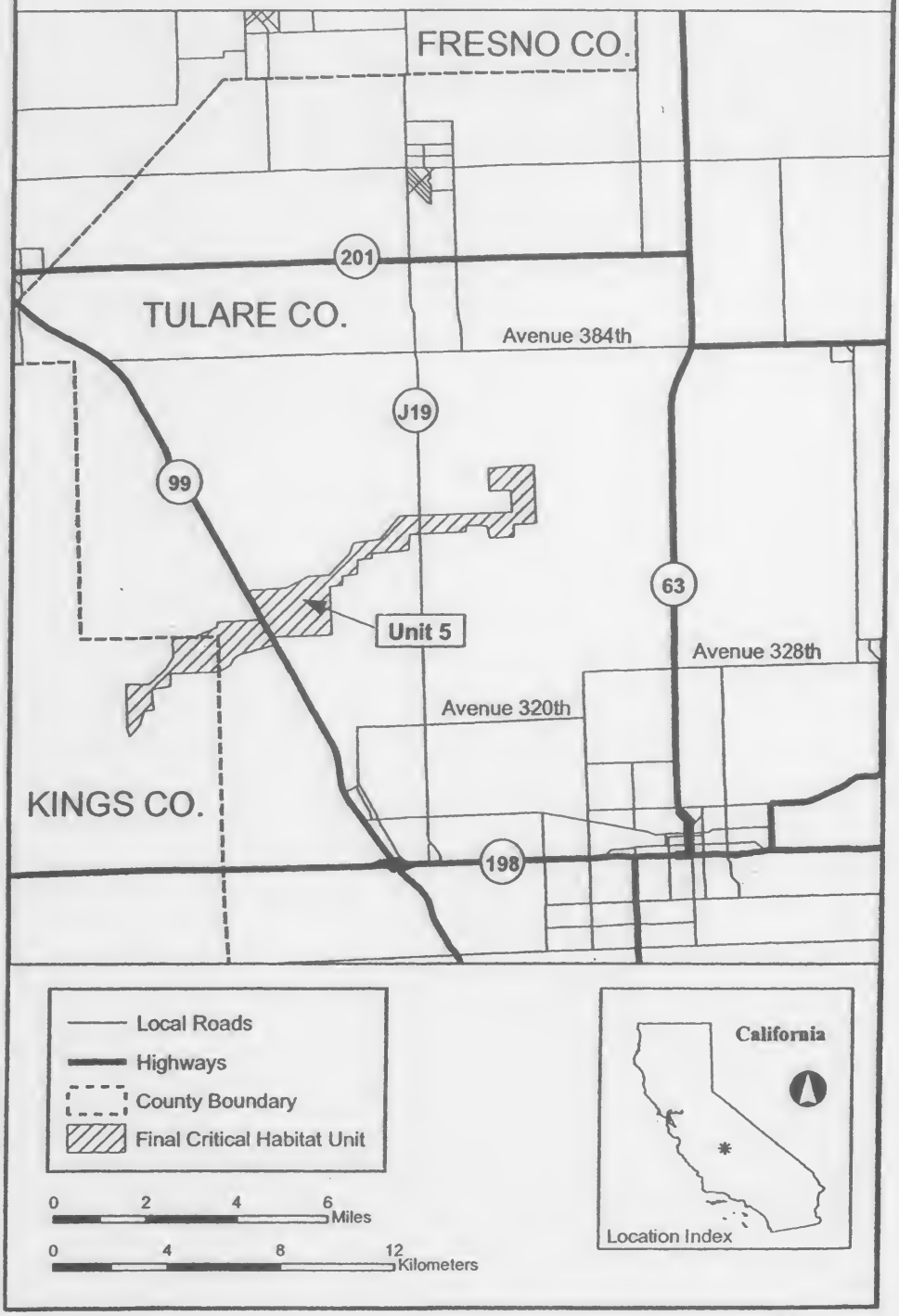


(33) Southern San Joaquin Region: Unit 5, Kings County, California, and Tulare County, California.

(i) From USGS 1:24,000 scale quadrangles Burris Park, Traver, Monson, and Remnoy. Land bounded by the following UTM Zone 11, NAD83 coordinates (E,N): 274730, 4029784; 275563, 4029744; 276147, 4030226; 276443, 4030631; 276461, 4031301; 277082, 4031301; 277215, 4031301; 278021, 4031581; 278032, 4031768; 279633, 4031751; 279157, 4032817; 280534, 4032802; 281370, 4033174; 282087, 4033164; 282812, 4033837; 282978, 4034239; 283924, 4034298; 284654, 4035065; 288568, 4034950; 288557, 4035728; 287806, 4035763; 287831, 4036538; 289234, 4036569; 289420, 4036545; 289388, 4034511; 288623, 4034511; 288596, 4034089; 287738, 4034107; 287670, 4034524; 286957, 4034603; 286918, 4034358; 284966, 4034398; 284896, 4033837; 283612, 4033835; 283601, 4033647; 283093, 4033631; 283051, 4033140; 282531, 4033101; 282523, 4032784; 282074, 4032765; 282062, 4031058; 280018, 4031127; 280070, 4030841; 278735, 4030571; 278537, 4030418; 278407, 4030226; 278030, 4030026; 278008, 4030027; 276325, 4030062; 276285, 4029617; 275634, 4029551; 275660, 4028843; 275341, 4028816; 275122, 4028323; 274758, 4027969; 274702, 4028196; returning to 274730, 4029784.

(ii) Note: Map 17 (Southern San Joaquin Valley Region, Unit 5) follows:

Map 17. Central Population of California Tiger Salamander Southern San Joaquin Region, Unit 5

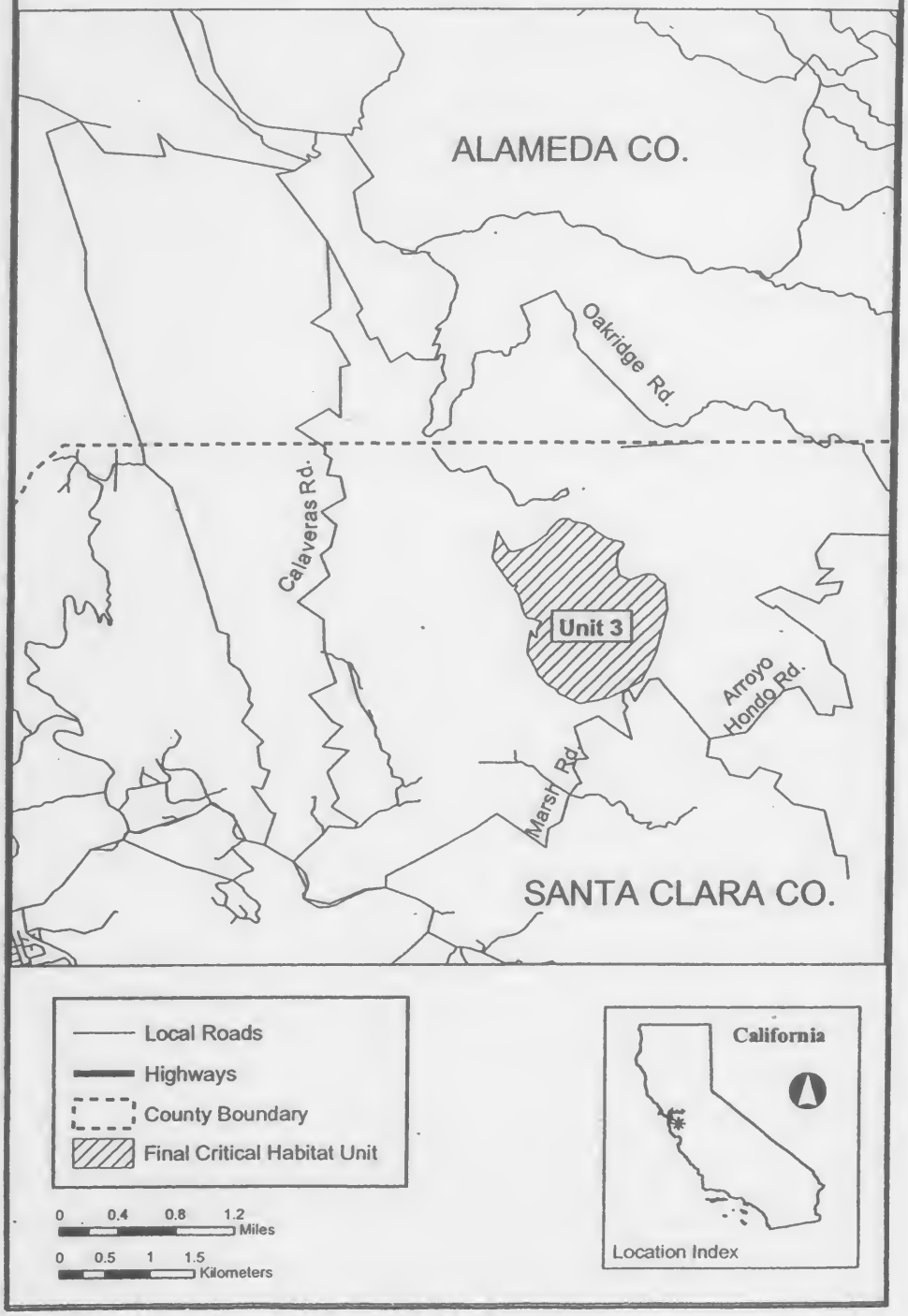


(34) East Bay Region: Unit 3, Santa Clara County, California.

(i) From USGS 1:24,000 scale quadrangle Calaveras Reservoir. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 606493, 4148131; 606445, 4148064; 606428, 4148018; 606432, 4147932; 606450, 4147848; 606466, 4147818; 606558, 4147771; 606599, 4147772; 606755, 4147834; 606834, 4147825; 606924, 4147745; 606959, 4147723; 606992, 4147438; 606865, 4146951; 606716, 4146634; 606357, 4146443; 606039, 4146380; 605807, 4146487; 605801, 4146507; 605762, 4146550; 605680, 4146592; 605678, 4146593; 605573, 4146697; 605446, 4146951; 605479, 4147194; 605495, 4147179; 605532, 4147116; 605552, 4147114; 605551, 4147218; 605591, 4147274; 605593, 4147302; 605461, 4147339; 605440, 4147342; 605404, 4147396; 605341, 4147607; 605300, 4147660; 605329, 4147701; 605322, 4147708; 605273, 4147694; 605244, 4147731; 605245, 4147738; 605236, 4147742; 605192, 4147798; 605044, 4148010; 605102, 4148319; 605127, 4148265; 605220, 4148111; 605251, 4148083; 605294, 4148086; 605431, 4148129; 605537, 4148188; 605655, 4148273; 605680, 4148317; 605768, 4148412; 605818, 4148448; 605900, 4148447; 605946, 4148417; 606075, 4148398; 606134, 4148371; 606201, 4148308; 606331, 4148228; 606492, 4148189; 606500, 4148167; returning to 606493, 4148131.

(ii) Note: Map 18 (East Bay Region, Unit 3) follows:

Map 18. Central Population of California Tiger Salamander East Bay Region, Unit 3



(35) East Bay Region: Unit 5, Santa Clara County, California.

(i) From USGS 1:24,000 scale quadrangles Calaveras Reservoir, and Mt. Day. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 611993, 4142407; 612080, 4142353; 612254, 4142429; 612417, 4142559; 612570, 4142679; 612668, 4142744; 612896, 4142712; 613157, 4142614; 613375, 4142483; 613560, 4142265; 613625, 4142113; 613669, 4141950; 613778, 4141819; 613963, 4141656; 614180, 4141406; 614246, 4141123; 614333, 4140851; 614267, 4140513; 614300, 4140296; 614191, 4139991; 614061, 4139795; 613832, 4139599; 613691, 4139480; 613527, 4139458; 613299, 4139534; 613081, 4139599; 612983, 4139686; 612809, 4139774; 612613, 4139752; 612504, 4139861; 612439, 4139948; 612254, 4139893; 612091, 4139991; 611971, 4140067; 610905, 4139741; 610208, 4139850; 609588, 4140546; 609621, 4141188; 609936, 4141656; 610415, 4141950; 610698, 4142026; 610763, 4142396; 610850, 4142570; 611025, 4142777; 611177, 4142918; 611340, 4142951; 611612, 4142799; 611884, 4142570; returning to 611993, 4142407.

(ii) Note: East Bay Region, Unit 5 is depicted on Map 19—Units 5, 6, 7, and 8—see paragraph (38)(ii).

(36) East Bay Region: Unit 6, Santa Clara County, California.

(i) From USGS 1:24,000 scale quadrangles Lick Observatory, and Isabel Valley. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 622442, 4134132; 622178, 4133537; 621384, 4132677; 620789, 4132346; 620326, 4131817; 619664, 4131156; 619003, 4131090; 618341, 4130891; 617283, 4130957; 616688, 4131553; 616489, 4132413; 615894, 4132876; 614769, 4133206; 613976, 4133008; 613248, 4133008; 612520, 4133140; 611793, 4133537; 611197, 4134198; 611131, 4135058; 612057, 4135654; 613050, 4135786; 613711, 4135852; 614637, 4135786; 615629, 4135654; 616026, 4135257; 616158, 4134860; 616555, 4134397; 617283, 4134198; 617746, 4133802; 618540, 4134000; 619069, 4134595; 620061, 4135654; 620921, 4135852; 621847, 4135786; 622442, 4135455; 622905, 4134661; returning to 622442, 4134132.

(ii) Note: East Bay Region, Unit 6 is depicted on Map 19—Units 5, 6, 7, and 8—see paragraph (38)(ii).

(37) East Bay Region: Unit 7, Santa Clara County, California.

(i) From USGS 1:24,000 scale quadrangles Lick Observatory, Isabel Valley, Morgan Hill, and Mt. Sizer. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 619400, 4126459; 619796, 4126327; 621053, 4126459; 621582, 4126393; 622641, 4126592; 623434, 4126592; 623964, 4126129; 624096, 4125467; 624096, 4124872; 623633, 4124277; 623699, 4123681; 622575, 4123417; 621384, 4123747; 620656, 4124210; 619796, 4124541; 619201, 4124078; 618540, 4123086; 618077, 4122094; 618143, 4120837; 618010, 4119779; 617217, 4118919; 616555, 4118919; 616158, 4119249; 615563, 4120043; 615100, 4121035; 614637, 4122028; 614703, 4122755; 615232, 4123218; 615629, 4123681; 615894, 4124343; 616026, 4124938; 616225, 4125070; 616489, 4126658; 616754, 4127187; 617217, 4127650; 617878, 4127650; 618804, 4127121; returning to 619400, 4126459.

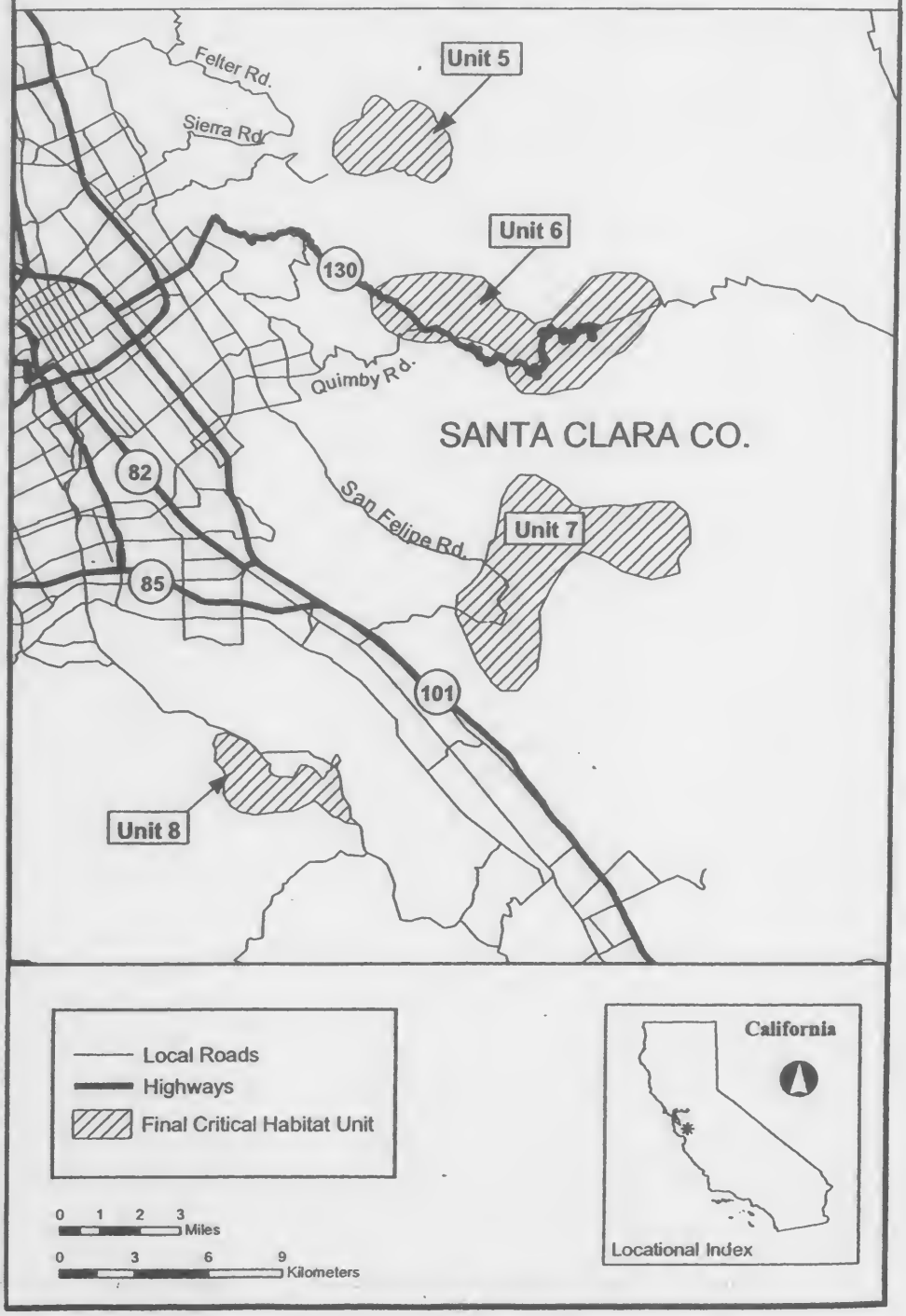
(ii) Note: East Bay Region, Unit 7 is depicted on Map 19—Units 5, 6, 7, and 8—see paragraph (38)(ii).

(38) East Bay Region: Unit 8, Santa Clara County, California.

(i) From USGS 1:24,000 scale quadrangle Santa Teresa Hills. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 607465, 4115477; 607584, 4115457; 607783, 4115457; 607902, 4115457; 608219, 4115417; 608517, 4115913; 608735, 4115913; 608973, 4115834; 609112, 4115695; 609291, 4115497; 609410, 4115338; 609529, 4115536; 609588, 4115675; 609727, 4115715; 609707, 4115834; 609767, 4116052; 609866, 4116211; 609927, 4116356; 609946, 4116348; 609990; 4116306; 610036, 4116246; 610131, 4116099; 610087, 4116065; 609930, 4115808; 609958, 4115742; 610012, 4115687; 610086, 4115410; 610096, 4115322; 610135, 4115089; 610138, 4115056; 610146, 4114967; 610194, 4114679; 610388, 4114391; 610474, 4114261; 610507, 4113796; 610840, 4113506; 610342, 4113592; 610045, 4113770; 609807, 4113850; 609092, 4114485; 608239, 4114068; 607584, 4114008; 606691, 4113909; 606036, 4114028; 605699, 4114266; 605401, 4114763; 605421, 4115080; 605461, 4115556; 605401, 4115715; 605123, 4115993; 605024, 4116152; 605084, 4116449; 605024, 4116648; 604945, 4116767; 605123, 4117144; 605481, 4117223; 605758, 4117104; 606076, 4116985; 606393, 4116826; 606671, 4116668; 606830, 4116449; 607108, 4116072; 607306, 4115953; 607247, 4115775; 607247, 4115695; 607346, 4115576; returning to 607465, 4115477.

(ii) Note: East Bay Region, Unit 6 is depicted on Map 19—Units 5, 6, 7, and 8—which follows:

Map 19. Central Population of California Tiger Salamander East Bay Region, Units 5, 6, 7, 8



(39) East Bay Region: Unit 9, Santa Clara County, California.

(i) From USGS 1:24,000 scale quadrangles Gilroy. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 631716, 4102121; 631597, 4102061; 631279, 4102081; 630982, 4102220; 630644, 4102478; 630466, 4102915; 630466, 4103312; 630545, 4103669; 630823, 4103966; 631061, 4104205; 631220, 4104324; 631418, 4104621; 631418, 4104760; 631101, 4104978; 630922, 4105177; 630525, 4105673; 630347, 4106110; 630307, 4106506; 630188, 4106784; 630029, 4107280; 630267, 4107558; 630466, 4107657; 630704, 4107836; 631021, 4108015; 631299, 4108074; 631608, 4108074; 632003, 4107936; 632368, 4107679; 632506, 4107363; 632605, 4107017; 632921, 4105822; 632990, 4105289; 632704, 4104716; 632506, 4104410; 632487, 4103985; 632704, 4103531; 632743, 4103156; 632664, 4102879; 632566, 4102682; 632368, 4102405; 632093, 4102121; returning to 631716, 4102121.

(ii) Note: East Bay Region, Unit 9 is depicted on Map 20—Units 9, 10a, 10b, 11, and 12—see paragraph (43)(ii).

(40) East Bay Region: Unit 10a, Santa Clara County, California.

(i) From USGS 1:24,000 scale quadrangle Mt. Madonna. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 621036, 4103975; 620814, 4103967; 620501, 4104023; 620498, 4104024; 620493, 4104030; 620454, 4104197; 620640, 4104325; 620875, 4104403; 620983, 4104462; 621101, 4104491; 621238, 4104580; 621415, 4104727; 621611, 4104854; 621807, 4104903; 622072, 4104707; 622162, 4104667; 622146, 4104640; 621926, 4104390; 621741, 4104273; 621587, 4104150; 621234, 4104025; returning to 621036, 4103975.

(ii) Note: East Bay Region, Unit 10a is depicted on Map 20—Units 9, 10a, 10b, 11, and 12—see paragraph (43)(ii).

(41) East Bay Region: Unit 10b, Santa Clara County, California.

(i) From USGS 1:24,000 scale quadrangles Gilroy, and Mt. Madonna. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 623013, 4101932; 623082, 4101638; 623121, 4101363; 623131, 4100981; 623033, 4100804; 622895, 4100755; 622758, 4100657; 622591, 4100500; 622573, 4100477; 622408, 4100545; 622373, 4100472; 622228, 4100526; 622167, 4100637; 622181, 4100752; 622102, 4100840; 621967, 4100895; 621852, 4101162; 621524, 4101274; 621477, 4101239; 621444, 4101255; 621189, 4101265; 621022, 4101353; 620787, 4101520; 620777, 4101706; 620885, 4101922; 620910, 4101980; 620947, 4101966; 621114, 4101924; 621263, 4101903; 621314, 4101852; 621397, 4101845; 621533, 4101885; 621594, 4102028; 621627, 4102049; 621676, 4102210; 621751, 4102302; 621833, 4102372; 621944, 4102424; 622126, 4102445; 622288, 4102596; 622376, 4102520; 622601, 4102442; 622788, 4102334; 622935, 4102158; returning to 623013, 4101932.

(ii) Note: East Bay Region, Unit 10b is depicted on Map 20—Units 9, 10a, 10b, 11, and 12—see paragraph (43)(ii).

(42) East Bay Region: Unit 11, Santa Clara County, California.

(i) From USGS 1:24,000 scale quadrangle Gilroy Hot Springs. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N):639775, 4106027; 640158, 4105923; 640506, 4105923; 641028, 4106271; 641272, 4106062; 641550, 4105471; 641724, 4105192; 642385, 4105018; 642594, 4104670; 642629, 4104183; 642803, 4103730; 642768, 4103138; 643221, 4102616; 643847, 4102477; 644404, 4101676; 644056, 4101537; 643847, 4101363; 643743, 4100632; 643256, 4100180; 642629, 4100180; 641968, 4100388; 641376, 4100214; 640854, 4100075; 640088, 4100180; 639740, 4100597; 639427, 4101259; 639531, 4101920; 639322, 4102268; 638905, 4102686; 638417, 4102999; 637860, 4103521; 637129, 4103904; 636990, 4104148; 636851, 4104983; 636920, 4105366; 637129, 4105679; 637582, 4106271; 638139, 4106584; 638626, 4106445; 639009, 4106376; 639392, 4106306; returning to 639775, 4106027.

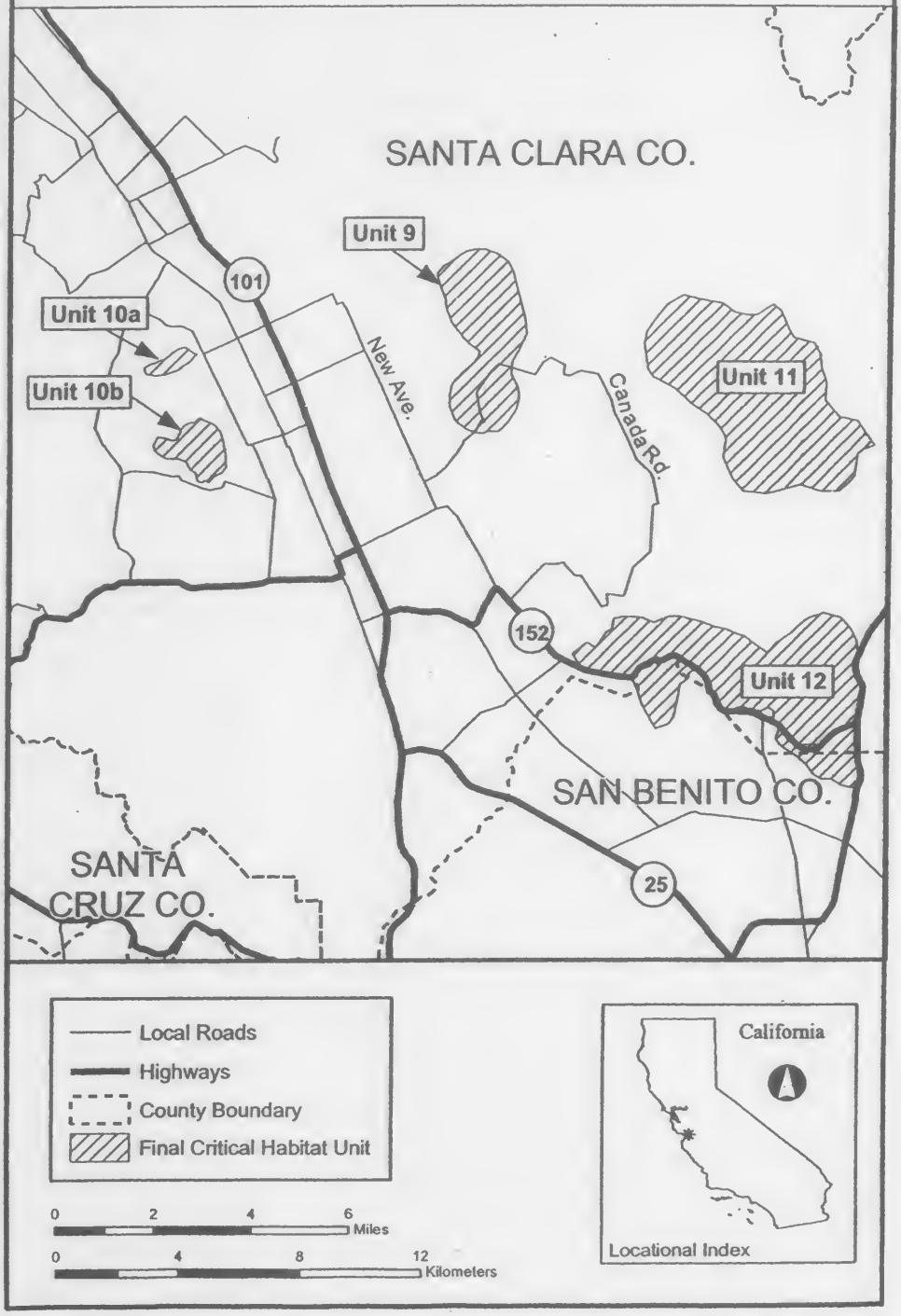
(ii) Note: East Bay Region, Unit 11 is depicted on Map 20—Units 9, 10a, 10b, 11, and 12—see paragraph (43)(ii).

(43) East Bay Region: Unit 12, Santa Clara County, California.

(i) From USGS 1:24,000 scale quadrangles Gilroy Hot Springs, and San Felipe. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 643914, 4095004; 643892, 4094772; 643829, 4094369; 643956, 4093946; 644013, 4093764; 644006, 4093721; 644006, 4093721; 643977, 4093529; 643977, 4093529; 643891, 4092970; 643891, 4092969; 643891, 4092969; 643890, 4092963; 643849, 4092776; 643849, 4092775; 643848, 4092770; 643848, 4092768; 643832, 4092624; 643832, 4092620; 643832, 4092615; 643832, 4092614; 643837, 4092282; 643838, 4092065; 643838, 4091759; 643837, 4091756; 643835, 4091751; 643834, 4091746; 643832, 4091741; 643832, 4091736; 643831, 4091731; 643831, 4091726; 643831, 4091722; 643831, 4091719; 643842, 4091603; 643851, 4091516; 643851, 4091516; 643854, 4091478; 643856, 4091367; 643856, 4091367; 643856, 4091358; 643856, 4091355; 643857, 4091350; 643858, 4091345; 643858, 4091342; 643929, 4091037; 643974, 4090778; 643946, 4090690; 643913, 4090588; 643897, 4090567; 643894, 4090563; 643891, 4090559; 643889, 4090555; 643887, 4090550; 643887, 4090549; 643885, 4090546; 643885, 4090545; 643859, 4090480; 643830, 4090454; 643640, 4090475; 643365, 4090560; 643069, 4090729; 642709, 4090729; 642497, 4090878; 642370, 4091026; 642222, 4091216; 641989, 4091428; 641800, 4091569; 641735, 4091618; 641418, 4091809; 641227, 4092063; 641312, 4092317; 641333, 4092550; 641143, 4092656; 641164, 4092952; 640994, 4093079; 640993, 4093078; 640782, 4092994; 640529, 4092994; 640528, 4092994; 640527, 4092994; 640379, 4092846; 640042, 4092867; 639767, 4092888; 639534, 4092922; 639470, 4092931; 639415, 4092984; 639320, 4093078; 639172, 4093438; 639123, 4093490; 639085, 4093565; 639045, 4093645; 638953, 4093932; 638852, 4094180; 638579, 4094348; 638410, 4094221; 638357, 4094075; 638356, 4094072; 638325, 4093988; 638108, 4093823; 638054, 4093568; 638023, 4093382; 637914, 4092762; 637744, 4092545; 637310, 4092402; 636884, 4093142; 636699, 4093626; 636543, 4094032; 634886, 4094373; 634553, 4094838; 635056, 4095202; 635335, 4095039; 635676, 4095551; 635869, 4095659; 635916, 4095992; 636218, 4096062; 636815, 4096054; 637246, 4095872; 637712, 4096063; 638093, 4096084; 638833, 4095893; 639236, 4095724; 639553, 4095661; 639913, 4095512; 640146, 4095428; 640590, 4095110; 640929, 4094877; 640930, 4094879; 640931, 4094878; 641248, 4095217; 641481, 4095365; 641672, 4095513; 641968, 4095767; 642307, 4096021; 642771, 4096190; 643342, 4096042; 643660, 4095682; 643871, 4095280; returning to 643914, 4095004.

(ii) Note: East Bay Region, Unit 12 is depicted on Map 20—Units 9, 10a, 10b, 11, and 12—which follows:

Map 20. Central Population of California Tiger Salamander East Bay Region, Units 9, 10a, 10b, 11, 12

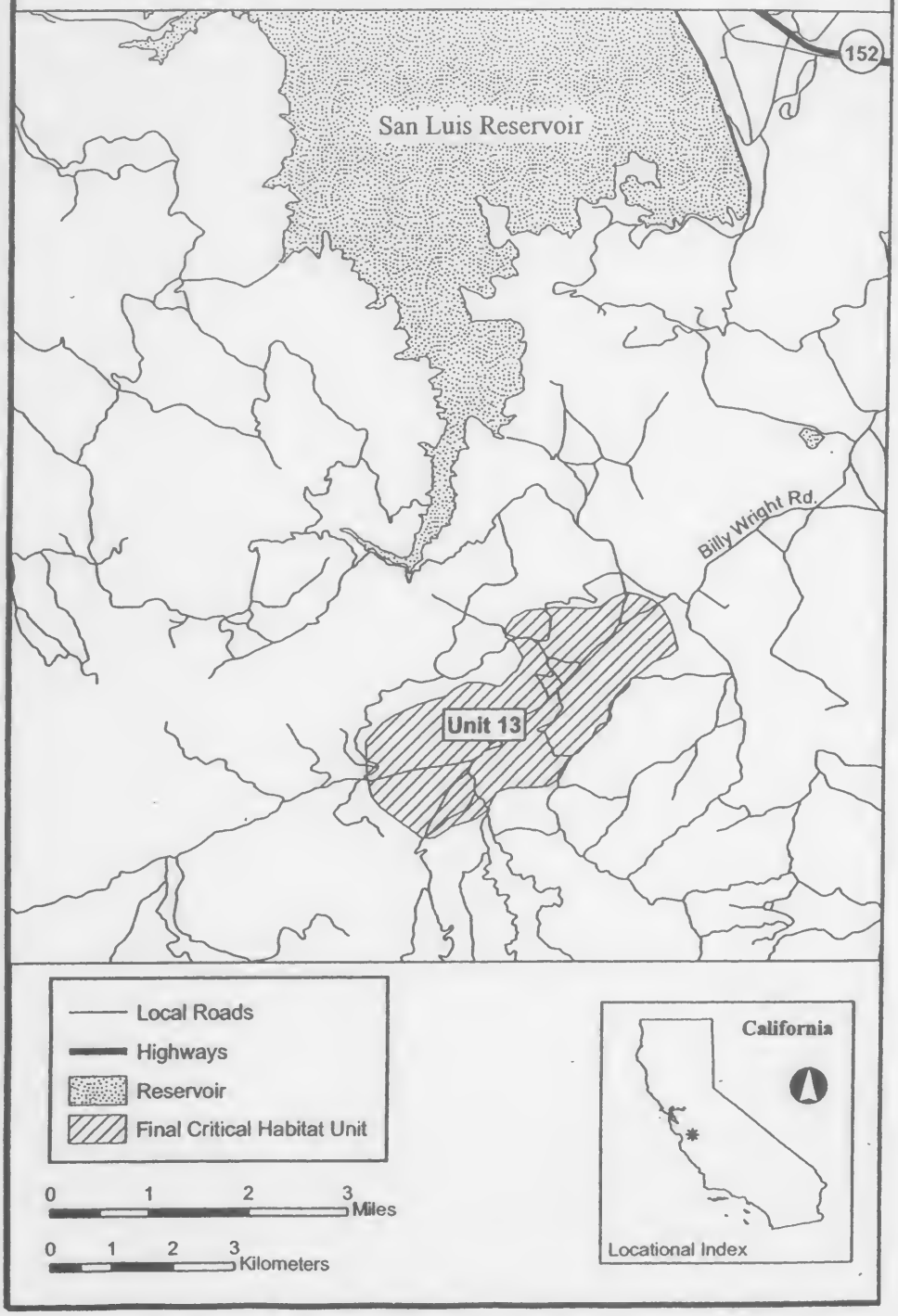


(44) East Bay Region: Unit 13, Merced County, California.

(i) From USGS 1:24,000 scale quadrangles Mariposa Peak, and Los Banos Valley. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N):670740, 4094185; 670879, 4093959; 670965, 4093691; 671019, 4093455; 670890, 4093358; 670632, 4093262; 670450, 4093101; 670299, 4093004; 670171, 4092864; 670010, 4092703; 669870, 4092242; 669645, 4092038; 669387, 4091802; 669248, 4091609; 669140, 4091383; 668947, 4091254; 668636, 4091233; 668314, 4091233; 668099, 4091169; 667949, 4090868; 667756, 4090729; 667380, 4090611; 667090, 4090428; 666886, 4090417; 666682, 4090568; 666210, 4090922; 666060, 4091104; 665996, 4091437; 665963, 4091974; 666232, 4092285; 666457, 4092424; 666800, 4092585; 667058, 4092661; 667273, 4092725; 667402, 4092832; 667616, 4092940; 667874, 4092929; 668153, 4092875; 668357, 4093079; 668421, 4093122; 668529, 4093326; 668400, 4093562; 668228, 4093669; 668228, 4093809; 668357, 4093991; 668582, 4094120; 668786, 4094131; 668872, 4094131; 668990, 4094152; 669173, 4094152; 669334, 4094152; 669559, 4094142; 669763, 4094163; 669956, 4094313; 670181, 4094399; 670439, 4094346; 670589, 4094292; returning to 670740, 4094185.

(ii) Note: Map 21 (East Bay Region, Unit 13) follows:

Map 21. Central Population of California Tiger Salamander East Bay Region, Unit 13

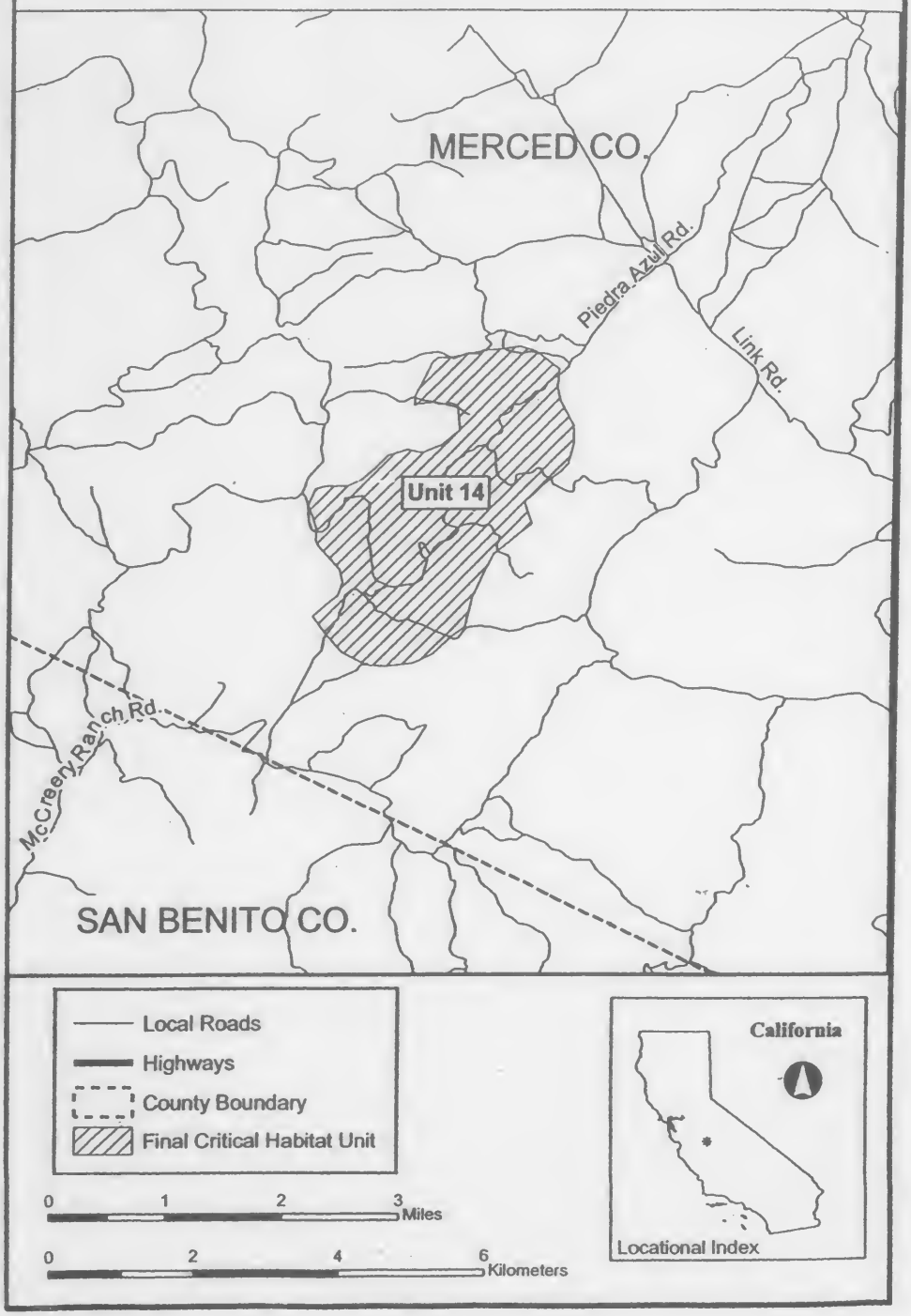


(45) East Bay Region: Unit 14, Merced County, California.

(i) From USGS 1:24,000 scale quadrangles Ruby Canyon, and Ortigalita Peak. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 679370, 4078644; 679558, 4078303; 679567, 4078064; 679490, 4077773; 679396, 4077671; 679149, 4077483; 678901, 4077253; 679003, 4076945; 678799, 4076800; 678483, 4076536; 678295, 4076186; 678184, 4075947; 678082, 4075537; 677894, 4075401; 677646, 4075162; 677382, 4075042; 676989, 4075000; 676742, 4075017; 676409, 4075187; 676161, 4075477; 676008, 4075682; 676213, 4075862; 676349, 4075964; 676409, 4076143; 676366, 4076331; 676272, 4076442; 676119, 4076604; 676085, 4076647; 676042, 4076707; 676042, 4076886; 675999, 4077031; 675931, 4077210; 676025, 4077441; 676170, 4077475; 676469, 4077475; 676665, 4077569; 676836, 4077705; 677015, 4077893; 677279, 4077970; 677476, 4077927; 677732, 4078029; 677988, 4078234; 677954, 4078542; 677663, 4078618; 677390, 4078593; 677365, 4078576; 677365, 4078695; 677510, 4078968; 677595, 4079156; 677681, 4079233; 677826, 4079233; 678022, 4079267; 678372, 4079335; 678585, 4079352; 678816, 4079386; 679029, 4079327; 679353, 4079079; 679345, 4078926; 679336, 4078823; returning to 679370, 4078644.

(ii) Note: Map 22 (East Bay Region, Unit 14) follows:

Map 22. Central Population of California Tiger Salamander East Bay Region, Unit 14



(46) East Bay Region: Unit 15a, San Benito County, California.

(i) From USGS 1:24,000 scale quadrangles Tres Pinos. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 648975, 4074659; 648866, 4074439; 648756, 4074518; 648584, 4074486; 648443, 4074424; 648345, 4074265; 647958, 4074729; 647957, 4074730; 647957, 4074730; 647737, 4074980; 647737, 4074980; 647686, 4075039; 647685, 4075039; 647683, 4075042; 647572, 4075156; 647267, 4075490; 647264, 4075493; 647261, 4075496; 647260, 4075497; 647205, 4075544; 647201, 4075547; 647197, 4075550; 647195, 4075551; 647136, 4075588; 647134, 4075589; 647129, 4075592; 647128, 4075592; 647066, 4075622; 647062, 4075623; 647059, 4075625; 646994, 4075648; 646992, 4075649; 646988, 4075650; 646985, 4075651; 646870, 4075678; 646867, 4075679; 646866, 4075679; 646057, 4075828; 646057, 4075828; 646015, 4075835; 646015, 4075836; 646014, 4075836; 645999, 4075838; 645995, 4075946; 645992, 4076037; 645986, 4076234; 645971, 4076906; 645969, 4077086; 645965, 4077530; 645965, 4077566; 645956, 4077596; 645946, 4077933; 645946, 4077933; 645953, 4077979; 645953, 4078182; 645953, 4078495; 645953, 4078809; 645953, 4079075; 645796, 4079341; 645828, 4079686; 646109, 4079873; 646313, 4080014; 646423, 4080265; 646517, 4080469; 646830, 4080672; 647080, 4080656; 647487, 4080641; 647738, 4080343; 647926, 4079920; 648036, 4079482; 647910, 4078903; 648004, 4078605; 648020, 4078245; 647910, 4077932; 647738, 4077728; 647534, 4077493; 647441, 4077258; 647503, 4077039; 647769, 4076929; 648145, 4076788; 648270, 4076679; 648396, 4076381; 648458, 4076052; 648458, 4075739; 648490, 4075598; 648662, 4075442; 648897, 4075175; returning to 648975, 4074659.

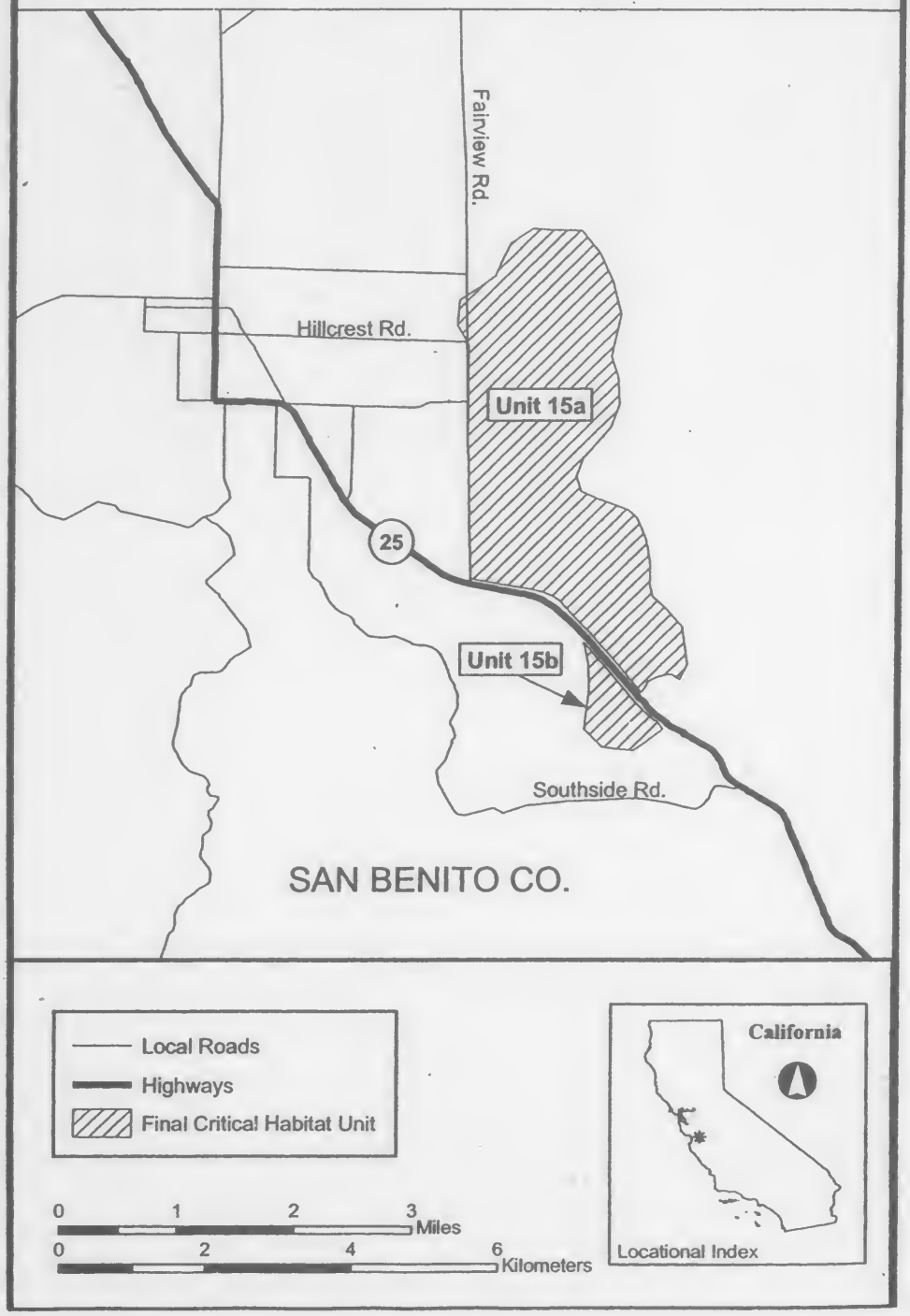
(ii) East Bay Region, Unit 15a is depicted on Map 23—Units 15a and 15b—see paragraph (47)(ii).

(47) East Bay Region: Unit 15b, San Benito County, California.

(i) From USGS 1:24,000 scale quadrangles Tres Pinos. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 648559, 4073866; 648564, 4073866; 648565, 4073866; 648646, 4073750; 648239, 4073453; 647816, 4073500; 647566, 4073750; 647628, 4074283; 647628, 4074471; 647613, 4074690; 647558, 4074952; 647572, 4074937; 647623, 4074880; 647623, 4074880; 647623, 4074879; 647842, 4074630; 648249, 4074142; 648251, 4074140; 648254, 4074137; 648366, 4074023; 648373, 4074013; 648374, 4074012; 648377, 4074008; 648381, 4074004; 648384, 4074001; 648513, 4073885; 648514, 4073885; 648518, 4073882; 648522, 4073879; 648526, 4073876; 648530, 4073874; 648535, 4073872; 648540, 4073870; 648544, 4073868; 648549, 4073867; 648554, 4073866; returning to 648559, 4073866.

(ii) Note: East Bay Region, Unit 15b is depicted on Map 23—Units 15a and 15b—which follows:

Map 23. Central Population of California Tiger Salamander East Bay Region, Units 15a, 15b

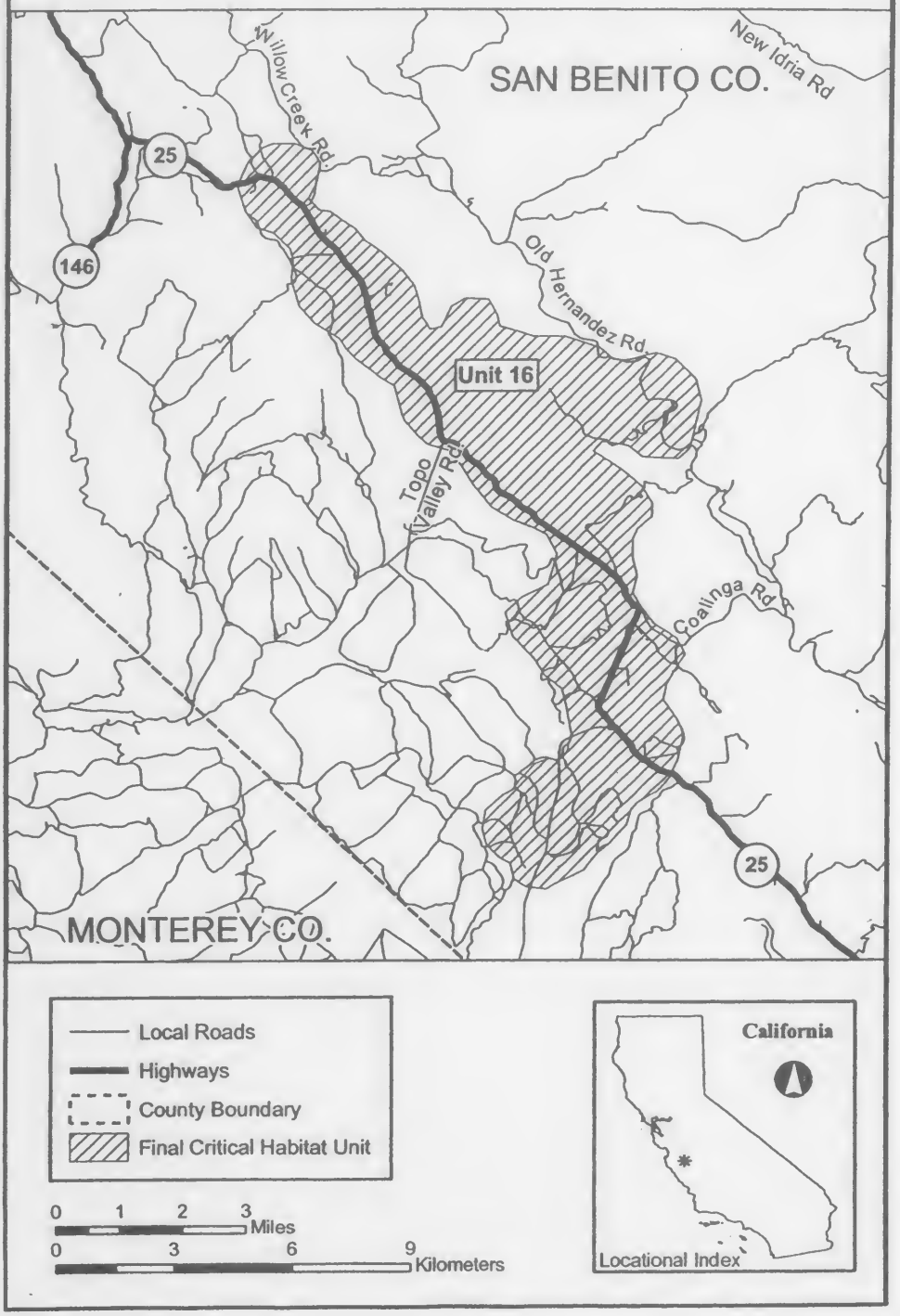


(48) East Bay Region: Unit 16, San Benito County, California.

(i) From USGS 1:24,000 scale quadrangles San Benito, Topo Valley, Rock Springs Peak, Pinalito Canyon, and Lonoak. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 674357, 4038468; 674568, 4038151; 674859, 4038204; 675098, 4038733; 675468, 4038944; 676050, 4038918; 676262, 4038547; 676341, 4038230; 676791, 4038098; 677214, 4037965; 677664, 4037965; 678008, 4037965; 678908, 4037674; 679252, 4037357; 679622, 4037357; 680310, 4037542; 680813, 4037383; 681289, 4036881; 681448, 4036325; 681315, 4035822; 681157, 4035108; 680892, 4034843; 679992, 4034896; 679622, 4035187; 678961, 4035293; 678749, 4035029; 679490, 4034552; 679992, 4034129; 680231, 4033732; 680231, 4033362; 679860, 4033044; 679754, 4032806; 679754, 4032330; 679860, 4031854; 679754, 4031430; 679992, 4031060; 680310, 4030636; 680866, 4030266; 681077, 4029869; 680892, 4029578; 680601, 4029075; 680522, 4028705; 680866, 4028202; 681051, 4027832; 680892, 4027144; 680680, 4026694; 680389, 4026350; 679887, 4026059; 679728, 4025874; 679622, 4025477; 679199, 4025027; 678881, 4024763; 678564, 4024339; 677982, 4024075; 677585, 4023863; 677082, 4023916; 676764, 4024101; 676659, 4024525; 676421, 4024657; 676050, 4025001; 675944, 4025398; 675997, 4025662; 676024, 4025874; 676500, 4026271; 676738, 4026403; 676923, 4026668; 677056, 4026774; 677294, 4027065; 677638, 4027197; 677876, 4027144; 678114, 4027356; 678220, 4027832; 678061, 4028626; 677982, 4028996; 677532, 4029340; 677267, 4029763; 676712, 4030319; 676526, 4030927; 676923, 4031298; 677611, 4031642; 677849, 4032409; 677585, 4032912; 677214, 4033097; 676712, 4033282; 676156, 4033626; 675706, 4034155; 675389, 4034685; 675071, 4035055; 674542, 4035214; 674251, 4035452; 673933, 4035822; 673854, 4036007; 673669, 4036695; 673325, 4036907; 673060, 4037119; 672690, 4037410; 672452, 4037648; 672293, 4037912; 671658, 4038309; 671261, 4038759; 671076, 4039394; 671102, 4039897; 671023, 4040214; 670600, 4040611; 670176, 4040744; 669885, 4041167; 669674, 4041802; 669938, 4042384; 670309, 4042754; 670600, 4042860; 671129, 4042860; 671579, 4042675; 671790, 4042384; 671711, 4041908; 671499, 4041484; 671764, 4041193; 672028, 4041167; 672346, 4040929; 672663, 4040717; 672928, 4040400; 673060, 4040320; 673351, 4040109; 673854, 4039659; 674145, 4039288; 674277, 4038891; returning to 674357, 4038468.

(ii) Note: Map 24 (East Bay Region, Unit 16) follows:

Map 24. Central Population of California Tiger Salamander East Bay Region, Unit 16

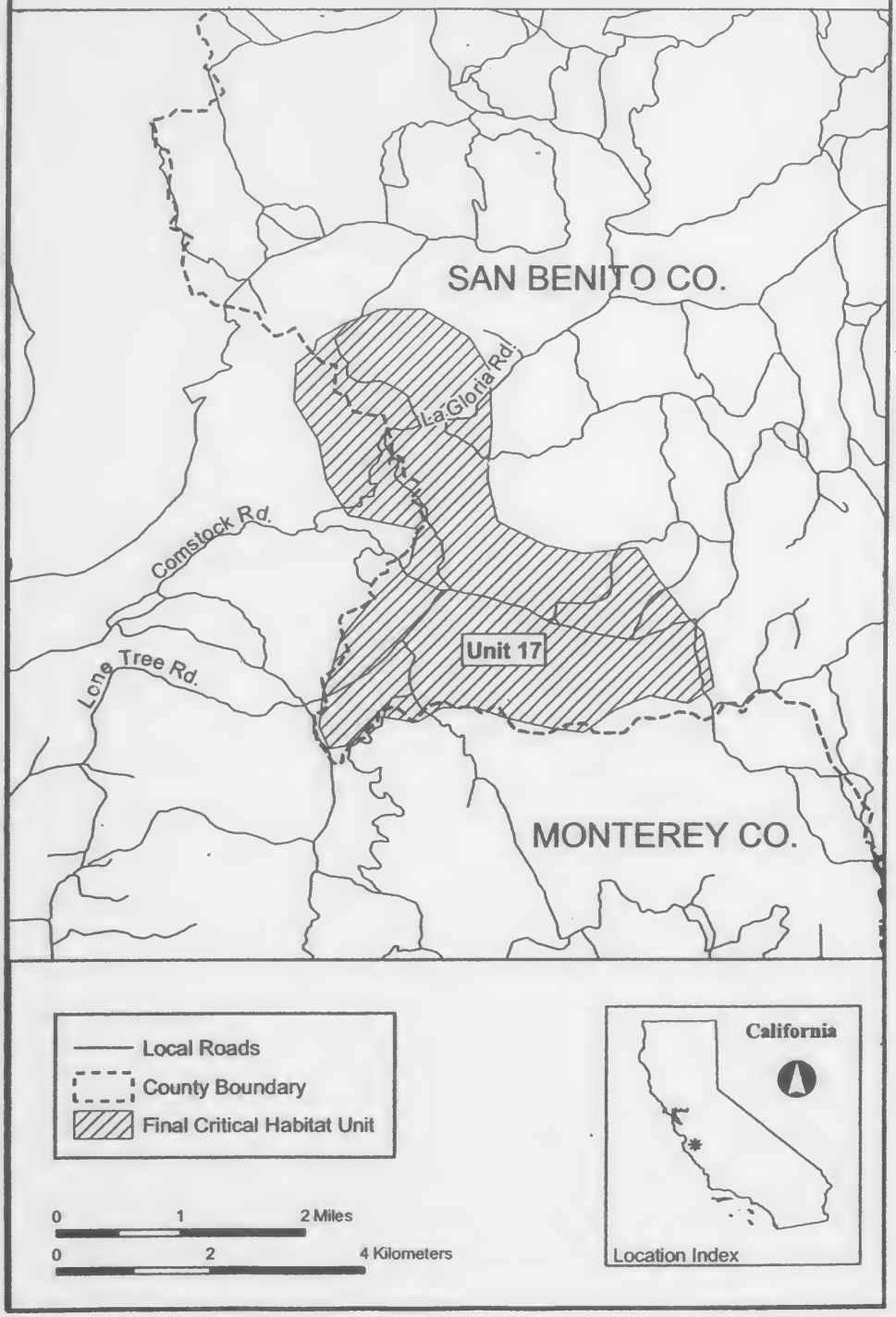


(49) East Bay Region: Unit 17, San Benito County, California, and Monterey County, California.

(i) From USGS 1:24,000 scale quadrangle Mount Johnson. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 654222, 4043469; 654725, 4043363; 655413, 4043442; 655651, 4043072; 656048, 4042543; 656259, 4042331; 656392, 4041617; 656074, 4041405; 655571, 4041511; 655148, 4041326; 654803, 4041088; 654725, 4041035; 654381, 4041078; 654301, 4041087; 653719, 4041220; 653713, 4041222; 653474, 4041307; 653349, 4041352; 653301, 4041352; 653086, 4041352; 653060, 4041352; 652873, 4041352; 652555, 4041167; 652479, 4041178; 652474, 4041179; 652049, 4041243; 652026, 4041246; 651775, 4040954; 651708, 4040876; 651686, 4040872; 651417, 4040823; 651285, 4041114; 651308, 4041306; 651338, 4041564; 651345, 4041581; 651444, 4041828; 651444, 4041831; 651550, 4042252; 651593, 4042303; 651973, 4042754; 651990, 4042771; 652003, 4042784; 652449, 4043231; 652545, 4043638; 652555, 4043680; 651655, 4043866; 651364, 4044315; 651259, 4044845; 650941, 4045347; 650968, 4045824; 651166, 4045978; 651206, 4046009; 651232, 4046141; 651603, 4046353; 652079, 4046538; 652608, 4046538; 653217, 4046168; 653481, 4045744; 653508, 4045003; 653455, 4044342; 653587, 4043786; returning to 654222, 4043469.

(ii) Note: Map 25 (East Bay Region, Unit 17) follows:

Map 25. Central Population of California Tiger Salamander East Bay Region, Unit 17

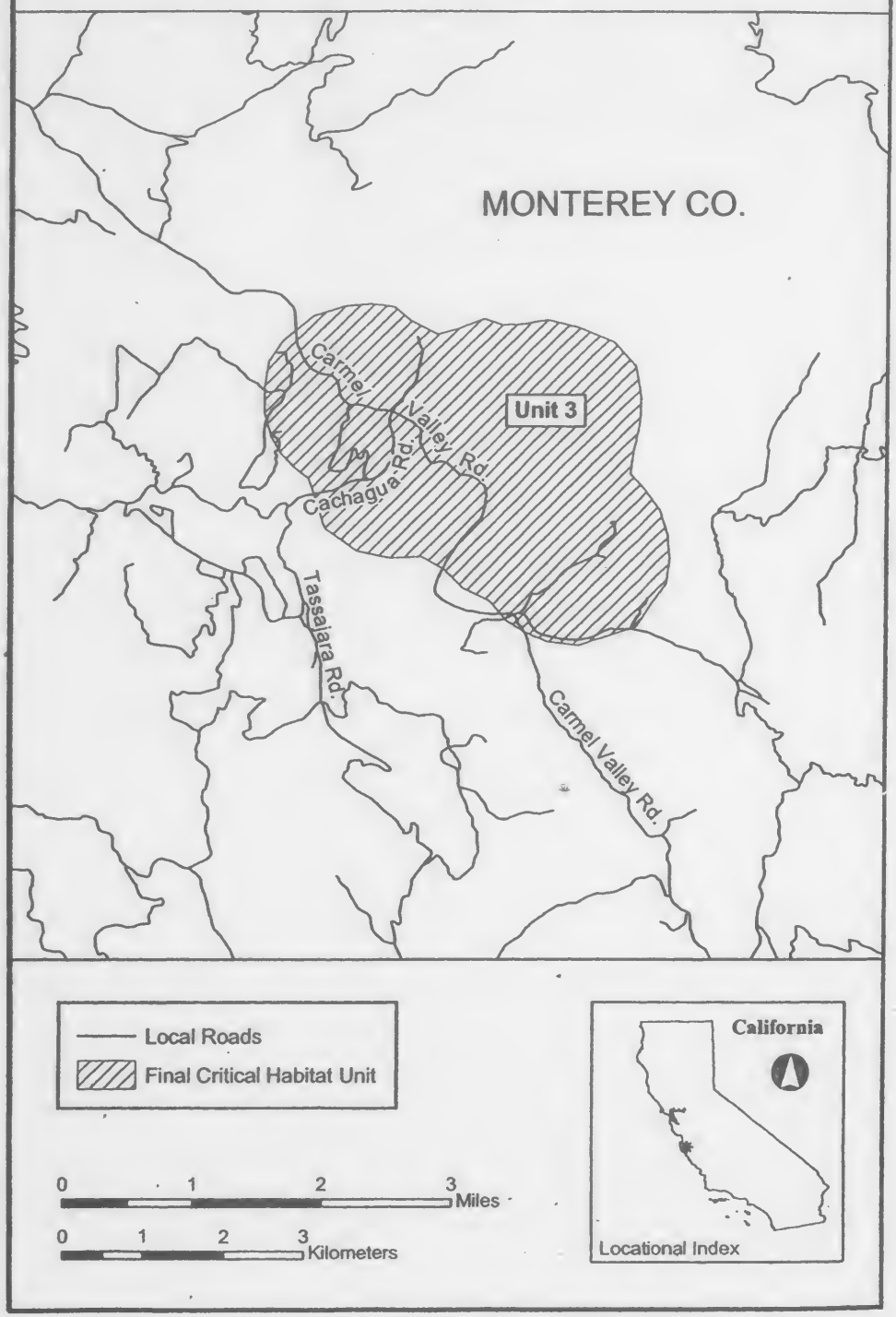


(50) Central Coast Region: Unit 3, Monterey County, California.

(i) From USGS 1:24,000 scale quadrangles Rana Creek. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 627509, 4030548; 627840, 4030382; 628072, 4030440; 628412, 4030573; 628645, 4030498; 628902, 4030506; 629208, 4030564; 629590, 4030473; 630029, 4030282; 630294, 4029984; 630361, 4029602; 630353, 4029296; 630278, 4028939; 630236, 4028649; 630427, 4028450; 630610, 4028201; 630701, 4027903; 630726, 4027588; 630684, 4027273; 630477, 4026991; 630319, 4026742; 629623, 4026518; 629233, 4026560; 628926, 4026684; 628711, 4026825; 628487, 4027074; 628155, 4027231; 627923, 4027463; 627650, 4027613; 627252, 4027596; 626845, 4027687; 626456, 4027969; 626373, 4028218; 626257, 4028591; 626074, 4028732; 625908, 4028906; 625784, 4029113; 625701, 4029403; 625701, 4029694; 625751, 4030034; 625933, 4030299; 626306, 4030606; 626688, 4030730; 627011, 4030763; 627301, 4030722; returning to 627509, 4030548.

(ii) Note: Map 26 (Central Coast Region, Unit 3) follows:

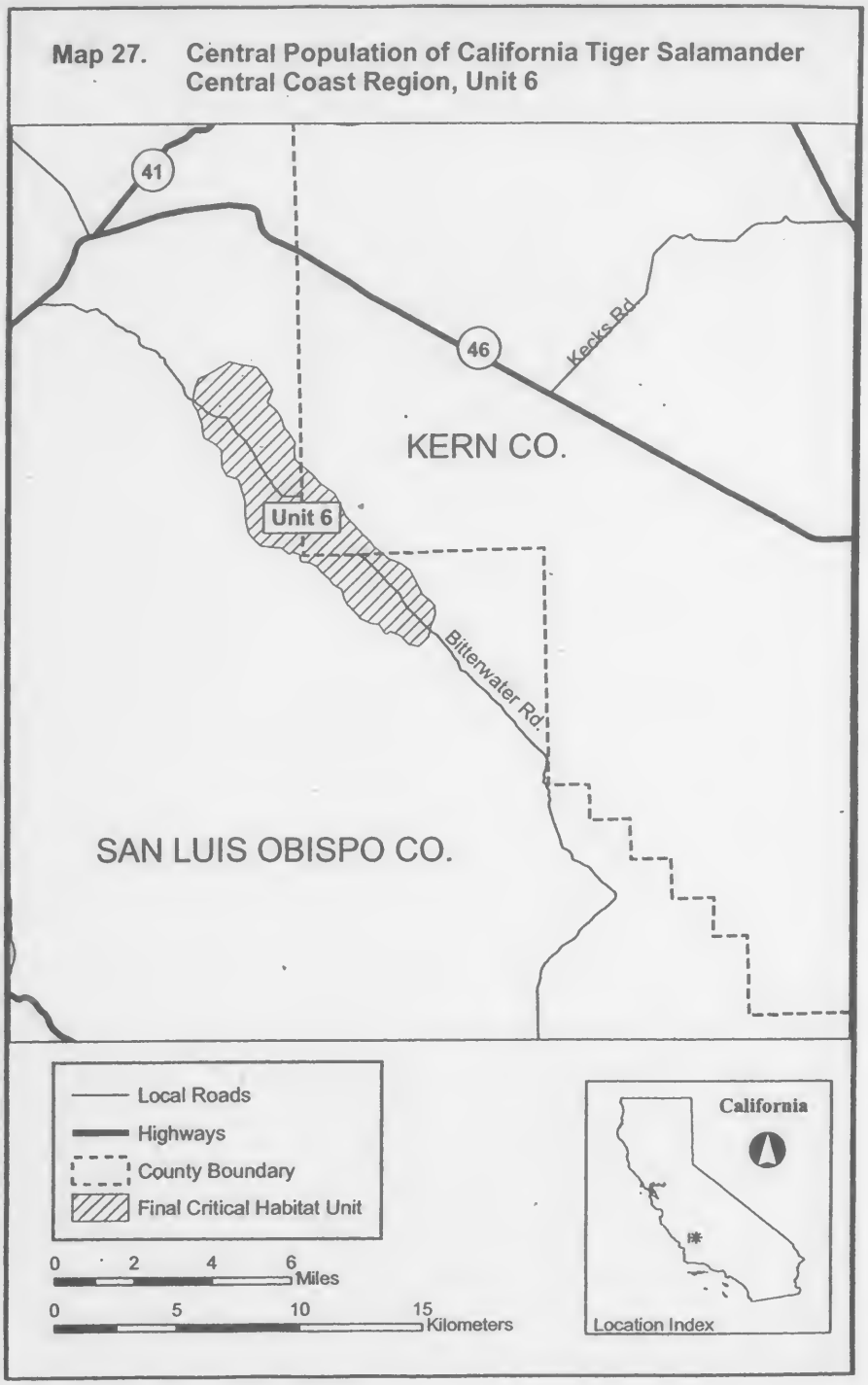
Map 26. Central Population of California Tiger Salamander Central Coast Region, Unit 3



(51) Central Coast Region: Unit 6, Kern County, California, and San Luis Obispo County, California.

(i) From USGS 1:24,000 scale quadrangles Orchard Peak, and Holland Canyon. Land bounded by the following UTM Zone 10, NAD83 coordinates (E,N): 757032, 3945151; 757374, 3944871; 757614, 3944675; 758116, 3944463; 758513, 3944172; 758831, 3943590; 759016, 3943193; 759360, 3942929; 759519, 3942770; 759545, 3942399; 759386, 3941950; 759254, 3941447; 758884, 3941076; 758487, 3941156; 758090, 3941553; 757693, 3941711; 757561, 3941579; 757481, 3941632; 757243, 3942002; 756873, 3942055; 756503, 3942241; 756264, 3942505; 755920, 3942876; 755815, 3943114; 755709, 3943431; 755497, 3943537; 755391, 3943616; 755180, 3943881; 754941, 3944093; 754730, 3944331; 754439, 3944516; 754068, 3944569; 754015, 3944860; 753724, 3944939; 753592, 3944860; 753275, 3945098; 752851, 3945151; 752428, 3945204; 752084, 3945521; 751925, 3945760; 751819, 3946104; 751793, 3946447; 751766, 3947030; 751608, 3947559; 751502, 3947903; 751026, 3948061; 750840, 3948405; 750814, 3948776; 750814, 3949120; 750523, 3949384; 750100, 3949622; 750047, 3949887; 750020, 3950152; 749835, 3950734; 749650, 3951025; 749676, 3951342; 749756, 3951739; 749888, 3952030; 750444, 3952295; 750840, 3952533; 751131, 3952718; 751634, 3952586; 751899, 3952559; 752243, 3952480; 752613, 3952030; 752878, 3951554; 752666, 3951051; 753063, 3950707; 753248, 3950390; 753328, 3950046; 753566, 3949781; 753804, 3949411; 753777, 3949014; 753804, 3948723; 754062, 3948505; 754306, 3948300; 754598, 3948035; 754862, 3947717; 755418, 3947321; 755629, 3946924; 755868, 3946421; 756238, 3946024; 756529, 3945680; 756820, 3945416; returning to 757032, 3945151.

(ii) Note: Map 27 (Central Coast Region, Unit 6) follows;



Dated: August 10, 2005.

Julie MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 05–16234 Filed 8–22–05; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
August 23, 2005

Part III

Department of Defense

Office of the Secretary

32 CFR Parts 21, 22, 25, etc.
DoD Grants and Agreement Regulations; Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 21, 22, 25, 32, 33, 34 and 37

RIN 0790–AH75

DoD Grant and Agreement Regulations

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense (DoD) is revising the DoD Grant and Agreement Regulations (DoDGARs) to implement four Office of Management and Budget (OMB) policy directives, to conform the DoDGARs with several statutory and regulatory revisions, and to make other administrative changes. The four OMB directives that are being implemented: require Federal agencies to use a new standard format for announcements of funding opportunities; require Federal agencies to electronically post synopses of those announcements at a Governmentwide Internet site; require Governmentwide use of the Data Universal Numbering System (DUNS) number as the universal identifier for recipient organizations; and amend OMB Circular A–B3 to raise the threshold of Federal funding at which recipients must obtain single audits. The statutory and regulatory changes with which the DoDGARs are being conformed concern matters such as nonprocurement debarment and suspension, drug-free workplace requirements for grants, and campus access for military recruiters and Reserve Officer Training Corps.

DATES: These final rules are effective on September 22, 2005.

FOR FURTHER INFORMATION CONTACT: Mark Herbst, (703) 696–0372.

SUPPLEMENTARY INFORMATION:

A. Background

On July 28, 2004 (69 FR 44990), DoD proposed to update the DoDGARs, the regulations that provide uniform policies and procedures for DoD Components' award and administration of grants and agreements. The proposed updates involved amendments to seven DoDGARs parts—32 CFR parts 21, 22, 25, 32, 33, 34 and 37—that are needed to conform those parts with Governmentwide and DoD policy changes and with DoD organizational and administrative changes.

DoD received one substantive and one editorial comment on the proposed updates, both from DoD Components. The final rule largely is the same as proposed, with a few changes to: respond to the two comments; correct typographical errors and one omission in the July 28, 2004, **Federal Register** document; and conform the characterization of the statutory requirement concerning military recruiters with a recent amendment to that statute. The changes are described at the end of this Supplementary Information section.

B. Summary of the Regulatory Updates

The following paragraphs describe the changes to the DoDGARs and the reasons for them.

Governmentwide standard format for program announcements. OMB issued a policy directive. "Format for Financial Assistant Program Announcements" [68 FR 37370, June 23, 2003], that requires Federal agencies to use a standard format for announcements of funding opportunities under which discretionary awards of grants or cooperative agreements may be made. The policy directive further requires that those announcements, with a few exceptions, be posted on the Internet. The DoD is revising paragraphs (a), (a)(1) and (2) of 32 CFR 22.315 to implement this OMB policy directive (see amendment number 7 following this preamble).

Electronic posting of synopses of program announcements. A second OMB policy directive "Requirement to Post Funding Opportunity Announcement Synopses at Grants.gov and Related Data Elements/Format" [68 FR 58146, October 8, 2003], requires Federal agencies to post on the Internet a summary of each announcement. The DoD is revising paragraph (a)(3) of 32 CFR 22.315 to implement this policy directive (see amendment number 7 following this preamble).

Use of Data Universal Numbering System (DUNS) numbers. A third OMB policy directive "Requirement for a DUNS number in Applications for Federal Grants and Cooperative Agreements" [68 FR 38402, June 27, 2003], established the DUNS number as the universal identifier for Federal grant and cooperative agreement applicants and recipients. It states that applications must include the DUNS number and that Federal agency electronic systems that handle data on grants and cooperative agreements must be able to accept the DUNS number. The DoD is adding a new section 32 CFR 21.565 to implement the requirement for agency electronic systems and a revised paragraph (a)(4) in 32 CFR 22.315 to address the requirement for including DUNS numbers in applications (see amendment numbers 2 and 7 following this preamble).

Dollar threshold for single audit requirements. The OMB also revised OMB Circular A–33, "Audits of States, Local Governments, and Non-Profit Organizations," to increase the threshold at which recipients are required to have single audits. The revision to the circular [68 FR 38401, June 27, 2003] increased the threshold from $300,000 per year to $500,000 per year in expenditures of Federal funds. The revision also increased the threshold (from $25 million per year $50 million per year in expenditures of Federal funds) at which a recipient would be assigned a cognizant Federal agency for audits and made related technical changes. The DoD is revising two sections of the DoDGARs—32 CFR 33.26 for awards to State, local, and other governmental organizations and 34.16 for awards to for-profit organizations—to replace the $300,000 threshold amount with the updated $500,000 threshold (see amendment numbers 25 and 28 following this preamble).

Nonprocurement debarment and suspension and drug-free workplace requirements. The DoD joined thirty-two other Federal agencies to publish [68 FR 66534, November 26, 2003] updated Governmentwide common rules on nonprocurement debarment and suspension and on drug-free workplace requirements for grants and agreements. The updated common rule on nonprocurement debarment and suspension is part 25 of the DoDGARs (32 CFR part 25) and the common rule on drug-free workplace requirements is part 26 (32 CFR part 26). The DoD is making conforming amendments to DoDGARs parts 21, 22, 32, 33, 34 and 37, to incorporate changes in policies and procedures due to the revisions of parts 25 and 26 and to correct references to sections of those two revised parts (see amendment numbers 3, 5, 8, 9.a, 11.a, 15, 17, 18, 22, 23, 26, 29, 31, 32, and 33 following this preamble).

Campus access for military recruiters and Reserve Officer Training Corps (ROTC). Section 549 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) recodified and consolidated—in 10 U.S.C. 983—two separate statutes applicable to institutions of higher education that receive DoD grants. The first of the two statutes prohibits DoD from providing funds by grant to institutions that deny military recruiters access to campuses, students, or student information for recruiting purposes. Before Public Law 106–65 recodified that requirement in 10 U.S.C. 983, it was in section 558 of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103–

337). The DoD implemented that section 558 requirement, as it applied to grants, in the DoDGARs at 32 CFR 22.520.

The second of the two statutes prohibits DoD from providing funds by grant to an institution that prevents the establishment and operation of a Senior ROTC unit on campus or student enrollment in a unit at an alternate institution. That statute was originally codified in 10 U.S.C. 983 by the National Defense Authorization Act for Fiscal Year 1996 (Public Law 104–106).

With the recodification and consolidation of both requirements in 10 U.S.C. 983, the DoD is revising section 32 CFR 22.520 of the DoDGARs and making conforming changes in sections 32 CFR 22.420 and 32 CFR 25.425. The revision of 32 CFR 22.520 addresses the requirements concerning ROTC, as well as the restrictions concerning military recruiters' access that already were addressed in 32 CFR 22.520. Among the changes in 32 CFR 22.520 are: the inclusion of the requirement concerning ROTC in the award term in paragraph 22.520(f); a clarification in a new paragraph 22.520(e)(2) that the prohibition on providing funds by grant extends, by law, to obligations of additional funds for pre-existing awards (*e.g.*, incremental funding actions); and a revision to paragraph 22.520(d)(1) to apply the prohibition on use of DoD funds to an institution of higher education as a whole, as 10 U.S.C. 983 requires, when any subordinate element of the institution has a policy or practice that denies access for ROTC or military recruiters (see amendment number 12 following this preamble for the changes to section 32 CFR 22.520 and amendment numbers 9.a and 20 for the conforming changes to section 32 CFR 22.420 and 32 CFR 25.425).

Other Revisions. In addition to the revisions described above, the DoD is making other needed updates to the DoDGARs. Those updates are: (1) A revision of paragraphs (a)(3) and (4) of section 32 CFR 22.715, to conform that section with revised procedures for oversight of single audits; (2) changes in Appendices A and B to 32 CFR part 22, to reflect revisions in regulations implementing national policy requirements; and (3) updates to office names, footnote references to sources of OMB and DoD documents, and cross references to sections within the DoDGARs (see amendment numbers 6, 9.b, 11.b, 13, 14, 15, 16, and 18 following this preamble).

C. Changes From the Proposed Rulemaking Notice

These final amendments include one change made in response to a comment from a DoD Component. The commenter pointed out the need for 32 CFR 22.715, which lists functions of grants administration offices, to identify each office's responsibilities to: (1) Take appropriate action when a governmental, university, or nonprofit recipient has not complied with requirements to have a single audit and submit its audit report; and (2) issue timely management decisions on single audit findings that the Office of the Inspector General, DoD, refers to the office. Accordingly, we are adding a new paragraph 32 CFR 22.715(a)(3)(iii) and revising paragraph 32 CFR 22.715(a)(4), rather than deleting it as proposed in July 2004 (see amendment number 15 following this preamble).

Another change in the final rule responds to an amendment to 10 U.S.C. 983 that was made by Section 552 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Public Law 108–375), after the rule was proposed for public comment. The amendment specifies that military recruiters' access to campuses and students must be at least equal in quality and scope to the access provided to any other employer. The final rule includes language to conform with that statutory change in two places: paragraph 22.520(c)(3), which describes the requirements of 10 U.S.C. 983, and the corresponding paragraph (C) of the award term under 22.520(e)(3) (see amendment number 12 following this preamble).

We corrected in these final amendments two typographical errors that appeared in the proposed rulemaking notice. First, a reference in 32 CFR 22.520(f)(1)(ii) to "paragraphs (e)(5)(i) and (e)(5)(i)(iii) of this section" is corrected to read "paragraphs (e)(5)(i) and (e)(5)(iii) of this section". Second, a reference in Appendix B to Part 22 to "40 CFR 32.110", a section in the Environmental Protection Agency's implementation of the Clean Air Act and Clean Water Act, is corrected to read "40 CFR 32.1110" (see amendment numbers 12 and 18 following this preamble).

These final amendments also include one amendment that was erroneously omitted in the proposed rulemaking notice. The additional amendment updates a reference in 32 CFR 22.605 to what is now Subpart E of 32 CFR part 21 (see amendment number 13.a following this preamble).

Executive Order 12866

OMB has determined this rule to be significant and it has been reviewed and approved for publication

Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector of $100 million or more in any one year.

Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

Federalism (Executive Order 13132)

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects

32 CFR Part 21

Grant programs, Reporting and recordkeeping requirements.

32 CFR Part 22

Accounting, Grant programs, Grant programs—education, Reporting and recordkeeping requirements.

32 CFR Part 25

Administrative practice and procedure; Grant programs; Loan programs; Reporting and recordkeeping requirements.

32 CFR Part 32

Accounting, Colleges and universities, Grant programs, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

32 CFR Part 33

Grant programs, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

32 CFR Part 34

Accounting, Government property, Grant programs, Nonprofit

organizations, Reporting and recordkeeping requirements.

32 CFR Part 37

Accounting, administrative practice and procedure, Grant programs, Grants administration, Reporting and recordkeeping requirements.

■ Accordingly, Title 32 of the Code of Federal Regulations, Chapter I, Subchapter B is amended as follows:

PART 21—[AMENDED]

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

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

Subpart E—[Amended]

■ 2. Subpart E is amended by adding a new section § 21.565 to read as set forth below.

§ 21.565 Must DoD Components' electronic systems accept Data Universal Numbering System (DUNS) numbers?

The DoD Components must comply with paragraph 5.e of the Office of Management and Budget (OMB) policy directive entitled, "Requirement for a DUNS number in the Applications for Federal Grants and Cooperative Agreements [6]." Paragraph 5.e requires electronic systems that handle information about grants and cooperative agreements (which, for the DoD, include Technology Investment Agreements) to accept DUNS numbers. Each DoD Component that awards for administers grants or cooperative agreements must ensure that DUNS numbers are accepted by each such system for which the DoD Component controls the system specifications. If the specifications of such a system are subject to another organization's control and the system can not accept DUNS numbers, the DoD Component must alert that organization to the OMB policy directive's requirement for use of DUNS numbers with a copy to: Director for Basic Sciences, ODDR&E, 3040 Defense Pentagon, Washington, DC 20301–3040.

[6] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants.docs.html.*

BILLING CODE 5001–06–M

■ 3. Appendix A to part 21 is revised to read as follows:

Appendix A to Part 21—Instruments to Which DoDGARs Portions Apply

DoDGARs . . .	which addresses . . .	applies to . . .
Part 21 (32 CFR part 21), all but Subparts D and E	The Defense Grant and Agreement Regulatory System and the DoD Grant and Agreement Regulations	"awards," which are grants, cooperative agreements, technology investment agreements (TIAs), and other nonprocurement instruments subject to one or more parts of the DoDGARs.
Part 21 (32 CFR part 21), Subpart D	Authorities and responsibilities for assistance award and administration	grants, cooperative agreements, and TIAs.
Part 21 (32 CFR part 21), Subpart E	DoD Components' information reporting requirements	grants, cooperative agreements, TIAs, and other nonprocurement instruments subject to reporting requirements in 31 U.S.C. chapter 61.
Part 22 (32 CFR part 22)	DoD grants officers' responsibilities for award and administration of grants and cooperative agreements	grants and cooperative agreements other than TIAs.
Part 25 (32 CFR part 25)	Governmentwide debarment and suspension requirements	nonprocurement generally, which includes grants, cooperative agreements, TIAs, and other instruments that are covered transactions under 32 CFR 25.210, with the exceptions identified at 32 CFR 25.215.
Part 26 (32 CFR part 26)	Governmentwide drug-free workplace requirements	grants, cooperative agreements and other financial assistance instruments, including TIAs, that are included in the definition of "award" at 32 CFR 26.605.
Part 28 (32 CFR part 28)	Governmentwide restrictions on lobbying	grants, cooperative agreements and other financial assistance instruments, including TIAs, that are included in the definitions of "Federal grant" and "Federal cooperative agreement" at 32 CFR 28.105.
Part 32 (32 CFR part 32)	Administrative requirements for grants and agreements with institutions of higher education, hospitals, and other non-profit organizations	grants, cooperative agreements other than TIAs, and other assistance included in "award," as defined in 32 CFR 32.2. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 33 (32 CFR part 33)	Administrative requirements for grants and agreements with State and local governments	grants, cooperative agreements other than TIAs, and other assistance included in "grant," as defined in 32 CFR 33.3. Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 34 (32 CFR part 34)	Administrative requirements for grants and agreements with for-profit organizations	grants and cooperative agreements other than TIAs ("awards," as defined in 32 CFR 34.2). Portions of this part apply to TIAs, but only as 32 CFR part 37 refers to them and makes them apply.
Part 37 (32 CFR part 37)	Agreements officers' responsibilities for award and administration of TIAs	TIAs. Note that this part refers to portions of DoDGARs parts 32, 33, and 34 that apply to TIAs.

PART 22—[AMENDED]

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

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

■ 5. Section 22.100 is amended as follows:

■ A. In paragraph (b)(1) by revising the phrase "Governmentwide rules on debarment, suspension and drug-free workplace requirements" to read "The Governmentwide rule on nonprocurement debarment and suspension";

■ B. Redesignate paragraphs (b) (2) and (3) as paragraphs (b)(3) and (4) respectively; and

■ C. Add a new paragraph (b)(2) to read as follows:

§ 22.100 Purpose, relation to other parts, and organization.

* * * * *

(b) * * *

(2) The Governmentwide rule on drug-free workplace requirements, in 32 CFR part 26.

* * * * *

§ 22.220 [Amended]

■ 6. In § 22.220, amend paragraph (a)(1) by revising "Director of Defense Procurement (DDP)" to read "Director of Defense Procurement and Acquisition Policy (DDP&AP)", and amend paragraph (a)(2) by revising "DDP" to read "DDP&AP".

■ 7. Section 22.315 is amended by revising paragraph (a) to read as set forth below:

§ 22.315 Merit-based, competitive procedures.

* * * * *

(a) *Notice to prospective proposers.* The notice may be a notice of funding availability or Broad Agency Announcement that is publicly disseminated, with unlimited distribution, or a specific notice that is distributed to eligible proposers (a specific notice must be distributed to at least two eligible proposers to be considered as part of a competitive procedure). Requirements for notices are as follows:

(1) The format and content of each notice must conform with the Governmentwide format for announcements of funding opportunities established by the Office of Management and Budget (OMB) in a policy directive entitled, "Format for Financial Assistance Program Announcements." [2]

(2) In accordance with that OMB policy directive, DoD Components also must post on the Internet any notice under which domestic entitles may submit proposals, if the distribution of the notice is unlimited. DoD Components are encouraged to simultaneously publish the notice in other media (*e.g.*, the **Federal Register**), if doing so would increase the likelihood of its being seen by potential proposers. If a DoD Component issues a specific notice with limited distribution (*e.g.* for national security considerations), the notice need not be posted on the Internet.

(3) To comply with an OMB policy directive entitled, "Requirement to Post Funding Opportunity Announcement Synopses at Grants.gov and Related Data Elements/Format," [3] DoD Components must post on the Internet a synopsis for each notice that, in accordance with paragraph (a)(2) of this section, is posted on the Internet. The synopsis must be posted at the Governmentwide site designated by the OMB (currently *http://www.FedGrants.gov*). The synopsis for each notice must provide complete instructions on where to obtain the notice and should have an electronic link to the Internet location at which the notice is posted.

[3] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants.docs.html.*

(4) In accordance with an OMB policy directive entitled, "Requirement for a DUNS Number in Applications for Federal Grants and Cooperative Agreements," [4] each notice must include a requirement for proposers to include Data Universal Numbering System (DUNS) numbers in their proposals. If a notice provides for submission of application forms, the forms must incorporate the DUNS number. To the extent that unincorporated consortia of separate organizations may submit proposals, the notice should explain that an unincorporated consortium would use the DUNS number of the entity proposed to receive DoD payments under the award (usually, a lead organization that consortium members identify for administrative matters).

* * * * *

[2] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants.docs.html.*

[3] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants.docs.html.*

[4] This OMB policy directive is available at the Internet site *http://www.whitehouse.gov/omb/grants/grants.docs.html.*

§ 22.405 [Amended]

■ 8. Section 22.405, paragraph (a) is amended by revising "32 CFR 22.115(a)" to read "32 CFR 25.110(a)".

■ 9. Section 22.420 is amended as follows:

■ a. Revision paragraph (c)(1) to read as set forth below; and

■ b. Redesignating the current footnote 2 in paragraph (b)(1) as footnote 5 and revising it to read as set forth below:

§ 22.420 Pre-award procedures.

* * * * *

(c) * * *

(1) Is not identified in the Governmentwide Excluded Parties List System (EPLS) as being debarred, suspended, or otherwise ineligible to receive the award. (In addition to being a requirement for every new award, note that checking the EPLS also is a requirement for subsequent obligations of additional funds, such as incremental funding actions, for pre-existing awards to institutions of higher education, as described at 32 CFR 22.520(e)(2).) The grants officer's responsibilities include (see 32 CFR 25.425 and 25.430) checking the EPLS for:

(i) Potential recipients of prime awards; and

(ii) A recipient's principals (as defined at 32 CFR 25.995), potential recipients of subawards, and principals of those potential subaward recipients, if DoD Component approval of those principals of lower-tier recipients is required under the terms of the award (e.g., if a subsequent change in a recipient's principal investigator or other key person would be subject to the DoD Component's prior approval under 32 CFR 32.25(c)(2), 33.30(d)(3), or 34.15(c)(i)).

* * * * *

[5] Electronic copies may be obtained at Internet site *http://www.whitehouse.gov/OMB.* For paper copies, contact the Office of Management and Budget, EOP Publications, 725 17th St. NW., New Executive Office Building, Washington, DC 20503.

■ 10. Section 22.505 is amended by redesignating the existing footnotes 3 and 4 in paragraph (a) of section 22.505 as footnotes 6 and 7, respectively, and by revising them to read as follows:

§ 22.505 Purpose.

* * * * *

[6] See footnote 5 to § 22.420(b)(1).

[7] See footnote 5 to § 22.420(b)(1).

■ 11. Section 22.510 is amended by:

■ a. Revising paragraphs (a)(2)(ii)(A), (a)(2)(ii)(B), and (a)(2)(ii)(C) to read as set forth below; and

■ b. Redesignating the current footnote 5 in paragraph (b) as footnote 8 and revising it to read as set forth below:

§ 22.510 Certifications, representations, and assurances.

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(A) If a grants officer elects to have proposers incorporate certifications by reference into their proposals, he or she must do so in one of the two following ways. When required by statute or codified regulation, the solicitation must include the full text of the certifications that proposers are to provide by reference. In other cases, the grants officer may include language in the solicitation that informs the proposers where the full text may be found (*e.g.*, in documents or computer network sites that are readily available to the public) and offers to provide it to proposers upon request.

(B) Appendix A to this part provides language that may be used for incorporating by reference the certification on lobbying, which currently is the only certification requirement that commonly applies to DoD grants and agreements. Because that certification is required by law to be submitted at the time of proposal, rather than at the time of award, Appendix A includes language to incorporate the certification by reference into a proposal.

(C) Grants officers may incorporate certifications by reference in award documents when doing so is consistent with statute and codified regulation (that is not the case for the lobbying certification addressed in paragraph (a)(2)(ii)(B) of this section). The provision that a grants officer would use to incorporate certifications in award documents, when consistent with statute and codified regulation, would be similar to the provision in Appendix A to this part, except that it would be modified to state that the recipient is providing the required certifications by signing the award document or by accepting funds under the award.

* * * * *

[8] For copies of Standard Forms listed in this part, contact regional grants administration offices of the Office of Naval Research. Addresses for the offices are listed in the "Federal Directory of Contract Administration Services (CAS) Components," which may be accessed through the Defense Contract Management Agency homepage at: *http://www.dcma.mil.*

■ 12. Section 22.520 is revised to read as follows:

§ 22.520 Campus access for military recruiting and Reserve Officer Training Corps (ROTC).

(a) *Purpose.* (1) The purpose of this section is to implement 10 U.S.C. 983 as it applies to grants. Under that statute, DoD Components are prohibited from providing funds to institutions of higher education that have policies or practices, as described in paragraph (c) of this section, restricting campus access of military recruiters or the Reserve Officer Training Corps (ROTC).

(2) By addressing the effect of 10 U.S.C. 983 on grants and cooperative agreements, this section supplements the DoD's primary implementation of that statute in 32 CFR part 216, "Military Recruiting and Reserve Officer Training Corps Program Access to Institutions of Higher Education." Part 216 establishes procedures by which the Department of Defense identifies institutions of higher education that have a policy or practice described in paragraph (c) of this section.

(b) *Definition specific to this section.* "Institution of higher education" in this section has the meaning given at 32 CFR 216.3, which is different than the meaning given at § 22.105 for other sections of this part.

(c) *Statutory requirement of 10 U.S.C. 983.* No funds made available to the Department of Defense may be provided by grant to an institution of higher education (including any subelement of such institution) if the Secretary of Defense determines that the institution (or any subelement of that institution) has a policy or practice that either prohibits, or in effect prevents:

(1) The Secretary of a Military Department from maintaining, establishing, or operating a unit of the Senior ROTC (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution (or any subelement of that institution);

(2) A student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a Military Department of Secretary of Homeland Security from gaining access to campuses, or access to student (who are 17 years of age or older) or campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope of the access to campuses and to students that is provided to any other employer; or

(4) Access by military recruiters for purposes of military recruiting to the following information pertaining to students (who are 17 years of age or older) enrolled at that institution (or any subelement of that institution);

(i) Name, address, and telephone listings.

(ii) Date and place of birth, levels of education, academic majors, degrees received, and the most recent education institution enrolled in by the student.

(d) *Policy.* (1) *Applicability to cooperative agreements.* As a matter of DoD policy, the restriction of 10 U.S.C. 983, as implemented by 32 CFR part 216, apply to cooperative agreements, as well as grants.

(2) *Deviations.* Grants officers may not deviate from any provision of this section without obtaining the prior approval of the Director of Defense Research and Engineering. Requests for deviations shall be submitted, through appropriate channels, to: Director for Basic Sciences, ODUSD(LABS), 3040 Defense Pentagon, Washington, D.C. 20301–3040.

(e) *Grants officers' responsibility.* (1) A grants officers shall not award any grant or cooperative agreements to an institution of higher education that has been identified pursuant to the procedures of 32 CFR part 216. Such institutions are identified as being ineligible on the Governmentwide Excluded Parts List System (EPLS). The cause and treatment code on the EPLS indicates the reason for an institution's ineligibility, as well as the effect of the exclusion. Note that 32 CFR 25.425 and 25.430 require a grants officers to check the EPLS prior to determining that a recipient is qualified to receive an award.

(2) A grants officer shall not consent to a subaward of DoD funds to such an institution, under a grant or cooperative agreement to any recipient, if the subaward requires the grants officer's consent.

(3) A grants officers shall include the following award term in each grant or cooperative agreements with an institution of higher education (note that this requirement does not flow down and that recipients are not required to include the award term in subawards):

"As a condition for receipt of funds available to the Department of Defense (DoD) under this award, the recipient agrees that it is not an institution of higher education (as defined in 32 CFR part 216) that has a policy or practice that either prohibits, or in effect prevents:

(A) The Secretary of a Military Department for maintaining, establishing, or operating a unit of the senior Reserve Officers Training Corps (in accordance with 10 U.S.C. 654 and other applicable Federal laws) at that institution (or any subelement of that institution);

(B) Any student at that institution (or any subelement of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education;

(C) The Secretary of a Military Department of Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provide to any other employer; or

(D) Access by military recruiters for purposes of military recruiter to the name of students (who are 17 years of age or older and enrolled at that institution or any subelement of that institution); their address, telephone listing, date and places of birth, levels of education, academic majors, and degrees received; and the most recent education institutions in which they were enrolled.

If the recipient is determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of this agreement, the Government will cease all payments of DoD funds under this agreements and all other DoD grants and cooperative agreements to the recipient, and it may suspend or terminate such grants and agreements unilaterally for material failure to comply with the terms and conditions of awards."

(4) If an institution of higher education refuses to accept the award of term in paragraph (e)(3) of this section, the grants officer shall:

(i) Determine that the institution is not qualified with respect to the award. This grants officer may award to an alternative recipient.

(ii) Transmit the name of the institution, through appropriate channels, to the Director of Access Policy, Office of the Deputy Under Secretary of defense of Military Personnel Policy (ODUSD(MPP)), 4000 Defense Pentagon, Washington, DC 20301–4000. This will allow ODUSD(MPP) to decide whether to initiate an evaluation of the instition under 32 CER part 216, to determine whether it is an institution that has a policy or practice described in paragraph (c) of this section.

(5) With respect to any pre-existing award to an institution of higher education that currently is listed on the EPLS pursuant to a determination under 32 CFR part 216, a grants officer.

(i) Shall not obligate additional funds available to the DoD for the award. A grants officer therefore must check the EPLS before approving an incremental funding action or other additional funding for any pre-existing award to an institution of higher education. The grants officer may not obligate the additoinal funds if the cause and treatment code indicates that the reason for an institution's EPLS listing is a determination under 32 CFR part 216 that institutional policies or practices restrict campus access of military recruiters or ROTC.

(ii) Shall not approve any request for payment submitted by such an institution (including payments of costs already incurred).

(iii) Shall:

(A) Terminate the award unless he or she has a reason to believe, after consulting with the ODUSD(MPP), 4000 Defense Pentagon, Washington, DC 20301–4000), that the institution may be removed from the EPLS in the near term and have its eligibility restored; and

(B) Suspend any award that is not immediately terminated, as well as all payments under it.

(f) *Post-award administration responsibilities of the Office of Naval Research (ONR).* As the DoD office assigned responsibility for performing field administration services for grants and cooperative agreements with institutions of higher education, the ONR shall disseminate the list it receives from the ODUSD(MPP) of institutions of higher education identified pursuant to the procedures of 32 CFR part 216 to:

(1) ONR field administration offices, with instructions to:

(i) Disapprove any payment requests under awards to such institutions for which post-award payment administration was delegated to the ONR; and

(ii) Alert the DoD offices that made the awards to their responsibilities under paragraphs (e)(5)(i) and (e)(5)(iii) of this section.

(2) Awarding offices in DoD Components that may be identified from data in the Defense Assistance Awards Data System (see 32 CFR 21.520 through 21.555) as having awards with such institution s for which post-award payment administration was not delegated to ONR. The ONR is to alert those offices to their responsibilities under paragraph (c)(5) of this section.

■ 13. Section 22.605 is amended by:

■ a. Revising "(see 32 CFR part 21, subpart C)" to read "(see 32 CFR part 21, subpart E)" in paragraph (b); and

■ b. Redesignating the current footnote 6 in paragraph (c)(2) as footnote 9 and revising it to read as follows:

§ 22.605 Grants officers' responsibilities.

* * * * *

[9] See footnote 8 to § 22.510(b).

■ 14. Section 22.710 is amended as follows:

■ a. Revising the introductory text to read as set forth below; and

■ b. Redesignating the current footnotes 7 through 9 in the introductory text and in paragraphs (a)(1) and (2) respectively as footnotes 10 through 12 and revising them to read as set forth below:

§ 22.710 Assignment of grants administration offices.

In accordance with the policy stated in § 22.705(b), the DoD offices (referred to in this part as "grants administration offices") that are assigned responsibility for performing field administration services for grants and cooperative agreements are (see the "Federal Directory of Contact Administration Services (CAS) Components" [10] for specific addresses of administration offices):

* * * * *

[10] The "Federal Directory of Contract Administration Services (CAS) Components" may be accessed through the Defense Contract Management Agency homepage at *http://www.dcma.mil.*

[11] See footnote 5 to § 22.420(b)(1).

[12] See footnote 5 to § 22.420(b)(1).

■ 15. Section 22.715 is amended by revising paragraphs (a)(3) and (4) to read as set forth below:

§ 22.715 Grants administration office functions.

* * * * *

(a) * * *

(3) Reviewing recipients' systems and compliance with Federal requirements, in coordination with any reviews and compliance audits performed by independent auditors under OMB Circular A–133, or in accordance with the terms and conditions of the award. This includes:

(i) Reviewing recipients' financial management, property management, and purchasing systems, to determine the adequacy of such systems.

(ii) Determining that recipients have drug-free workplace programs, as required under 32 CFR part 26.

(iii) Determining that governmental, university and nonprofit recipients have complied with requirements in OMB Circular A–133, as implemented at 32 CFR 32.26 and 33.26, to have single audits and submit audit reports to the Federal Audit Clearinghouse. If a recipient has not had a required audit, appropriate action must be taken (*e.g.,* contacting the recipient and coordinating with the Office of the Assistant Inspector General for Audit Policy and Oversight (OAIG(P&O)), Office of the Deputy Inspector General for Inspections and Policy, Office of the Inspector General of the Department of Defense (OIG, DoD), 400 Army-Navy Drive, Arlington, VA 22202).

(4) Issuing timely management decisions, in accordance with DoD Directive 7640.2, "Policy for Follow-up

on Contract Audit Reports,"[13] on single audit findings referred by the OIG, DoD, Directive 7600.10, "Audits of States, Local Governments, and Non-Profit Organizations".[14]

[13] Electronic copies may be obtained at the Washington Headquarters Services Internet site *http://www.dtic.mil/whs/directives.* Paper copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[14] See footnote 13 to § 22.715(a)(4).

■ 16. Section 22.810 is amended by redesignating footnote 10 to paragraph (c)(3)(i) as footnote 15 and revising it to read as follows:

§ 22.810 Payments.

* * * * *

[15] See footnote 13 to § 22.715(a)(4).

BILLING CODE 5001–06–M

■ 17. Appendix A to Part 22 is revised to read as follows:

Appendix A to Part 22—Proposal Provision for Required Certification

PROVISION IN PROPOSAL (or, suitably modified, in award)	USED FOR			SOURCE OF REQUIREMENT
	Type of Award	Type of Recipient	Specific Situation	
By signing and submitting this proposal, the recipient is providing the certification at Appendix A to 32 CFR Part 28 regarding lobbying.	Any financial assistance [see 32 CFR 28.105(b) and definitions of "Federal grant," "Federal cooperative agreement," and "Federal loan" in 32 CFR 28.105(c), (d), and (e)]	All but Indian tribe or tribal organization with respect to expenditures specifically permitted by other Federal law [see 32 CFR 28.105(l)]	Any	32 CFR 28, which implements 31 U.S.C. 1352

■ 18. Appendix B to Part 22 is revised to read as follows:

Appendix B to Part 22—Suggested Award Provisions for National Policy Requirements That Often Apply

SUGGESTED AWARD PROVISION	USED FOR: Type of Award	USED FOR: Type of Recipient	USED FOR: Specific Situation	SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
Nondiscrimination By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following, national policies prohibiting discrimination:				
a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, et seq.), as implemented by DoD regulations at 32 CFR part 195.	Grants, cooperative agreements, and other financial assistance included at 32 CFR 195.2(d).	Any.	Any.	32 CFR part 195.6 requires grants officer to obtain recipient's assurance of compliance. It also requires the recipient to flow down requirements to subrecipients.
b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp., p. 339], as implemented by Department of Labor regulations at 41 CFR part 60.	Grants, cooperative agreements, and other prime awards defined at 40 CFR 60-1.3 as "Federally assisted construction contract."	Any.	Awards under which construction work is to be done.	The grants officer should inform recipients that 41 CFR 60-1.4(b) prescribes a clause that recipients must include in federally assisted construction awards and subawards [60-1.4(d) allows incorporation by reference]. This requirement also is at 32 CFR 33.36(i)(3) and in Appendices A to 32 CFR part 32 and 32 CFR part 34.
c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.	Grants, cooperative agreements, and other financial assistance included at 20 U.S.C. 1682.	Any [for sex discrimination, 32 CFR 196.235 excepts an entity controlled by a religious organization, if not consistent with the organization's religious tenets].	Any educational program or activity receiving Federal financial assistance.	32 CFR 196.115 requires assurance of compliance. The inclusion of subrecipients in the definition of "recipient" at 32 CFR 196.105 requires recipient to flow down requirements to subrecipients.
d. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.	Grants, cooperative agreements, and other awards defined at 45 CFR 90.4 as "Federal financial assistance."	Any.	Any.	45 CFR 90.4 requires that recipient flow down requirements to subrecipients [definition of "recipient" at 45 CFR 90.4 includes entities to which assistance is extended indirectly, through another recipient].

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
e. On the basis of handicap, in:				
1. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.	Grants, cooperative agreements, and other awards included in "Federal financial assistance" definition at 32 CFR 56.3(b).	Any.	Any.	32 CFR 56.9(b) requires grants officer to obtain recipient's written assurance of compliance and specifies what the assurance includes. Note that requirements flow down to subawards ["recipient," defined at 32 CFR 56.3(g), includes entities receiving assistance indirectly through other recipients].
2. The Architectural Barriers Act of 1968 (42 U.S.C. 4151, et seq.).	Grant or loan.	Any.	Construction or alteration of buildings or facilities, except those restricted to use only by able-bodied uniformed personnel.	
Live Organisms By signing this agreement or accepting funds under this agreement, the recipient assures that it will comply with applicable provisions of the following national policies concerning live organisms:				
a. For human subjects, the Common Federal Policy for the Protection of Human Subjects, codified by the Department of Health and Human Services at 45 CFR part 46 and implemented by the Department of Defense at 32 CFR part 219.	Any.	Any.	Research, development, test, or evaluation involving live human subjects, with some exceptions [see 32 CFR part 219].	32 CFR 219.103 requires each recipient to have a Federally approved, written assurance of compliance [it may be HHS-approved, on file with HHS; DoD-approved, on file with a DoD Component; or may need to be obtained by the grants officer for the specific award].

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
b. For animals:				
1. Rules on animal acquisition, transport, care, handling, and use in 9 CFR parts 1-4, Department of Agriculture rules implementing the Laboratory Animal Welfare Act of 1966 (7 U.S.C. 2131-2156) , and guidelines in the National Academy of Sciences (NAS) "Guide for the Care and Use of Laboratory Animals" (1996), including the Public Health Service Policy and Government Principles Regarding the Care and Use of Animals in Appendix D to the guide.	Any.	Any.	Research, experimentation, or testing involving the use of animals.	Prior to making an award under which animal-based research, testing, or training is to be performed, DoD Directive 3216.1[1] requires administrative review of the proposal by a DoD veterinarian trained or experienced in laboratory animal science and medicine, as well as a review by the recipient's Institutional Animal Care and Use Committee.
2. Prohibitions on the purchase or use of dogs or cats for certain medical training purposes, in Section 8019 (10 U.S.C. 2241 note) of the Department of Defense Appropriations Act, 1991 (Pub. Law 101-511).	Any.	Any.	Use of DoD appropriations for training on treatment of wounds.	
3. Rules of the Departments of Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227) implementing laws and conventions on the taking, possession, transport, purchase, sale, export, or import of wildlife and plants, including the: Endangered Species Act of 1973 (16 U.S.C. 1531-1543); Marine Mammal Protection Act (16 U.S.C. 1361-1384); Lacey Act (18 U.S.C. 42); and Convention on International Trade in Endangered Species of Wild Fauna and Flora.	Any.	Any.	Activities that may involve or impact wildlife and plants.	

1 Electronic copies may be obtained at the Washington Headquarters Services Internet site http://www.dtic.mil/whs/directives. Paper copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
Debarment and Suspension The recipient agrees to comply with the requirements regarding debarment and suspension in Subpart C of 32 CFR part 25, which implements E.O. 12549 [3 CFR, 1986 Comp., p. 189]; E.O. 12689 [3 CFR, 1989 Comp., p. 235]; and Sec. 2455 of Federal Acquisition and Streamlining Act of 1994 (Pub. L. 103-355). The recipient also agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the recipient enters into transactions that are "covered transactions" under Subpart B of 32 CFR part 25.	Any nonprocurement transaction [see "covered transaction" as specified in Subpart B of 32 CFR part 25, especially sections 25.210 and 25.215]	All but foreign governments, foreign governmental entities, and others excluded at 32 CFR 25.215(a)	Any	
Hatch Act The recipient agrees to comply with the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328), as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.	Grants or loans.	State and local governments.	All but employees of educational or research institutions supported by State; political subdivision thereof; or religious, philanthropic, or cultural organization.	
Environmental Standards By signing this agreement or accepting funds under this agreement, the recipient assures that it will: a. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et. seq.) and Clean Water Act (33 U.S.C. 1251, et. seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 Comp., p. 799] and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR part 32.	Any nonprocurement transaction [see 40 CFR 32.1110].	Any.	Any.	Executive Order 11738 establishes additional responsibilities for grants officers.

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
b. Identify to the awarding agency any impact this award may have on:				
1. The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et. seq.) and to prepare Environmental Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.	Any.	Any.	Any actions that may affect the environment.	The Council on Environmental Quality's regulations for implementing NEPA are at 40 C.F.R. parts 1500-1508. Executive Order 11514 [3 CFR, 1966-1970 Comp., p. 902], as amended by Executive Order 11991, sets policies and procedures for considering actions in the U.S. Executive Orders11988 [3 CFR, 1977 Comp., p. 117] and 11990 [3 CFR, 1977 Comp., p. 121] specify additional considerations, when actions involve floodplains or wetlands, respectively.
2. Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et. seq.), which require flood insurance, when available, for Federally assisted construction or acquisition in flood-prone areas.	Grants, cooperative agreements, and other "financial assistance" (see 42 U.S.C. 4003).	Any.	Awards involving construction, land acquisition or development, with some exceptions [see 42 U.S.C. 4001, et. seq.].	The grants officer should inform the recipient that 42 U.S.C. 4012a prohibits awards for acquisition or construction in flood-prone areas (Federal Emergency Management Agency publishes lists of such areas in the Federal Register), unless recipient has required insurance. If action is in a floodplain, Executive Order 11988 [3 CFR, 1977 Comp., p. 117] specifies additional pre-award procedures for Federal agencies. Recipients are to apply requirements to subawards ("financial assistance," defined at 42 U.S.C. 4003, includes indirect Federal assistance).

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
3. Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et. Seq.), concerning protection of U.S. coastal resources.	Grants, cooperative agreements, and other "Federal assistance" [see 16 U.S.C. 1456(d)].	State and local governments, interstate and other regional agencies.	Awards that may affect the coastal zone.	16 U.S.C. 1456(d) prohibits approval of projects inconsistent with a coastal State's approved management program for the coastal zone.
4. Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, et. seq.), concerning preservation of barrier resources.	Grants, cooperative agreements, and other "financial assistance" (see 16 U.S.C. 3502).	Any.	Awards that may affect barriers along the Atlantic and Gulf coasts and Great Lakes' shores.	16 U.S.C. 3504-3505 prohibit new awards for actions within Coastal Barrier System, except for certain purposes. Requirements flow to subawards (16 U.S.C. 3502 includes indirect assistance as "financial assistance").
5. Any existing or proposed component of the National Wild and Scenic Rivers system, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).	Any.	Any.	Awards that may affect existing or proposed element of National Wild and Scenic Rivers system.	
6. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300h-3).	Any.	Any.	Construction in any area with aquifer that the EPA finds would create public health hazard, if contaminated.	42 U.S.C. 300h-3(e) precludes awards of Federal financial assistance for any project that the EPA administrator determines may contaminate a sole-source aquifer so as to threaten public health.
Drug-Free Workplace The recipient agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B (or Subpart C, if the recipient is an individual) of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).	Any financial assistance, including any grant or cooperative agreement [see "award" as broadly defined at 32 CFR 26.605]	Any	Any, except where inconsistent with international obligations of the U.S. or the laws or regulations of a foreign government [see 32 CFR 26.110]	

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
National Historic Preservation The recipient agrees to identify to the awarding agency any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.), as implemented by the Advisory Council on Historic Preservation regulations at 36 C.F.R. part 800 and Executive Order 11593 [3 CFR, 1971-1975 Comp., p. 559].	Any.	Any.	Any construction, acquisition, modernization, or other activity that may impact a historic property.	36 CFR part 800 requires grants officers to get comments from the Advisory Council on Historic Preservation before proceeding with Federally assisted projects that may affect properties listed on or eligible for listing on the National Register of Historic Places.
Officials Not to Benefit No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.	Grants, cooperative agreements, and other "agreements."	Any.	Any.	
Preference for U.S. Flag Carriers Travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.	Any.	Any.	Any agreement under which international air travel may be supported by U.S. Government funds.	

SUGGESTED AWARD PROVISION	USED FOR:			SOME REQUIREMENT(S) THE GRANTS OFFICER SHOULD NOTE
	Type of Award	Type of Recipient	Specific Situation	
Cargo Preference The recipient agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulations at 46 CFR 381.7, which require that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this agreement, and which may be transported by ocean vessel, shall be transported on privately owned U.S.-flag commercial vessels, if available.	Grants, cooperative agreements, and other awards included in 46 CFR 381.7.	Any.	Any award where possibility exists for ocean transport of items procured or obtained by or on behalf of the recipient, or any of the recipient's contractors or subcontractors.	46 CFR 381.7 requires grants officers to include appropriate clauses in award documents. It also requires recipients to include appropriate clauses in contracts using U.S. Government funds under agreements, where ocean transport of procured goods is possible [e.g., see clause at 46 CFR 381.7(b)].
Military Recruiters [Grants officers shall include the exact award provision specified at 32 CFR 22.520]	Grants and cooperative agreements.	Domestic institution of higher education (see 32 CFR 22.520).	Any.	
Relocation and Real Property Acquisition The recipient assures that it will comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provides for fair and equitable treatment of persons displaced by Federally assisted programs or persons whose property is acquired as a result of such programs.	Grants, cooperative agreements, and other "Federal financial assistance" [see 49 CFR 24.2(j)].	"State agency" as defined in 49 CFR part 24 to include persons with authority to acquire property by eminent domain under State law.	Any project that may result in real property acquisition or displacement where State agency hasn't opted to certify to Dept. of Transportation in lieu of providing assurance.	42 U.S.C. 4630 and 49 CFR 24.4, as implemented by DoD at 32 CFR part 259, requires grants officers to obtain recipients' assurance of compliance.

PART 25—[AMENDED]

■ 19. The authority citation for part 25 continues to read as follows:

Authority: Sec. 2455, Pub. L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note); E.O. 12549 [3 CFR, 1986 Comp., p. 189]; E.O. 12689 [3 CFR, 1989 Comp., p. 235].

■ 20. Section 25.425 is amended by revising paragraphs (c) and (d) and adding a paragraph (e) to read as follows:

§ 25.425 When do I check to see if a person is excluded or disqualified?

* * * * *

(c) Approve a lower tier participant if agency approval of the lower tier participant is required;

(d) Approve a principal in connection with a lower tier transaction if agency approval of the principal is required; or

(e) Obligate additional funding (e.g., through an incremental funding action) for a pre-existing covered transaction with an institution of higher education, as provided in 32 CFR 22.520(e)(2).

PART 32—[AMENDED]

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

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 32.2 [Amended]

■ 22. Section 32.2 introductory text is amended by revising "32 CFR 25.105" to read "32 CFR 25.1015".

■ 23. Paragraph 8 of Appendix A to part 32 is revised to read as follows:

Appendix A to Part 32—Contract Provisions

* * * * *

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 32 CFR 25.220) shall not be made to parties listed on the Governmentwide Excluded Parties List System, in accordance with the DoD adoption at 32 CFR part 25 of the Governmentwide rule implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

PART 33—[AMENDED]

■ 24. The authority citation for part 33 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113

§ 33.26 [Amended]

■ 25. Section 33.26, paragraph (b) is amended by revising "$300,000" to read "$500,000".

§ 33.35 [Amended]

■ 26. Section 33.35 is amended by revising "not make any award or permit any award (subgrant or contract) at any tier to" to read "comply with the requirements of Subpart C, 32 CFR part 25, including the restrictions on entering into a covered transaction with".

PART 34—[AMENDED]

■ 27. The authority citation for part 34 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

§ 34.16 [Amended]

■ 28. Section 34.16, paragraph (a) is amended by revising "$300,000" to read "$500,000".

■ 29. Paragraph 7 of Appendix A to part 34 is revised to read as follows:

Appendix A to Part 34—Contract Provisions

* * * * *

7. *Debarment and Suspension (E.O.s 12549 and 12689)*—A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 32 CFR 25.220) shall not be made to parties listed on the Governmentwide Excluded Parties List System, in accordance with the DoD adoption at 32 CFR part 25 of the Governmentwide rule implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

PART 37—[AMENDED]

■ 30. The authority citation for part 37 continues to read as follows:

Authority: 5 U.S.C. 301 and 10 U.S.C. 113.

■ 31. Section 37.130 is amended by:

■ a. Revising paragraph (b)(1); and

■ b. Redesignating paragraph (b)(2) as (b)(3), and adding a new (b)(2) to read as follows:

§ 37.130 Which other parts of the DoD Grant and Agreement Regulations apply to TIAs?

* * * * *

(b) * * *

(1) Part 25 (32 CFR part 25) on nonprocurement debarment and suspension, which applies because it covers nonprocurement instruments in general;

(2) Part 26 (32 CFR part 26), on drug-free workplace requirements, which applies because it covers financial assistance in general; and

* * * * *

■ 32. Appendix D to part 37 is revised to read as follows:

Appendix D to Part 37—What Common National Policy Requirement May Apply and Need To Be Included in TIAs?

What your TIA is a cooperative agreement or another type of assistance transaction, as discussed in Appendix B to this part, the terms and conditions of the agreement must provide for recipients' compliance with applicable Federal statues and regulations. This appendix lists some of the more common requirements to aid you in identifying one that apply to your TIA. The list is not intended to be all-inclusive, however, and you may need to consult legal counsel to verify whether there are other that apply in your situation (*e.g.*, due to a provision in the appropriations act for the specific funds that you are using or due to a statute or rule that applies to a particular program or type of activity).

A. Certifications

One requirement that applies to all TIA's currently requires you to obtain a certification at the time of proposal. That requirement is in a Governmentwide common rule about lobbying prohibitions, which is implemented by the DoD at 32 CFR part 28. The prohibitions apply to all financial assistance. Appendix A to 32 CFR part 22 includes a sample provision that you may use, to have proposers incorporate the certification by reference into their proposals.

B. Assurance That Apply to All TIAs

DoD policy is to use certification, as described in the preceding paragraph, only for national policy requirement that specifically require them. The usual approach to a communicating other national policy requirements to recipients is to incorporate them as award terms of conditions, or assurances. Appendix B to 32 CFR part 22 lists national policy requirements that commonly apply to grants and cooperative agreements. It also has suggested language for assurances to incorporate the requirements in award documents. Of those requirements, the following six apply to all TIAs:

1. Requirements concerning debarment and suspension in the Governmentwide common rule that the DoD has codified in 32 CFR part 25. The requirements apply to all nonprocurement transactions.

2. Requirements concerning drug-free workplace in the Governmentwide common rule that the DoD has codified at 32 CFR part 26. The requirements apply to all financial assistance.

3. Prohibitions on discrimination the basis of race, color, or national origin in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.* These apply to all financial assistance. They require recipients to flow down the prohibitions to any subrecipients performing a part of the substantive research program (as opposed to supplies from whom recipients purchase goods or services). For further information, see item 1. under the heading "Nondiscrimination" in Appendix B to 32 CFR part 22.

4. Prohibitions on discrimination on the basis of age, in the Age Discrimination Act

of 1975 (42 U.S.C. 6101, *et seq.*). They apply to all financial assistance and require flow down to subrecipients. For further information, see item d. under the heading "Nondiscrimination" in Appendix B to 32 CFR part 22.

5. Prohibition on discrimination on the basis of handicap, in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). They apply to all financial assistance and require flow down to subrecipients. For further information, see item e.1. under the heading "Nondiscrimination" in Appendix B to 32 CFR part 22.

6. Preferences for use of U.S.-flag air carriers in the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), which apply to uses of U.S. Government funds.

C. Other Assurances

Additional requirements listed in Appendix B to 32 CFR part 22 may apply in certain circumstances, as follows:

1. If construction work is to be done under a TIA or its subawards, it is subject to the prohibitions in Executive Order 11246 on discrimination on the basis of race, color, religion, sex, or national origin. For further information, see item b. under the heading "Nondiscrimination" in Appendix B to 32 CFR part 22.

2. If the research involves human subjects or animals, it is subject to the requirements in item a. or b., respectively, under the heading "Live organisms" in Appendix B to 32 CFR part 22.

3. If the research involves actions that may affect the environment, it is subject to the National Environmental Policy Act, which is item b.1. under the heading "Environmental Standards" in Appendix B to 32 CFR part 22. It also may be subject to one or more of the other requirements in items b.2. through b.6. under that heading, which concern flood-prone areas, coastal zones, coastal barriers, wild and scenic rivers, and underground sources of drinking water.

4. If the project may impact a historic property, it is subject to the National Historic Preservation Act of 1966 (16 U.S.C. 470, *et seq.*), as described under the heading "National Historic Preservation" in Appendix B to 32 CFR part 22.

■ 33. Appendix E to part 37 is revised to read as follows:

Appendix E to Part 37—What Provisions May a Participant Need To Include When Purchasing Goods or Services Under a TIA?

A. As discussed in § 37.705, you must inform recipients of any national policy requirements that flow down to their purchases of goods or services (*e.g.*, supplies or equipment) under their TIAs. Note that purchases of goods or services differ from subawards, which are for substantive research program performance.

B. Appendix A to 32 CFR part 34 lists seven national policy requirements that commonly apply to firms' purchases under grants or cooperative agreements. Of those seven, two that apply to all recipients' purchases under TIAs are:

1. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).* A contractor submitting a bid to the recipient for a contract award of $100,000 or more must file a certification with the recipient that it has not and will not use Federal appropriations for certain lobbying purposes. The contractor also must disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. For further details, see 32 CFR part 28, the DoD's codification of the Governmentwide common rule implementing this amendment.

2. *Debarment and suspension.* A contract award with an amount expected to equal or exceed $25,000 and certain other contract awards (see 32 CFR 25.220) shall not be made to parties listed on the Governmentwide Excluded Parties List System, in accordance with the DoD adoption at 32 CFR part 25 of the Governmentwide rule implementing E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235), "Debarment and Suspension." The Excluded Parties List System contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than E.O. 12549.

C. One other requirement applies only in cases where construction work is to be performed under the TIA with Federal funds or recipient funds counted toward required cost sharing:

1. *Equal Employment Opportunity.* Although construction work should happen rarely under a TIA, the agreements officer in that case should inform the recipient that Department of Labor regulations at 41 CFR 60–1.4(b) prescribe a clause that must be incorporated into construction awards and subawards. Further details are provided in Appendix B to Part 22 of the DoDGARs (32 CFR part 22), in section b. under the heading "Nondiscrimination."

Dated: August 15, 2005.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 05–16417 Filed 8–19–05; 9:53 am]

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html.*

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H.R. 3423/P.L. 109–43

Medical Device User Fee Stabilization Act of 2005 (Aug. 1, 2005; 119 Stat. 439)

H.R. 38/P.L. 109–44

Upper White Salmon Wild and Scenic Rivers Act (Aug. 2, 2005; 119 Stat. 443)

H.R. 481/P.L. 109–45

Sand Creek Massacre National Historic Site Trust Act of 2005 (Aug. 2, 2005; 119 Stat. 445)

H.R. 541/P.L. 109–46

To direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries. (Aug. 2, 2005; 119 Stat. 448)

H.R. 794/P.L. 109–47

Colorado River Indian Reservation Boundary Correction Act (Aug. 2, 2005; 119 Stat. 451)

H.R. 1046/P.L. 109–48

To authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming. (Aug. 2, 2005; 119 Stat. 455)

H.J. Res. 59/P.L. 109–49

Expressing the sense of Congress with respect to the women suffragists who fought for and won the right of women to vote in the United States. (Aug. 2, 2005; 119 Stat. 457)

S. 571/P.L. 109–50

To designate the facility of the United States Postal Service located at 1915 Fulton Street in Brooklyn, New York, as the "Congresswoman Shirley A. Chisholm Post Office Building". (Aug. 2, 2005; 119 Stat. 459)

S. 775/P.L. 109–51

To designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, Oklahoma, as the "Boone Pickens Post Office". (Aug. 2, 2005; 119 Stat. 460)

S. 904/P.L. 109–52

To designate the facility of the United States Postal Service located at 1560 Union Valley Road in West Milford, New Jersey, as the "Brian P. Parrello Post Office Building". (Aug. 2, 2005; 119 Stat. 461)

H.R. 3045/P.L. 109–53

Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (Aug. 2, 2005; 119 Stat. 462)

H.R. 2361/P.L. 109–54

Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 499)

H.R. 2985/P.L. 109–55

Legislative Branch Appropriations Act, 2006 (Aug. 2, 2005; 119 Stat. 565)

S. 45/P.L. 109–56

To amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes. (Aug. 2, 2005; 119 Stat. 591)

S. 1395/P.L. 109–57

Controlled Substances Export Reform Act of 2005 (Aug. 2, 2005; 119 Stat. 592)

Last List August 2, 2005

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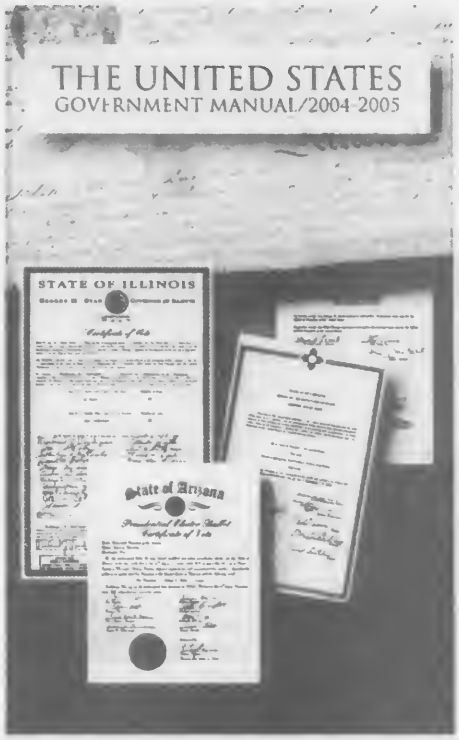

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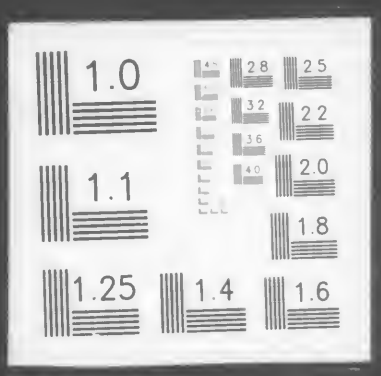
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